Mr. DINGELL. What I am trying to do is to find out from my good friend the gentleman from New York, when will the basic legislation be available to us and when will the requirement for publication take place so we understand how much time we are going to have between the time the legislation becomes available and the time that the amendments——

Mr. SOLOMON. It is in today's RECORD. The gentleman has access to it. It was filed last night.

Mr. DINGELL. It was filed last night?

Mr. SOLOMON. Yes.

Mr. DINGELL. If the gentleman would yield further, could the gentleman tell me whether there will be changes in the legislation between now and the time that the printing requirement bites, so that we can understand that our amendments if drafted will be drafted to the legislation that will be considered by the House?

Mr. SOLOMON. To my knowledge, there will be no changes made. The report has been filed and the legislation is before you. It is pretty cut and dried.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. SOLOMON] has expired.

Mr. SOLOMON. I am waiting for the gentleman from Massachusetts up in the Committee on Rules. We are holding up all these people.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent to address the outstanding chairman of the Committee on Rules.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MOAKLEY. The gentleman from New York [Mr. SOLOMON] says this is all cut and dried. So is there any reason for any amendments to be offered by Democrats? Are we going to be given any choice when you are picking out the Democratic amendments?

Mr. SOLOMON. There is a prefiling requirement. We intend to place a time limitation, but we would hopefully be able to take care of anyone's amendments, Democrat or Republican, liberal or conservative. We want to be as fair as we possibly can.

Mr. MOAKLEY. Mr. Speaker, I want to yield to our mutual friend, the chairman of the Committee on Veterans' Affairs, the Honorable General MONTGOMERY.

Mr. SOLOMON. He is not the chairman. He is the former good chairman, though.

Mr. MOAKLEY. He is always chairman to me.

Mr. MONTGOMERY. Mr. Speaker, if the gentleman will yield, I have been talking to him about the rescission of $206 million on veterans programs, mainly outpatient clinics which have been very, very important to take care of the older vet now that we have got about 20 million that are over age 60.

I have talked to the gentleman before. How does this affect the veterans?

Mr. SOLOMON. This means if you want to offer an amendment reinstating the cuts that appear in that chapter of the rescission bill—and I would support such an amendment, and I will take the floor and fight for it with you—it means that you are going to have to offset that reinstatement with a like amount of dollar cuts from other items appearing in that same chapter. Again that chapter takes in the Department of Veterans Affairs, it takes in HUD and independent agencies.

Just, for example, if you want to reinstate the veterans' cuts—and I do want to reinstate them, too—you are going to have to take them out of something like the National Service Corps, Americorps. In other words, we are going to have to decide which is the priority, and I will support the gentleman no matter where he takes it out of, out of that chapter.

Mr. MONTGOMERY. Will the gentleman support me if we do not take it away from anybody and just offer a clean amendment?

Mr. SOLOMON. No, I would not support that, because we have a responsibility to maintain the defense budget. With all the money that has been taken out of the defense budget for all of the peacekeeping missions, that is wrong. We have got to reinstate it someplace, and I will support your amendment if you offer it and will take the cuts out of somewhere else in the chapter.

The SPEAKER pro tempore. All time has expired.

(By unanimous consent, Mr. MOAKLEY was allowed to proceed for 1 additional minute.)

Mr. MOAKLEY. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. To the chairman of the Committee on Rules, one more question.

Mr. SOLOMON. One more time.

Mr. MONTGOMERY. In that chapter, the only thing the veterans have would be compensation and pensions, and I certainly would not want to cut compensation and pension programs.

Mr. SOLOMON. No.

Mr. MONTGOMERY. In that chapter, what else does it include that we could get the money from? And would you let me offer a clean amendment just to take care of the $206 million?

Mr. SOLOMON. SONNY, as a matter of fact, here is a list I will be glad to give to you. There are a lot of items in that chapter. Certainly I would not want to see you take it out of other veterans' benefits, but if you want to take it out of the National Service Corps, I will support your amendment. If you do not want to do that, I will do it.

Mr. MOAKLEY. Is the gentleman from New York [Mr. SOLOMON] going to allow the amendments that have been subject to the Appropriations Committee's——

The SPEAKER pro tempore. All time has expired.

