

Calendar No. 422

109TH CONGRESS
2^D SESSION

S. 22

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2006

Mr. ENSIGN (for himself, Mr. FRIST, Mr. GREGG, Mr. McCONNELL, Mr. HATCH, Mr. SANTORUM, Mr. DEMINT, Mr. INHOFE, Mr. BURNS, Mrs. DOLE, Mr. CORNYN, Mr. VOINOVICH, Mr. BURR, Mr. ALLARD, Mr. COBURN, Mr. VITTER, and Mr. ALEXANDER) introduced the following bill; which was read the first time

MAY 4, 2006

Read the second time and placed on the calendar

A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Medical Care Access
3 Protection Act of 2006” or the “MCAP Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—

6 (1) EFFECT ON HEALTH CARE ACCESS AND
7 COSTS.—Congress finds that our current civil justice
8 system is adversely affecting patient access to health
9 care services, better patient care, and cost-efficient
10 health care, in that the health care liability system
11 is a costly and ineffective mechanism for resolving
12 claims of health care liability and compensating in-
13 jured patients, and is a deterrent to the sharing of
14 information among health care professionals which
15 impedes efforts to improve patient safety and quality
16 of care.

17 (2) EFFECT ON INTERSTATE COMMERCE.—
18 Congress finds that the health care and insurance
19 industries are industries affecting interstate com-
20 merce and the health care liability litigation systems
21 existing throughout the United States are activities
22 that affect interstate commerce by contributing to
23 the high costs of health care and premiums for
24 health care liability insurance purchased by health
25 care system providers.

1 (3) EFFECT ON FEDERAL SPENDING.—Con-
2 gress finds that the health care liability litigation
3 systems existing throughout the United States have
4 a significant effect on the amount, distribution, and
5 use of Federal funds because of—

6 (A) the large number of individuals who
7 receive health care benefits under programs op-
8 erated or financed by the Federal Government;

9 (B) the large number of individuals who
10 benefit because of the exclusion from Federal
11 taxes of the amounts spent to provide them
12 with health insurance benefits; and

13 (C) the large number of health care pro-
14 viders who provide items or services for which
15 the Federal Government makes payments.

16 (b) PURPOSE.—It is the purpose of this Act to imple-
17 ment reasonable, comprehensive, and effective health care
18 liability reforms designed to—

19 (1) improve the availability of health care serv-
20 ices in cases in which health care liability actions
21 have been shown to be a factor in the decreased
22 availability of services;

23 (2) reduce the incidence of “defensive medi-
24 cine” and lower the cost of health care liability in-

1 surance, all of which contribute to the escalation of
2 health care costs;

3 (3) ensure that persons with meritorious health
4 care injury claims receive fair and adequate com-
5 pensation, including reasonable noneconomic dam-
6 ages;

7 (4) improve the fairness and cost-effectiveness
8 of our current health care liability system to resolve
9 disputes over, and provide compensation for, health
10 care liability by reducing uncertainty in the amount
11 of compensation provided to injured individuals; and

12 (5) provide an increased sharing of information
13 in the health care system which will reduce unin-
14 tended injury and improve patient care.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**
18 **TEM; ADR.**—The term “alternative dispute resolution
19 system” or “ADR” means a system that provides
20 for the resolution of health care lawsuits in a man-
21 ner other than through a civil action brought in a
22 State or Federal court.

23 (2) **CLAIMANT.**—The term “claimant” means
24 any person who brings a health care lawsuit, includ-
25 ing a person who asserts or claims a right to legal

1 or equitable contribution, indemnity or subrogation,
 2 arising out of a health care liability claim or action,
 3 and any person on whose behalf such a claim is as-
 4 serted or such an action is brought, whether de-
 5 ceased, incompetent, or a minor.

6 (3) COLLATERAL SOURCE BENEFITS.—The
 7 term “collateral source benefits” means any amount
 8 paid or reasonably likely to be paid in the future to
 9 or on behalf of the claimant, or any service, product
 10 or other benefit provided or reasonably likely to be
 11 provided in the future to or on behalf of the claim-
 12 ant, as a result of the injury or wrongful death, pur-
 13 suant to—

14 (A) any State or Federal health, sickness,
 15 income-disability, accident, or workers’ com-
 16 pensation law;

17 (B) any health, sickness, income-disability,
 18 or accident insurance that provides health bene-
 19 fits or income-disability coverage;

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

1 (D) any other publicly or privately funded
2 program.

