

109TH CONGRESS
1ST SESSION

S. 354

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

FEBRUARY 10, 2005

Mr. ENSIGN (for himself, Mr. GREGG, Mr. THOMAS, Mr. INHOFE, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Help Efficient, Acces-
5 sible, Low-Cost, Timely Healthcare Act of 2005” or the
6 “HEALTH Act of 2005”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—

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

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

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

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

4 (B) the large number of individuals who
5 benefit because of the exclusion from Federal
6 taxes of the amounts spent to provide them
7 with health insurance benefits; and

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

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

14 (1) improve the availability of health care serv-
15 ices in cases in which health care liability actions
16 have been shown to be a factor in the decreased
17 availability of services;

18 (2) reduce the incidence of “defensive medi-
19 cine” and lower the cost of health care liability in-
20 surance, all of which contribute to the escalation of
21 health care costs;

22 (3) ensure that persons with meritorious health
23 care injury claims receive fair and adequate com-
24 pensation, including reasonable noneconomic dam-
25 ages;

1 (4) improve the fairness and cost-effectiveness
2 of our current health care liability system to resolve
3 disputes over, and provide compensation for, health
4 care liability by reducing uncertainty in the amount
5 of compensation provided to injured individuals; and

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

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
12 TEM; ADR.—The term “alternative dispute resolution
13 system” or “ADR” means a system that provides
14 for the resolution of health care lawsuits in a man-
15 ner other than through a civil action brought in a
16 State or Federal court.

17 (2) CLAIMANT.—The term “claimant” means
18 any person who brings a health care lawsuit, includ-
19 ing a person who asserts or claims a right to legal
20 or equitable contribution, indemnity or subrogation,
21 arising out of a health care liability claim or action,
22 and any person on whose behalf such a claim is as-
23 serted or such an action is brought, whether de-
24 ceased, incompetent, or a minor.

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

9 (A) any State or Federal health, sickness,
10 income-disability, accident, or workers’ com-
11 pensation law;

12 (B) any health, sickness, income-disability,
13 or accident insurance that provides health bene-
14 fits or income-disability coverage;

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

20 (D) any other publicly or privately funded
21 program.

22 (4) COMPENSATORY DAMAGES.—The term
23 “compensatory damages” means objectively
24 verifiable monetary losses incurred as a result of the
25 provision of, use of, or payment for (or failure to

1 provide, use, or pay for) health care services or med-
2 ical products, such as past and future medical ex-
3 penses, loss of past and future earnings, cost of ob-
4 taining domestic services, loss of employment, and
5 loss of business or employment opportunities, dam-
6 ages for physical and emotional pain, suffering, in-
7 convenience, physical impairment, mental anguish,
8 disfigurement, loss of enjoyment of life, loss of soci-
9 ety and companionship, loss of consortium (other
10 than loss of domestic service), hedonic damages, in-
11 jury to reputation, and all other nonpecuniary losses
12 of any kind or nature. Such term includes economic
13 damages and noneconomic damages, as such terms
14 are defined in this section.

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

19 (6) ECONOMIC DAMAGES.—The term “economic
20 damages” means objectively verifiable monetary
21 losses incurred as a result of the provision of, use
22 of, or payment for (or failure to provide, use, or pay
23 for) health care services or medical products, such as
24 past and future medical expenses, loss of past and
25 future earnings, cost of obtaining domestic services,

1 loss of employment, and loss of business or employ-
2 ment opportunities.

3 (7) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit” means any health care liability
5 claim concerning the provision of health care goods
6 or services affecting interstate commerce, or any
7 health care liability action concerning the provision
8 of (or the failure to provide) health care goods or
9 services affecting interstate commerce, brought in a
10 State or Federal court or pursuant to an alternative
11 dispute resolution system, against a health care pro-
12 vider, a health care organization, or the manufac-
13 turer, distributor, supplier, marketer, promoter, or
14 seller of a medical product, regardless of the theory
15 of liability on which the claim is based, or the num-
16 ber of claimants, plaintiffs, defendants, or other par-
17 ties, or the number of claims or causes of action, in
18 which the claimant alleges a health care liability
19 claim.

20 (8) HEALTH CARE LIABILITY ACTION.—The
21 term “health care liability action” means a civil ac-
22 tion brought in a State or Federal Court or pursu-
23 ant to an alternative dispute resolution system,
24 against a health care provider, a health care organi-
25 zation, or the manufacturer, distributor, supplier,

1 marketer, promoter, or seller of a medical product,
2 regardless of the theory of liability on which the
3 claim is based, or the number of plaintiffs, defend-
4 ants, or other parties, or the number of causes of ac-
5 tion, in which the claimant alleges a health care li-
6 ability claim.