Mr. MOAKLEY. May the gentleman from New York [Mr. SOLOMON] have enough time just to answer the question Mr. Speaker?

Mr. SOLOMON. That is up to the Committee on Rules, JOE, and you are the ranking member.

Mr. MOAKLEY. You are the Committee on Rules. I am asking.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 109 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 956.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

THe CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 8, 1995, all time for general debate pursuant to House Resolution 108 had expired.

Pursuant to House Resolution 109, no further general debate is in order.

The amendment in the nature of a substitute consisting of the text of H.R. 1075 is considered as an original bill for purposes of amendment and is considered as having been read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1075

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Common Sense Product Liability and Legal Reform Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the manufacture and distribution of goods in interstate commerce is to a large extent a national activity which affects national interests in a variety of important ways;

(2) in recent years, the free flow of products in interstate commerce has been increasingly burdened by product liability law;

(3) as a result of this burden, consumers have been adversely affected through the withdrawal of products and producers from the national market, and from excessive liability costs passed on to them through higher prices;

(4) the rules of product liability law in recent years have evolved rapidly and inconsistently within and among the several States, such that the body of product liability law prevailing in this nation today is complex, contradictory, and uncertain;

(5) the unpredictability of product liability awards and doctrines are inequitable to both plaintiffs and defendants and have added considerably to the high cost of liability insurance, making it difficult for producers and insurers to protect their liability with any degree of confidence;

(6) product liability actions and punitive damage awards jeopardize the financial well-being of many industries and are a particular threat to the viability of the nation's small businesses;

(7) the extraordinary costs of the product liability system undermine the ability of American industry to compete internationally, and is costing the loss of jobs and productive capital; and

(8) because of the national scope of the manufacture and distribution of most products, it is not possible for the individual states to enact laws that fully and effectively respond to these problems.

(b) PURPOSES.—Based upon the powers contained in Article I, clause 3 of the United States Constitution, the purposes of this title are to promote the free flow of goods in interstate commerce—

(1) by establishing certain uniform legal principles which provide a fair balance between the interests of product users, manufacturers, and product sellers,

(2) by placing reasonable limits on product liability law,

(3) by ensuring that product liability law operates to compensate persons injured by the wrongdoing of others,

(4) by reducing the unacceptable transactions costs and delays which harm both plaintiffs and defendants,

(5) by allocating responsibility for harm to those in the best position to prevent such harm, and

(6) by establishing greater predictability in product liability actions.

SEC. 102. APPLICABILITY AND PREEMPTION.

(a) PREEMPTION.—This title governs any product liability action brought in any State or Federal court, on any theory for harm caused by a product. A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by this title shall be governed by otherwise applicable State or Federal law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—Except as provided in subsection (b), in any product liability action, a product seller other than a manufacturer shall be liable to a claimant for harm only if the claimant establishes that—

(1)(A) the product which allegedly caused the harm complained of was sold by the product seller; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty applicable to the product which allegedly caused the harm complained of, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm; or

(3) the product seller engaged in intentional wrongdoing as determined under applicable State law and such intentional wrongdoing was a proximate cause of the harm complained of by the claimant.

For purposes of paragraph (1)(B), a product seller shall not be considered to have failed to exercise reasonable care with respect to the product based upon an alleged failure to inspect a product where there was no reasonable opportunity to inspect the product in a manner which would, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) EXCEPTION.—In a product liability action, a product seller shall be liable for harm to the claimant caused by such product as if the product seller were the manufacturer of such product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term ''drug'' means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that has been taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—Except as provided in subsection (c), in a product liability action, the damages for which a defendant is otherwise liable under State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes by a preponderance of the evidence that such percentage of the claimant's harm was proximately caused by—

(1) a use or alteration of a product in violation of, or contrary to, the defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable State law, or

(2) a use or alteration of a product involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damage for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. FRIVOLOUS PLEADINGS.

(a) GENERAL RULE.—

(1) SIGNING OF PLEADING.—The signing or verification of a pleading in a product liability action in a State court subject to this title constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, a pleading is frivolous if the pleading is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

(B) For purposes of subparagraph (A), the term ''groundless'' means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT PLEADING FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 60 days after the date a pleading in a product liability action in a State court is filed, a party to the action may make a motion that the court determine if the pleading is frivolous.