3 (4) COMPENSATORY DAMAGES.—The term
4 “compensatory damages” means objectively
5 verifiable monetary losses incurred as a result of the
6 provision of, use of, or payment for (or failure to
7 provide, use, or pay for) health care services or med-
8 ical products, such as past and future medical ex-
9 penses, loss of past and future earnings, cost of ob-
10 taining domestic services, loss of employment, and
11 loss of business or employment opportunities, dam-
12 ages for physical and emotional pain, suffering, in-
13 convenience, physical impairment, mental anguish,
14 disfigurement, loss of enjoyment of life, loss of soci-
15 ety and companionship, loss of consortium (other
16 than loss of domestic service), hedonic damages, in-
17 jury to reputation, and all other nonpecuniary losses
18 of any kind or nature. Such term includes economic
19 damages and noneconomic damages, as such terms
20 are defined in this section.

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

1 (6) ECONOMIC DAMAGES.—The term “economic
2 damages” means objectively verifiable monetary
3 losses incurred as a result of the provision of, use
4 of, or payment for (or failure to provide, use, or pay
5 for) health care services or medical products, such as
6 past and future medical expenses, loss of past and
7 future earnings, cost of obtaining domestic services,
8 loss of employment, and loss of business or employ-
9 ment opportunities.

10 (7) HEALTH CARE GOODS OR SERVICES.—The
11 term “health care goods or services” means any
12 goods or services provided by a health care institu-
13 tion, provider, or by any individual working under
14 the supervision of a health care provider, that relates
15 to the diagnosis, prevention, care, or treatment of
16 any human disease or impairment, or the assessment
17 of the health of human beings.

18 (8) HEALTH CARE INSTITUTION.—The term
19 “health care institution” means any entity licensed
20 under Federal or State law to provide health care
21 services (including but not limited to ambulatory
22 surgical centers, assisted living facilities, emergency
23 medical services providers, hospices, hospitals and
24 hospital systems, nursing homes, or other entities li-
25 censed to provide such services).

1 (9) HEALTH CARE LAWSUIT.—The term
 2 “health care lawsuit” means any health care liability
 3 claim concerning the provision of health care goods
 4 or services affecting interstate commerce, or any
 5 health care liability action concerning the provision
 6 of (or the failure to provide) health care goods or
 7 services affecting interstate commerce, brought in a
 8 State or Federal court or pursuant to an alternative
 9 dispute resolution system, against a health care pro-
 10 vider or a health care institution regardless of the
 11 theory of liability on which the claim is based, or the
 12 number of claimants, plaintiffs, defendants, or other
 13 parties, or the number of claims or causes of action,
 14 in which the claimant alleges a health care liability
 15 claim.

16 (10) HEALTH CARE LIABILITY ACTION.—The
 17 term “health care liability action” means a civil ac-
 18 tion brought in a State or Federal Court or pursu-
 19 ant to an alternative dispute resolution system,
 20 against a health care provider or a health care insti-
 21 tution regardless of the theory of liability on which
 22 the claim is based, or the number of plaintiffs, de-
 23 fendants, or other parties, or the number of causes
 24 of action, in which the claimant alleges a health care
 25 liability claim.

1 (11) HEALTH CARE LIABILITY CLAIM.—The
 2 term “health care liability claim” means a demand
 3 by any person, whether or not pursuant to ADR,
 4 against a health care provider or health care institu-
 5 tion, including third-party claims, cross-claims,
 6 counter-claims, or contribution claims, which are
 7 based upon the provision of, use of, or payment for
 8 (or the failure to provide, use, or pay for) health
 9 care services, regardless of the theory of liability on
 10 which the claim is based, or the number of plaintiffs,
 11 defendants, or other parties, or the number of
 12 causes of action.

13 (12) HEALTH CARE PROVIDER.—

14 (A) IN GENERAL.—The term “health care
 15 provider” means any person (including but not
 16 limited to a physician (as defined by section
 17 1861(r) of the Social Security Act (42 U.S.C.
 18 1395x(r)), registered nurse, dentist, podiatrist,
 19 pharmacist, chiropractor, or optometrist) re-
 20 quired by State or Federal law to be licensed,
 21 registered, or certified to provide health care
 22 services, and being either so licensed, reg-
 23 istered, or certified, or exempted from such re-
 24 quirement by other statute or regulation.