7 (9) HEALTH CARE LIABILITY CLAIM.—The
8 term “health care liability claim” means a demand
9 by any person, whether or not pursuant to ADR,
10 against a health care provider, health care organiza-
11 tion, or the manufacturer, distributor, supplier, mar-
12 keter, promoter, or seller of a medical product, in-
13 cluding third-party claims, cross-claims, counter-
14 claims, or contribution claims, which are based upon
15 the provision of, use of, or payment for (or the fail-
16 ure to provide, use, or pay for) health care services
17 or medical products, regardless of the theory of li-
18 ability on which the claim is based, or the number
19 of plaintiffs, defendants, or other parties, or the
20 number of causes of action.

21 (10) HEALTH CARE ORGANIZATION.—The
22 term “health care organization” means any person
23 or entity which is obligated to provide or pay for
24 health benefits under any health plan, including any
25 person or entity acting under a contract or arrange-

1 ment with a health care organization to provide or
2 administer any health benefit.

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

10 (12) HEALTH CARE GOODS OR SERVICES.—
11 The term “health care goods or services” means any
12 goods or services provided by a health care organiza-
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 (13) MALICIOUS INTENT TO INJURE.—The
19 term “malicious intent to injure” means inten-
20 tionally causing or attempting to cause physical in-
21 jury other than providing health care goods or serv-
22 ices.

23 (14) MEDICAL PRODUCT.—The term “medical
24 product” means a drug or device intended for hu-
25 mans. The terms “drug” and “device” have the

1 meanings given such terms in sections 201(g)(1) and
2 201(h) of the Federal Food, Drug and Cosmetic Act
3 (21 U.S.C. 321), respectively, including any compo-
4 nent or raw material used therein, but excluding
5 health care services.

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

15 (16) PUNITIVE DAMAGES.—The term “punitive
16 damages” means damages awarded, for the purpose
17 of punishment or deterrence, and not solely for com-
18 pensatory purposes, against a health care provider,
19 health care organization, or a manufacturer, dis-
20 tributor, or supplier of a medical product. Punitive
21 damages are neither economic nor noneconomic
22 damages.

23 (17) RECOVERY.—The term “recovery” means
24 the net sum recovered after deducting any disburse-
25 ments or costs incurred in connection with prosecu-

1 tion or settlement of the claim, including all costs
 2 paid or advanced by any person. Costs of health care
 3 incurred by the plaintiff and the attorneys' office
 4 overhead costs or charges for legal services are not
 5 deductible disbursements or costs for such purpose.

6 (18) 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, the Trust Territory of the Pacific Islands, and
 11 any other territory or possession of the United
 12 States, or any political subdivision thereof.

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

14 (a) IN GENERAL.—Except as otherwise provided for
 15 in this section, the time for the commencement of a health
 16 care lawsuit shall be 3 years after the date of manifesta-
 17 tion of injury or 1 year after the claimant discovers, or
 18 through the use of reasonable diligence should have discov-
 19 ered, the injury, whichever occurs first.

20 (b) GENERAL EXCEPTION.—The time for the com-
 21 mencement of a health care lawsuit shall not exceed 3
 22 years after the date of manifestation of injury unless the
 23 tolling of time was delayed as a result of—

24 (1) fraud;

25 (2) intentional concealment; or

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

4 (c) MINORS.—An action by a minor shall be com-
5 menced within 3 years from the date of the alleged mani-
6 festation of injury except that if such minor is under the
7 full age of 6 years, such action shall be commenced within
8 3 years of the manifestation of injury, or prior to the
9 eighth birthday of the minor, whichever provides a longer
10 period. Such time limitation shall be tolled for minors for
11 any period during which a parent or guardian and a health
12 care provider or health care organization have committed
13 fraud or collusion in the failure to bring an action on be-
14 half of the injured minor.

15 **SEC. 5. COMPENSATING PATIENT INJURY.**

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

22 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
23 health care lawsuit, the amount of noneconomic damages
24 recovered, if otherwise available under applicable Federal
25 or State law, may be as much as \$250,000, regardless of

1 the number of parties against whom the action is brought
2 or the number of separate claims or actions brought with
3 respect to the same occurrence.