(2) COURT ACTION.—The court in a product liability action in a State court shall on the motion of a party or on its own motion determine if a pleading is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether a pleading is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that a pleading is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the pleading. The sanction may include one or more of the following:

(1) the striking of a pleading or the offending portion thereof;

(2) the dismissal of a party; or

(3) an order to pay to a party who stands in opposition to the offending pleading the amounts of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(e) CONSTRUCTION.—For purposes of this section—

(1) a general denial does not constitute a frivolous pleading; and

(2) the amount requested for damages does not constitute a frivolous pleading.

SEC. 107. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

In any product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss attributable to such defendant in direct proportion to such defendant's proportionate share of fault or responsibility for the claimant's harm, as determined by the trier of fact.

SEC. 108. STATUTE OF REPOSE.

(a) GENERAL RULE.—A product liability action shall be barred unless the complaint is served and filed within 15 years of the date of delivery of the product to its first purchaser or lessee, who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

(b) EXCEPTION.—Subsection (a)—

(1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 15 years, but it will apply at the expiration of such warranty,

(2) does not apply to a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product, and

(3) does not affect the limitations period established by the General Aviation Revitalization Act of 1994.

SEC. 109. SERVICE OF PROCESS.

This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States.

SEC. 110. DEFINITIONS.

As used in this title:

(1) The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term ''commercial loss'' means any loss of or damage to a product itself incurred in the course of the ongoing business enterprise consisting of providing goods or services for compensation.

(3) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs) to the extent recovery for such loss is allowed under applicable State law.

(4) The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(5) The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), (ii) has engaged another person to design or formulate the product (or component part of the product), or (iii) uses the design or formulation of the product developed by another person;

(B) a product seller of the product who, before placing the product in the stream of commerce—

(i) designs or formulates or has engaged another person to design or formulate an aspect of the product after the product was initially made by another, or

(ii) produces, creates, makes, or constructs such aspect of the product, or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(6) The term ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(7) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(8)(A) The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(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) The term does not include—

(i) human tissue, human organs, human blood, and human blood products; or

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

(9) The term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(10) The term ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels a product, is otherwise involved in placing a product in the stream of commerce, or installs, repairs, or maintains the harm-causing aspect of a product. The term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; or

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(11) The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE II—PUNITIVE DAMAGES REFORM

SEC. 201. PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded in any civil action for harm in any Federal or State court against a defendant if the claimant establishes by clear and convincing evidence that the harm suffered was result of conduct—

(1) specifically intended to cause harm, or

(2) conduct manifesting a conscious, flagrant indifference to the safety of others.

(b) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded in any civil action subject to this title shall not exceed 3 times the amount of damages awarded to the claimant for the economic loss on which the claimant's action is based, or $250,000, whichever is greater.

(c) APPLICABILITY AND PREEMPTION.—Except as provided in section 401, this title shall apply to any civil action brought in any Federal or State court on any theory where punitive damages are sought. This title does not create a cause of action for punitive damages in any jurisdiction that does not authorize such actions.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such award. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) CONSIDERATION.—In determining the amount of punitive damages, the trier of fact shall consider all relevant, admissible evidence, including—

(1) the severity of the harm caused by the conduct of the defendant,

(2) the duration of the conduct or any concealment of it by the defendant,

(3) the profitability of the specific conduct that caused the harm to the defendant,

(4) the number of products sold, the frequency of services provided, or the type of activities conducted by the defendant of the kind causing the harm complained of by the claimant,

(5) awards of punitive damages to persons similarly situated to the claimant,

(6) possibility of prospective awards of compensatory damages to persons similarly situated to the claimant,

(7) any criminal penalties imposed on the defendant as a result of the conduct complained of by the claimant,

(8) the amount of any civil and administrative fines and penalties assessed against the defendant as a result of the conduct complained of by the claimant, and

(9) whether the foregoing considerations have been a factor in any prior proceeding involving the defendant.

SEC. 202. DEFINITIONS.

As used in this title:

(1) The term ''claimant'' means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs), to the extent recovery for such loss is allowed under applicable State law.

(4) The term ''harm'' means any legally cognizable wrong or injury for which punitive damages may be imposed.

(5) The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(6) The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE III—BIOMATERIALS SUPPLIERS

SEC. 301. LIABILITY OF BIOMATERIALS SUPPLIERS.