1 (B) TREATMENT OF CERTAIN PROFES-
2 SIONAL ASSOCIATIONS.—For purposes of this
3 Act, a professional association that is organized
4 under State law by an individual physician or
5 group of physicians, a partnership or limited li-
6 ability partnership formed by a group of physi-
7 cians, a nonprofit health corporation certified
8 under State law, or a company formed by a
9 group of physicians under State law shall be
10 treated as a health care provider under sub-
11 paragraph (A).

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

17 (14) NONECONOMIC DAMAGES.—The term
18 “noneconomic damages” means damages for phys-
19 ical and emotional pain, suffering, inconvenience,
20 physical impairment, mental anguish, disfigurement,
21 loss of enjoyment of life, loss of society and compan-
22 ionship, loss of consortium (other than loss of do-
23 mestic service), hedonic damages, injury to reputa-
24 tion, and all other nonpecuniary losses of any kind
25 or nature.

1 (15) PUNITIVE DAMAGES.—The term “punitive
2 damages” means damages awarded, for the purpose
3 of punishment or deterrence, and not solely for com-
4 pensatory purposes, against a health care provider
5 or health care institution. Punitive damages are nei-
6 ther economic nor noneconomic damages.

7 (16) RECOVERY.—The term “recovery” means
8 the net sum recovered after deducting any disburse-
9 ments or costs incurred in connection with prosecu-
10 tion or settlement of the claim, including all costs
11 paid or advanced by any person. Costs of health care
12 incurred by the plaintiff and the attorneys’ office
13 overhead costs or charges for legal services are not
14 deductible disbursements or costs for such purpose.

15 (17) 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, the Trust Territory of the Pacific Islands, and
20 any other territory or possession of the United
21 States, or any political subdivision thereof.

22 **SEC. 4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

23 (a) IN GENERAL.—Except as otherwise provided for
24 in this section, the time for the commencement of a health
25 care lawsuit shall be 3 years after the date of manifesta-

tion of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) 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.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, 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 institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties

1 or whether on the motion of the court) that there has been
 2 a violation of Rule 11 of the Federal Rules of Civil Proce-
 3 dure (or a similar violation of applicable State court rules)
 4 in a health care liability action to which this Act applies,
 5 the court shall impose upon the attorneys, law firms, or
 6 pro se litigants that have violated Rule 11 or are respon-
 7 sible for the violation, an appropriate sanction, which shall
 8 include an order to pay the other party or parties for the
 9 reasonable expenses incurred as a direct result of the filing
 10 of the pleading, motion, or other paper that is the subject
 11 of the violation, including a reasonable attorneys' fee.
 12 Such sanction shall be sufficient to deter repetition of such
 13 conduct or comparable conduct by others similarly situ-
 14 ated, and to compensate the party or parties injured by
 15 such conduct.

16 **SEC. 5. COMPENSATING PATIENT INJURY.**

17 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
 18 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
 19 health care lawsuit, nothing in this Act shall limit the re-
 20 covery by a claimant of the full amount of the available
 21 economic damages, notwithstanding the limitation con-
 22 tained in subsection (b).

23 (b) ADDITIONAL NONECONOMIC DAMAGES.—

24 (1) HEALTH CARE PROVIDERS.—In any health
 25 care lawsuit where final judgment is rendered

1 against a health care provider, the amount of non-
2 economic damages recovered from the provider, if
3 otherwise available under applicable Federal or State
4 law, may be as much as \$250,000, regardless of the
5 number of parties other than a health care institu-
6 tion against whom the action is brought or the num-
7 ber of separate claims or actions brought with re-
8 spect to the same occurrence.

9 (2) HEALTH CARE INSTITUTIONS.—

10 (A) SINGLE INSTITUTION.—In any health
11 care lawsuit where final judgment is rendered
12 against a single health care institution, the
13 amount of noneconomic damages recovered
14 from the institution, if otherwise available
15 under applicable Federal or State law, may be
16 as much as \$250,000, regardless of the number
17 of parties against whom the action is brought
18 or the number of separate claims or actions
19 brought with respect to the same occurrence.

20 (B) MULTIPLE INSTITUTIONS.—In any
21 health care lawsuit where final judgment is ren-
22 dered against more than one health care insti-
23 tution, the amount of noneconomic damages re-
24 covered from each institution, if otherwise avail-
25 able under applicable Federal or State law, may

1 be as much as \$250,000, regardless of the
2 number of parties against whom the action is
3 brought or the number of separate claims or ac-
4 tions brought with respect to the same occur-
5 rence, except that the total amount recovered
6 from all such institutions in such lawsuit shall
7 not exceed \$500,000.