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

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

8 (2) the jury shall not be informed about the
9 maximum award for noneconomic damages under
10 subsection (b);

11 (3) an award for noneconomic damages in ex-
12 cess of \$250,000 shall be reduced either before the
13 entry of judgment, or by amendment of the judg-
14 ment after entry of judgment, and such reduction
15 shall be made before accounting for any other reduc-
16 tion in damages required by law; and

17 (4) if separate awards are rendered for past
18 and future noneconomic damages and the combined
19 awards exceed \$250,000, the future noneconomic
20 damages shall be reduced first.

21 (d) FAIR SHARE RULE.—In any health care lawsuit,
22 each party shall be liable for that party's several share
23 of any damages only and not for the share of any other
24 person. Each party shall be liable only for the amount of
25 damages allocated to such party in direct proportion to

1 such party's percentage of responsibility. A separate judg-
2 ment shall be rendered against each such party for the
3 amount allocated to such party. For purposes of this sec-
4 tion, the trier of fact shall determine the proportion of
5 responsibility of each party for the claimant's harm.

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

7 (a) COURT SUPERVISION OF SHARE OF DAMAGES
8 ACTUALLY PAID TO CLAIMANTS.—

9 (1) IN GENERAL.—In any health care lawsuit,
10 the court shall supervise the arrangements for pay-
11 ment of damages to protect against conflicts of in-
12 terest that may have the effect of reducing the
13 amount of damages awarded that are actually paid
14 to claimants.

15 (2) CONTINGENCY FEES.—

16 (A) IN GENERAL.—In any health care law-
17 suit in which the attorney for a party claims a
18 financial stake in the outcome by virtue of a
19 contingent fee, the court shall have the power
20 to restrict the payment of a claimant's damage
21 recovery to such attorney, and to redirect such
22 damages to the claimant based upon the inter-
23 ests of justice and principles of equity.

24 (B) LIMITATION.—The total of all contin-
25 gent fees for representing all claimants in a

1 health care lawsuit shall not exceed the fol-
2 lowing limits:

3 (i) 40 percent of the first \$50,000 re-
4 covered by the claimant(s).

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

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

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

12 (b) APPLICABILITY.—

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

17 (2) MINORS.—In a health care lawsuit involving
18 a minor or incompetent person, a court retains the
19 authority to authorize or approve a fee that is less
20 than the maximum permitted under this section.

21 (c) EXPERT WITNESSES.—

22 (1) REQUIREMENT.—No individual shall be
23 qualified to testify as an expert witness concerning
24 issues of negligence in any health care lawsuit
25 against a defendant unless such individual—

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

3 (i) is appropriately credentialed or li-
4 censed in 1 or more States to deliver
5 health care services; and

6 (ii) typically treats the diagnosis or
7 condition or provides the type of treatment
8 under review; and

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

19 (2) PHYSICIAN REVIEW.—In a health care law-
20 suit, if the claim of the plaintiff involved treatment
21 that is recommended or provided by a physician
22 (allopathic or osteopathic), an individual shall not be
23 qualified to be an expert witness under this sub-
24 section with respect to issues of negligence con-

1 cerning such treatment unless such individual is a
2 physician.

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

12 (4) LIMITATION.—The limitations in this sub-
13 section shall not apply to expert witnesses testifying
14 as to the degree or permanency of medical or phys-
15 ical impairment.

16 **SEC. 7. ADDITIONAL HEALTH BENEFITS.**

17 (a) IN GENERAL.—The amount of any damages re-
18 ceived by a claimant in any health care lawsuit shall be
19 reduced by the court by the amount of any collateral
20 source benefits to which the claimant is entitled, less any
21 insurance premiums or other payments made by the claim-
22 ant (or by the spouse, parent, child, or legal guardian of
23 the claimant) to obtain or secure such benefits.

24 (b) PRESERVATION OF CURRENT LAW.—Where a
25 payor of collateral source benefits has a right of recovery

1 by reimbursement or subrogation and such right is per-
2 mitted under Federal or State law, subsection (a) shall
3 not apply.

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

7 **SEC. 8. PUNITIVE DAMAGES.**

8 (a) PUNITIVE DAMAGES PERMITTED.—

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

18 (2) FILING OF LAWSUIT.—No demand for puni-
19 tive damages shall be included in a health care law-
20 suit as initially filed. A court may allow a claimant
21 to file an amended pleading for punitive damages
22 only upon a motion by the claimant and after a find-
23 ing by the court, upon review of supporting and op-
24 posing affidavits or after a hearing, after weighing
25 the evidence, that the claimant has established by a

1 substantial probability that the claimant will prevail
2 on the claim for punitive damages.