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by a medical device, only if the claimant in a product liability action shows that the conduct of the biomaterials supplier was an actual and proximate cause of the harm to the claimant and—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts:

(ii)(I) provided to the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary of Health and Human Services and that is currently maintained by the biomaterials supplier of purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for the purposes of premarket approval or review by the Secretary of Health and Human Services under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary of Health and Human Services, if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the raw materials or component parts;

(2) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(3) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

SEC. 302. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—

(1) GENERAL RULE.—Any biomaterials supplier who is a defendant in any product liability action involving a medical device which allegedly caused the harm for which the action is brought and who did not take part in the design, manufacture, or sale of such medical device may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(A) the claimant has failed to establish that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier; or

(B) the claimant has failed to comply with the requirements of subsection (b).

(2) EXCEPTION.—The biomaterials supplier may not move to dismiss the action if—

(A) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(B) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(b) MANUFACTURER OF MEDICAL DEVICE SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the medical device to which the biomaterials supplier furnished raw materials or component parts as a party to the product liability action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDINGS ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO STATUS OF DEFENDANT.—

(A) DEFENDANT AFFIDAVIT.—The defendant in the action may support a motion to dismiss by filing an affidavit demonstrating that defendant is a biomaterials supplier and that it is neither the manufacturer nor the product seller of the medical device which caused the harm alleged by the claimant.

(B) RESPONSE TO MOTION TO DISMISS.—In response to a motion to dismiss described in this section, the claimant may submit an affidavit demonstrating why it asserts that—

(i) the defendant who filed the motion to dismiss is not a biomaterials supplier with respect to the medical device which caused the harm alleged by the claimant;

(ii) on what basis it asserts that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(iii) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(iv) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—If a defendant files a motion to dismiss, no discovery shall be permitted in connection with the action that is the subject of the motion, unless the affidavits submitted in accordance with this section raise material issues of fact concerning whether—

(A) the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(B) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(C) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

Any such discovery shall be limited solely to such material facts.

(3) RESPONSE TO MOTION TO DISMISS.—The court shall rule on the motion to dismiss solely on the basis of the affidavits filed under this section and on the basis of any evidence developed in the course of discovery under paragraph (2) and subsequently submitted to the court in accordance with applicable rules of evidence.

(d) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 303. DEFINITIONS.

For purposes of this title:

(1) The term ''biomaterials supplier'' means an entity that directly or indirectly supplies, or licenses another person to supply, a component part or raw material for use in the manufacture of a medical device—

(A) that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids of internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(2) Notwithstanding paragraph (1), the term ''biomaterials supplier'' excludes any person, with respect to a medical device which is the subject of a product liability action—

(A) who is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the medical device, and has registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section, and has included the medical device on a list of devices filed with the Secretary of Health and Human Services pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) who, in the course of a business conducted for that purpose, has sold, distributed, leased, packaged, labeled, or otherwise placed the implant in the stream of commerce after it was manufactured.

(3) The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(4) The term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

SEC. 401. EFFECT ON OTHER LAW.

Nothing in title I, II, or III shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

SEC. 402. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 403. EFFECTIVE DATE.

Titles I, II, and III shall apply with respect to actions which are commenced after the date of the enactment of this Act.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute shall be in order except the amendments printed in House Report 104–72 or in section 2 of House Resolution 109, as amended. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Debate time on each amendment will be equally divided and controlled by the proponent and an opponent of the amendment.

It is now in order to consider amendment number 1 printed in section 2 of House Resolution 109, as amended.

AMENDMENT OFFERED BY MR. PETE GEREN OF TEXAS

Mr. PETE GEREN of Texas. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PETE GEREN of Texas: Page 7, insert after line 3 the following:

(c) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product shall be subject to liability under subsection (a) but shall not liable to a claimant for the tortious act of another involving a product solely by reason of ownership of such product.