8 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
9 DAMAGES.—In any health care lawsuit—

10 (1) an award for future noneconomic damages
11 shall not be discounted to present value;

12 (2) the jury shall not be informed about the
13 maximum award for noneconomic damages under
14 subsection (b);

15 (3) an award for noneconomic damages in ex-
16 cess of the limitations provided for in subsection (b)
17 shall be reduced either before the entry of judgment,
18 or by amendment of the judgment after entry of
19 judgment, and such reduction shall be made before
20 accounting for any other reduction in damages re-
21 quired by law; and

22 (4) if separate awards are rendered for past
23 and future noneconomic damages and the combined
24 awards exceed the limitations described in subsection

1 (b), the future noneconomic damages shall be re-
 2 duced first.

3 (d) FAIR SHARE RULE.—In any health care lawsuit,
 4 each party shall be liable for that party's several share
 5 of any damages only and not for the share of any other
 6 person. Each party shall be liable only for the amount of
 7 damages allocated to such party in direct proportion to
 8 such party's percentage of responsibility. A separate judg-
 9 ment shall be rendered against each such party for the
 10 amount allocated to such party. For purposes of this sec-
 11 tion, the trier of fact shall determine the proportion of
 12 responsibility of each party for the claimant's harm.

13 **SEC. 6. MAXIMIZING PATIENT RECOVERY.**

14 (a) COURT SUPERVISION OF SHARE OF DAMAGES
 15 ACTUALLY PAID TO CLAIMANTS.—

16 (1) IN GENERAL.—In any health care lawsuit,
 17 the court shall supervise the arrangements for pay-
 18 ment of damages to protect against conflicts of in-
 19 terest that may have the effect of reducing the
 20 amount of damages awarded that are actually paid
 21 to claimants.

22 (2) CONTINGENCY FEES.—

23 (A) IN GENERAL.—In any health care law-
 24 suit in which the attorney for a party claims a
 25 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.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered by the claimant(s).

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

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the

1 authority to authorize or approve a fee that is less
2 than the maximum permitted under this section.

3 (c) EXPERT WITNESSES.—

4 (1) REQUIREMENT.—No individual shall be
5 qualified to testify as an expert witness concerning
6 issues of negligence in any health care lawsuit
7 against a defendant unless such individual—

8 (A) except as required under paragraph
9 (2), is a health care professional who—

10 (i) is appropriately credentialed or li-
11 censed in 1 or more States to deliver
12 health care services; and

13 (ii) typically treats the diagnosis or
14 condition or provides the type of treatment
15 under review; and

16 (B) can demonstrate by competent evi-
17 dence that, as a result of training, education,
18 knowledge, and experience in the evaluation, di-
19 agnosis, and treatment of the disease or injury
20 which is the subject matter of the lawsuit
21 against the defendant, the individual was sub-
22 stantially familiar with applicable standards of
23 care and practice as they relate to the act or
24 omission which is the subject of the lawsuit on
25 the date of the incident.

1 (2) PHYSICIAN REVIEW.—In a health care law-
 2 suit, if the claim of the plaintiff involved treatment
 3 that is recommended or provided by a physician
 4 (allopathic or osteopathic), an individual shall not be
 5 qualified to be an expert witness under this sub-
 6 section with respect to issues of negligence con-
 7 cerning such treatment unless such individual is a
 8 physician.

9 (3) SPECIALTIES AND SUBSPECIALTIES.—With
 10 respect to a lawsuit described in paragraph (1), a
 11 court shall not permit an expert in one medical spe-
 12 cialty or subspecialty to testify against a defendant
 13 in another medical specialty or subspecialty unless,
 14 in addition to a showing of substantial familiarity in
 15 accordance with paragraph (1)(B), there is a show-
 16 ing that the standards of care and practice in the
 17 two specialty or subspecialty fields are similar.

18 (4) LIMITATION.—The limitations in this sub-
 19 section shall not apply to expert witnesses testifying
 20 as to the degree or permanency of medical or phys-
 21 ical impairment.

22 **SEC. 7. ADDITIONAL HEALTH BENEFITS.**

23 (a) IN GENERAL.—The amount of any damages re-
 24 ceived by a claimant in any health care lawsuit shall be
 25 reduced by the court by the amount of any collateral

1 source benefits to which the claimant is entitled, less any
 2 insurance premiums or other payments made by the claim-
 3 ant (or by the spouse, parent, child, or legal guardian of
 4 the claimant) to obtain or secure such benefits.