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

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

8 (B) the amount of punitive damages fol-
9 lowing a determination of punitive liability.

10 If a separate proceeding is requested, evidence rel-
11 evant only to the claim for punitive damages, as de-
12 termined by applicable State law, shall be inadmis-
13 sible in any proceeding to determine whether com-
14 pensatory damages are to be awarded.

15 (4) LIMITATION WHERE NO COMPENSATORY
16 DAMAGES ARE AWARDED.—In any health care law-
17 suit where no judgment for compensatory damages
18 is rendered against a person, no punitive damages
19 may be awarded with respect to the claim in such
20 lawsuit against such person.

21 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
22 AGES.—

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

1 (A) the severity of the harm caused by the
2 conduct of such party;

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

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

7 (D) the number of products sold or med-
8 ical procedures rendered for compensation, as
9 the case may be, by such party, of the kind
10 causing the harm complained of by the claim-
11 ant;

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

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

18 (2) MAXIMUM AWARD.—The amount of punitive
19 damages awarded in a health care lawsuit may not
20 exceed an amount equal to two times the amount of
21 economic damages awarded in the lawsuit or
22 \$250,000, whichever is greater. The jury shall not
23 be informed of the limitation under the preceding
24 sentence.

1 (c) **LIABILITY OF HEALTH CARE PROVIDERS.**—A
2 health care provider who prescribes, or who dispenses pur-
3 suant to a prescription, a drug or device (including blood
4 products) approved by the Food and Drug Administration
5 shall not be named as a party to a product liability lawsuit
6 invoking such drug or device and shall not be liable to
7 a claimant in a class action lawsuit against the manufac-
8 turer, distributor, or product seller of such drug or device.

9 **SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
10 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
11 **SUITS.**

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

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

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

2 (a) VACCINE INJURY.—

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

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

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

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

19 (b) OTHER FEDERAL LAW.—Except as provided in
20 this section, nothing in this Act shall be deemed to affect
21 any defense available to a defendant in a health care law-
22 suit or action under any other provision of Federal law.

23 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
24 **RIGHTS.**

25 (a) HEALTH CARE LAWSUITS.—The provisions gov-
26 erning health care lawsuits set forth in this Act shall pre-

1 empt, subject to subsections (b) and (c), State law to the
2 extent that State law prevents the application of any pro-
3 visions of law established by or under this Act. The provi-
4 sions governing health care lawsuits set forth in this Act
5 supersede chapter 171 of title 28, United States Code, to
6 the extent that such chapter—

7 (1) provides for a greater amount of damages
8 or contingent fees, a longer period in which a health
9 care lawsuit may be commenced, or a reduced appli-
10 cability or scope of periodic payment of future dam-
11 ages, than provided in this Act; or

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

14 (b) PREEMPTION OF CERTAIN STATE LAWS.—The
15 provisions of this Act shall preempt any constitutional pro-
16 vision, statute, or rule of State law, whether enacted prior
17 to, on, or after the date of enactment of this Act, that—

18 (1) prohibits the application of any limitation
19 on the amount of compensatory, punitive, or total
20 damages in a health care lawsuit; or

21 (2) provides for a greater amount of compen-
22 satory, punitive, or total damages in a health care
23 lawsuit than those provided for under this Act.

24 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
25 LAWS.—

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

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

8 (A) preempt or supersede any Federal or
9 State law that imposes greater procedural or
10 substantive protections (such as a shorter stat-
11 ute of limitations) for a health care provider,
12 health care organization, or the manufacturer,
13 distributor, supplier, marketer, promoter, or
14 seller of a medical product from liability, loss,
15 or damages than those provided by this Act;

16 (B) create a cause of action that is not
17 otherwise available under Federal or State law;
18 or

19 (C) affect the scope of preemption of any
20 other Federal law.

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

22 This Act shall apply to any health care lawsuit
23 brought in a Federal or State court, or subject to an alter-
24 native dispute resolution system, that is initiated on or
25 after the date of the enactment of this Act, except that

1 any health care lawsuit arising from an injury occurring
2 prior to the date of enactment of this Act shall be gov-
3 erned by the applicable statute of limitations provisions
4 in effect at the time the injury occurred.

○