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas, Mr. PETE GEREN and a Member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is in fact a clarifying amendment to title I of H.R. 1075. Our amendment would clarify that companies that rent or lease products are covered by the provisions of title I. Currently under title I it is clear that product liability actions against companies that sell products are subject to section 103. Section 103 provides that a product liability action cannot be pursued against a product seller unless the seller has been negligent, has offered an express warranted offer, or has engaged in intentional wrongdoing. Simply stated, there should be no liability without fault. That is the intention of this clarifying amendment.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, this amendment amplifies and is consistent with an amendment offered in the committee by the gentleman from Illinois [Mr. FLANAGAN]. We find it perfectly acceptable, and I am pleased to accept the amendment.

Mr. PETE GEREN of Texas. Reclaiming my time, Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BRYANT].

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding me the time, and I rise in support of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me the time.

Mr. Chairman, I too rise in strong support of this amendment. Vicarious liability is plain and simple: liability without fault. Every month car dealers, rental companies and leasing firms are held liable under these vicarious liability laws for harm to third parties that they in no way could prevent. There is no negligence whatsoever, and I believe that this clarifying amendment is essential because of the cost to American consumers literally equaling tens of millions of dollars in higher prices for car rental leases and also we are paying a price in terms of competition in these industries.

This bill has the support of the auto manufacturers, the new and used car dealers and the car rental industry. If there is any opposition, it comes from those who have used the vicarious liability laws to coerce companies into unfair and inequitable settlements.

This reform is long overdue. I commend the gentleman from Texas for bringing this amendment to the floor. I urge my colleagues to support it.

The CHAIRMAN. The Chair would inquire if there is any Member who wishes to speak in opposition to the amendment.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I do not rise in strong opposition to this but I must say I rise with great concern because there were so many amendments that were really very, very substantive and they were not allowed, and here we are with the first amendment, one that was basically adopted by the committee. I do not think there is a tremendous amount of dissent about it, and I think it just shows what a lot of us have been trying to say during the rules debate.

□ 1230

Really critical issues about which there is a lot of debate and a lot of concern have been moved aside, and they made room instead for amendments like this which were really more like a love-in. Basically, this amendment too goes to the issue a little bit more of tort. I think it is a little bit more of concern to some that it is kind of squeezed into the product liability, and I have some question as to how it may have moved into the torts area, and it is not quite clear. But nevertheless, my position at this point, and the committee's position on this side of the aisle would be that it is a shame we could not have substituted some of the amendments that there was much more dissent about than spending precious time on the floor on this.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Florida [Mr. DEUTSCH].

Mr. DEUTSCH. Mr. Chairman, I rise in support of this amendment. This amendment clarifies what the committee tried to do in terms of making sure that a renter of a product is not automatically liable in that situation, and I urge the adoption of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois [Mr. FLANAGAN].

(Mr. FLANAGAN asked and was given permission to revise and extend his remarks.)

Mr. FLANAGAN. Mr. Chairman, I also rise in support of this amendment.

During the Committee on the Judiciary markup of the product liability bill I offered an amendment which was adopted by voice vote to assure that companies who rent products were covered under the definition of product seller. This amendment is a further improvement on the Judiciary Committee bill, and it expressly states that a company that rents and leases products is to be treated as a product seller under title I of the bill. It makes clear that those companies will not be held liable for injuries they do not cause.

This amendment deserves the support of every Member of the body, and I urge my colleagues to support it overwhelmingly.

Mr. Chairman, among the problems H.R. 1075 is designed to address is the tort doctrine of vicarious liability for motor vehicles. The amendment, which I have coauthored with Messrs. Geren, Ramstad, and Cox, is a mere clarification of the bill's scope. It would assure that vicarious liability—or liability without fault—is covered under the product liability legislation before us today.

Mr. Chairman, 11 States and the District of Columbia currently have these vicarious liability laws on the books—laws which hold the owners of motor vehicles liable for damages caused by their vehicles even though the owners were not negligent and there is no defect in their automobiles.

Many businesses, such as car rental companies, automobile dealers, and leasing companies are being held strictly liable in these vicarious liability States for injuries they did not cause and could not prevent. These companies have not been negligent, and yet they are being forced to pay for the negligence of others.

For example, in my neighboring State of Iowa, a renter of an automobile fell asleep at the wheel. The vehicle he was driving left the road and struck a parked truck. Unfortunately, the renter's wife and child were killed in the accident. Although there was no negligence on behalf of the car rental company, the court still imposed a $800,000 judgement on the rental company. Mr. Chairman, is this fair?