5 (b) PRESERVATION OF CURRENT LAW.—Where a
 6 payor of collateral source benefits has a right of recovery
 7 by reimbursement or subrogation and such right is per-
 8 mitted under Federal or State law, subsection (a) shall
 9 not apply.

10 (c) APPLICATION OF PROVISION.—This section shall
 11 apply to any health care lawsuit that is settled or resolved
 12 by a fact finder.

13 **SEC. 8. PUNITIVE DAMAGES.**

14 (a) PUNITIVE DAMAGES PERMITTED.—

15 (1) IN GENERAL.—Punitive damages may, if
 16 otherwise available under applicable State or Federal
 17 law, be awarded against any person in a health care
 18 lawsuit only if it is proven by clear and convincing
 19 evidence that such person acted with malicious in-
 20 tent to injure the claimant, or that such person de-
 21 liberately failed to avoid unnecessary injury that
 22 such person knew the claimant was substantially
 23 certain to suffer.

24 (2) FILING OF LAWSUIT.—No demand for puni-
 25 tive damages shall be included in a health care law-

1 suit as initially filed. A court may allow a claimant
2 to file an amended pleading for punitive damages
3 only upon a motion by the claimant and after a find-
4 ing by the court, upon review of supporting and op-
5 posing affidavits or after a hearing, after weighing
6 the evidence, that the claimant has established by a
7 substantial probability that the claimant will prevail
8 on the claim for punitive damages.

9 (3) SEPARATE PROCEEDING.—At the request of
10 any party in a health care lawsuit, the trier of fact
11 shall consider in a separate proceeding—

12 (A) whether punitive damages are to be
13 awarded and the amount of such award; and

14 (B) the amount of punitive damages fol-
15 lowing a determination of punitive liability.

16 If a separate proceeding is requested, evidence rel-
17 evant only to the claim for punitive damages, as de-
18 termined by applicable State law, shall be inadmis-
19 sible in any proceeding to determine whether com-
20 pensatory damages are to be awarded.

21 (4) LIMITATION WHERE NO COMPENSATORY
22 DAMAGES ARE AWARDED.—In any health care law-
23 suit where no judgment for compensatory damages
24 is rendered against a person, no punitive damages

1 may be awarded with respect to the claim in such
 2 lawsuit against such person.

3 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
 4 AGES.—

5 (1) FACTORS CONSIDERED.—In determining
 6 the amount of punitive damages under this section,
 7 the trier of fact shall consider only the following:

8 (A) the severity of the harm caused by the
 9 conduct of such party;

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

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

14 (D) the number of products sold or med-
 15 ical procedures rendered for compensation, as
 16 the case may be, by such party, of the kind
 17 causing the harm complained of by the claim-
 18 ant;

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

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

1 (2) MAXIMUM AWARD.—The amount of punitive
 2 damages awarded in a health care lawsuit may not
 3 exceed an amount equal to two times the amount of
 4 economic damages awarded in the lawsuit or
 5 \$250,000, whichever is greater. The jury shall not
 6 be informed of the limitation under the preceding
 7 sentence.

8 (c) LIABILITY OF HEALTH CARE PROVIDERS.—

9 (1) IN GENERAL.—A health care provider who
 10 prescribes, or who dispenses pursuant to a prescrip-
 11 tion, a drug, biological product, or medical device
 12 approved by the Food and Drug Administration, for
 13 an approved indication of the drug, biological prod-
 14 uct, or medical device, shall not be named as a party
 15 to a product liability lawsuit invoking such drug, bi-
 16 ological product, or medical device and shall not be
 17 liable to a claimant in a class action lawsuit against
 18 the manufacturer, distributor, or product seller of
 19 such drug, biological product, or medical device.

20 (2) MEDICAL PRODUCT.—The term “medical
 21 product” means a drug or device intended for hu-
 22 mans. The terms “drug” and “device” have the
 23 meanings given such terms in sections 201(g)(1) and
 24 201(h) of the Federal Food, Drug and Cosmetic Act
 25 (21 U.S.C. 321), respectively, including any compo-

1 nent or raw material used therein, but excluding
 2 health care services.

3 **SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
 4 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
 5 **SUITS.**

6 (a) IN GENERAL.—In any health care lawsuit, if an
 7 award of future damages, without reduction to present
 8 value, equaling or exceeding \$50,000 is made against a
 9 party with sufficient insurance or other assets to fund a
 10 periodic payment of such a judgment, the court shall, at
 11 the request of any party, enter a judgment ordering that
 12 the future damages be paid by periodic payments in ac-
 13 cordance with the Uniform Periodic Payment of Judg-
 14 ments Act promulgated by the National Conference of
 15 Commissioners on Uniform State Laws.

16 (b) APPLICABILITY.—This section applies to all ac-
 17 tions which have not been first set for trial or retrial be-
 18 fore the effective date of this Act.

19 **SEC. 10. EFFECT ON OTHER LAWS.**

20 (a) GENERAL VACCINE INJURY.—

21 (1) IN GENERAL.—To the extent that title XXI
 22 of the Public Health Service Act establishes a Fed-
 23 eral rule of law applicable to a civil action brought
 24 for a vaccine-related injury or death—

1 (A) this Act shall not affect the application
2 of the rule of law to such an action; and

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

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

13 (b) SMALLPOX VACCINE INJURY.—

14 (1) IN GENERAL.—To the extent that part C of
15 title II of the Public Health Service Act establishes
16 a Federal rule of law applicable to a civil action
17 brought for a smallpox vaccine-related injury or
18 death—

19 (A) this Act shall not affect the application
20 of the rule of law to such an action; and

21 (B) any rule of law prescribed by this Act
22 in conflict with a rule of law of such part C
23 shall not apply to such action.

24 (2) EXCEPTION.—If there is an aspect of a civil
25 action brought for a smallpox vaccine-related injury

1 or death to which a Federal rule of law under part
 2 C of title II of the Public Health Service Act does
 3 not apply, then this Act or otherwise applicable law
 4 (as determined under this Act) will apply to such as-
 5 pect of such action.

6 (c) OTHER FEDERAL LAW.—Except as provided in
 7 this section, nothing in this Act shall be deemed to affect
 8 any defense available, or any limitation on liability that
 9 applies to, a defendant in a health care lawsuit or action
 10 under any other provision of Federal law.

11 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES’**
 12 **RIGHTS.**

13 (a) HEALTH CARE LAWSUITS.—The provisions gov-
 14 erning health care lawsuits set forth in this Act shall pre-
 15 empt, subject to subsections (b) and (c), State law to the
 16 extent that State law prevents the application of any pro-
 17 visions of law established by or under this Act. The provi-
 18 sions governing health care lawsuits set forth in this Act
 19 supersede chapter 171 of title 28, United States Code, to
 20 the extent that such chapter—

21 (1) provides for a greater amount of damages
 22 or contingent fees, a longer period in which a health
 23 care lawsuit may be commenced, or a reduced appli-
 24 cability or scope of periodic payment of future dam-
 25 ages, than provided in this Act; or

1 (2) prohibits the introduction of evidence re-
2 garding collateral source benefits.

3 (b) PREEMPTION OF CERTAIN STATE LAWS.—No
4 provision of this Act shall be construed to preempt any
5 State law (whether effective before, on, or after the date
6 of the enactment of this Act) that specifies a particular
7 monetary amount of compensatory or punitive damages
8 (or the total amount of damages) that may be awarded
9 in a health care lawsuit, regardless of whether such mone-
10 tary amount is greater or lesser than is provided for under
11 this Act, notwithstanding section 5(a).

12 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
13 LAWS.—

14 (1) IN GENERAL.—Any issue that is not gov-
15 erned by a provision of law established by or under
16 this Act (including the State standards of neg-
17 ligence) shall be governed by otherwise applicable
18 Federal or State law.

19 (2) RULE OF CONSTRUCTION.—Nothing in this
20 Act shall be construed to—

21 (A) preempt or supersede any Federal or
22 State law that imposes greater procedural or
23 substantive protections (such as a shorter stat-
24 ute of limitations) for a health care provider or

1 health care institution from liability, loss, or
2 damages than those provided by this Act;

3 (B) preempt or supercede any State law
4 that permits and provides for the enforcement
5 of any arbitration agreement related to a health
6 care liability claim whether enacted prior to or
7 after the date of enactment of this Act;

8 (C) create a cause of action that is not
9 otherwise available under Federal or State law;
10 or

11 (D) affect the scope of preemption of any
12 other Federal law.

13 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

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

Calendar No. 422

109TH CONGRESS
2^D Session

S. 22

A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

MAY 4, 2006

Read the second time and placed on the calendar