To cite one more example, this time in New York, where a renter, allegedly using the vehicle for drug trafficking, struck a pedestrian on a downtown Manhattan street. The pedestrian received severe head injuries from the accident. The settlement by the car rental company was set at $1.226 million. Again, the car rental company had to pay-out $1,226,000 although it was not negligent. Surely, in this instance, the car rental company should not have been held at fault.

The Geren-Ramstad-Cox-Flanagan amendment will provide relief in these circumstances and would assure that companies that rent or lease products are not held liable for damages caused by rented or leased products if the company could not have prevented the harm.

This provision would not exempt these companies from liability if the company is negligent and would not exempt these companies from State financial responsibility laws for vehicle owners in each State.

In addition, this amendment would not, as has been alleged, cover all automobile accidents. Such a statement ignores the plain wording of the amendment. The amendment would cover only civil actions involving product sellers, not civil actions against all drivers of motor vehicles. Again, this amendment only covers product sellers as defined in section 110 of the bill.

Mr. Chairman, I believe it is appropriate to include the Geren-Ramstad-Cox-Flanagan provision in H.R. 1075 because vicarious liability impacts the car rental industry in the same fashion that product liability impacts other product sellers.

Vicarious liability claims cost car rental companies over $75 million annually—costs which drive up rental and leasing rates for all Americans.

In addition, vicarious liability has driven smaller companies out of business or forced them to refrain from doing business in States with vicarious liability laws. This leads to decreased competition, increased rates, and limited choice for consumers.

In sum, Mr. Chairman, section 103 of H.R. 1075 states that a product seller shall not be held liable without fault. This amendment simply extends this principle to companies that rent or lease products.

Therefore, Mr. Chairman, I urge my colleagues to support the amendment.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I continue my protest that we had amendments that were very, very critical that were shut out. One of the ones that I had wanted to offer that had everybody from the Right to Life Committee to NARAL joining in consensus on was a very critical one.

It dealt with people's reproductive organs, and the fact that it should be removed from this bill because people feel very, very strongly, and especially women who have had incident after incident after incident of people manufacturing things that did affect their reproductive organs. We really felt we wanted to make it very clear we thought that that should not be covered by this bill. That was not allowed.

I find that pretty amazing when we have this consensus from right to left, and it is rather historic, I do not think we have had that kind of consensus in this body for a very long time, that that amendment was not allowed, and yet we have this as an amendment that was adopted by voice vote, as the gentleman from Illinois said, in the committee, and here we are just continuing to perfect it a little bit and taking up time.

There are many other amendments similar to mine in the 82 that were there, and of course many fell off the table. And then of course many of the ones that we had, such as the one I will have next, has been limited to 20 minutes. We got hardly any time to discuss very serious legal principles that have been established in this country since the beginning of the Republic that we are now changing today, and it seems to me that we should have taken the precious time that we have and allocated it to many more of the serious issues about which there is real contention than this, which is really more of a cosmetic, housekeeping amendment about which there really has not been a lot of disagreement.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume, and I yield to the gentleman from Louisiana [Mr. TAUZIN] for the purposes of a colloquy.

The CHAIRMAN. The gentleman from Texas, Mr. PETE GEREN, has 1½ minutes remaining.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. It is my understanding that this amendment is intended only to preempt the State laws in a small minority of jurisdictions that impose unlimited financial liability on owners of motor vehicles for harm caused by the permissive users of their vehicles, and that nothing in this amendment should be construed to excuse any motor vehicle owner from meeting the minimum financial responsibility laws required by each State.

Mr. PETE GEREN of Texas. The gentleman's understanding of this amendment is correct, and that is an accurate characterization of it. I appreciate the gentleman helping us to clarify the intent of this amendment.

Mr. TAUZIN. I thank the gentleman, and I urge support for the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, borrowing from the wisdom I picked up from the gentleman from Louisiana over my years here, and drawing on the comments of the gentlewoman from Colorado, when the package is sold, you wrap it up.

Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, obviously I have a lot to say on my next amendment, and whatever time I have left, if I could just use it for that I would be very, very appreciative.

In my next amendment I am going to be talking about noneconomic damages, and it is called the family values amendment. I think even the gentleman from Texas would join me in saying that this body should stand up for this next family values amendment that hopefully will be coming up almost immediately after a voice vote on this, because it is a very serious amendment. We are talking about we cannot talk family values and say they do not amount to anything, and unless we pass this amendment that is exactly what we will be saying. So I apologize to the gentleman from Texas for using our 5 minutes to talk about some of the problems we have in trying to deal with this because of the rule, but I felt that that was really the only fair thing to do since we were not allowed to offer many of the amendments that really, really were coming up. So what I will be able to do then, hopefully, is find a way to get people's attention as to how patched together this is, how uncertain many of us are, and the concerns we have.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired. All time has expired.

The question is on the amendment offered by the gentleman from Texas, Mr. PETE GEREN.

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in section 2 of House Resolution 109.

AMENDMENT OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER: Page 11, strike lines 17 through 24, and redesignate succeeding sections accordingly.

Page 17, line 25, insert ''and noneconomic'' before ''loss''.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Colorado [Mrs. SCHROEDER] and a Member opposed will each be recognized for 10 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment I have called the family values amendment, and I think it is very critical. I was very pleased when I offered it in the committee that it had a very large vote, and we had votes from both sides of the aisle.

Americans value this families. We talk family values. Here is a chance to put our money where our mouths are, because under this bill noneconomic damages are discriminated against very, very much, and I do not think that is fair.

Noneconomic damages mean if you do not get a paycheck, you do not count. So the fact that you were staying home and taking care of your family, no matter which parent you are, that does not matter. That is noneconomic damages. You do not count.

Let me tell my colleagues, every parent is a working parent, whether they are working in the house or out of the house, so I think that is ridiculous.

Second, if you are a child obviously you are not getting a paycheck, so that does not count.

Third, if a woman is working outside the home, they are still, unfortunately, very apt to be discriminated against, so any paycheck they would get still reflects the discrimination we have in society.

Finally, one of the areas I feel strongest about is the whole area of people's reproductive organs, because we have seen so many problems in this area in the past, with the Dalcon shield and all sorts of other issues that people are more and more familiar with. If we do not deal with this noneconomic damage issue in this bill, then we are really saying those do not matter. And we will not have joint and several liability on those issues, which means even if you get some kind of a judgment, it is very apt that you will not be able to collect it, you cannot collect it nearly as easy as you can with economic damages.

And this bill discriminates on punitive damages by not allowing noneconomic damages to count. So we are really saying you are only valued for your paycheck. There is no other value to you, and any other value that you have, whether it is about your reproductive organs or not, it does not count.

The CHAIRMAN. Does any Member seek recognition in opposition to the amendment?

Mr. HYDE. Mr. Chairman, indeed there is. I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment offered by the gentlewoman from Colorado eliminates the protection against disproportionate liability for subjective, nonmonetary losses and weakens the protection of the punitive damages cap. For these reasons I urge the defeat of the pending amendment. It was offered in committee and was defeated in committee.

Section 107, in the interests of fairness, protects a defendant from being held liable for noneconomic losses that are attributable to the fault or responsibility of another individual or entity. The concept of a defendant paying for its own proportionate share of fault or responsibility sounds self-evident to most people. Many States, however, give expression in their law to the principle of joint and several liability, which in its unrestricted form means that a party with relatively nominal responsibility, perhaps 1 percent, can be held liable for the fault attributable to the others, perhaps 99 percent.

The result of the principle of joint and several liability is that litigation imposes severe risks for solvent businesses, often necessitating excessive settlement offers, increasing liability insurance costs, and making goods more expensive for consumer. All of these factors have negative implications for our competitiveness in international markets and our ability to keep enterprises, with all of the jobs involved, in the United States.

Section 107 essentially is a compromise between the principle of joint and several liability with its disproportionate attendant costs, and the concept of liability limited to degree of fault or responsibility. Under section 107, a defendant can only be held liable for noneconomic losses in proportion to its share of the total fault or responsibility, but can continue to be held liable to the extent authorized by State law for economic losses that exceed its proportionate share.

This bill does not impinge on the rights of claimants to recover noneconomic damages from a defendant for the harm it inflicts, but appropriately safeguards one party from having to pay for the harm others inflict. Disproportionate liability for noneconomic damages not only is unfair, but results in expenses that are passed on to all Americans.

I strongly recommend defeat of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I just wanted to quickly answer my chairman. If joint and several is so terrible, then joint and several liability should be removed for both compensatory and noneconomic damages, and it is not. They are keeping it for one and taking it away for another, which is saying that family values do not count.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, if I understand the focus of the gentlewoman's amendment, this bill as written discriminates against the young child who has a limb severed or is decapitated, really, as a result of playground equipment, a senior citizen who is burned horribly in a fire with a defective heater, a student who is exposed to toxic substances and is impaired for life, a homemaker, be that male or female, but usually it ends up being female, a woman who is at home providing for her family but not a wage earner at that time? All of these people are treated as second-class citizens under this piece of legislation unless the gentlewoman's amendment is adopted.

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Mrs. SCHROEDER. The gentleman is absolutely correct. That is why we call it family values. I think we respect something besides just a paycheck.

The paycheck is raised to a much higher level in this bill. It is going to be much easier to collect if you can show a paycheck. If you cannot, then you do not get the options of joint and several liability, you do not get the punitive damages. You are in real trouble. Those are the people that we are saying that do not count. We say, ''We like you, but good luck getting any damages on that.''

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a valued member of the committee.

Mr. SENSENBRENNER. I thank the gentleman for yielding.

Mr. Chairman, this amendment is a killer amendment, and it is a killer amendment because it goes back from the principles stated in the bill that the party who is at fault pays and the party who is not at fault does not pay.

The bill provides for several liability for noneconomic losses. That means that if a person or a party is determined by the jury to be 1 percent at fault, that party will pay 1 percent of the noneconomic losses, not 100 percent, if the party who is found more negligent by the jury ends up not having any assets or not having any insurance to pay for the judgment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I have a limited amount of time. I think it is only fair, the gentlewoman from Colorado, that the opponents use their time to lay out the case and not horn in on the opponents' time and take all of the time in support of it.

Second, what the gentlewoman from Colorado's amendment also proposes to do is to limit the cap on punitive damages. Punitive damages are not compensation for anything. It is designed to be punishment for the party or the parties that are at fault. And the bill provides an elastic ceiling on punitive damages of $250,000, or three times the actual damages, whichever is greater.

So if there is more than $83,000 or $84,000 of actual damages, then the punitive damages cap goes up.

Punitive damages are not compensation for anything, whether it is an economic loss or a noneconomic loss.

So the gentlewoman is now trying to increase punitive damages awards, which will end up, of course, enriching not only a plaintiff for not what they actually lost but also manufacture's attorney.

I would hope, for these two reasons, that this killer amendment would be defeated.

Mrs. SCHROEDER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentlewoman for yielding this time to me.

Mr. SENSENBRENNER, as we all know, the purpose of punitive damages is to deter manufacturers of dangerous products from being willing to put the dangerous products on the market because they might hurt somebody.

As we all know, because we are all human beings, some companies have done this, there will always be someone willing to do that, and we want them to be afraid to do it because if they do do it, they could get socked with punitive damages. That is the purpose of punitive damages.

You are taking these out of the bill. Basically, you are saying the cap on punitive damages is $250,000, which is not enough to frighten any major company, or three times earnings.

Once again, this is a bill basically for rich folks and it is bill that is going to hurt poor folks, poor working people. Why? Because under the Republican bill, you could get three times your economic damages for punitive damages. So, for a wealthy fellow who is making a lot of money, it is going to be three times a whole lot of money. But for a working person who is not making very much money, it is going to be three times not much, even though they both lost the same thing—that is, their ability to live a normal life and to make a living for their families.

So the rich are going to get plenty of money under your bill, the poor folks are not going to get much at all.

Or the regular folks, the working folks, the retired folks, or women who work in the home, for example, who cannot show great economic loss because they cannot work anymore, they are going to get very little. Your friends are going to get a whole lot. Why? Because your friends make a lot of money.

That is the bill you brought out to the House here today.

In 1966, 24 American young men were killed playing football. In 1990, none were killed playing football. Sports Illustrated reported that that is because of the fear of the manufacturers of football equipment that if they did not make the stuff safer, they would get sued and get a punitive damage award.

You are taking the punitive damage awards out of this bill, for all practicable purposes. You are saying the cap is $250,000, or three times economic damages, and you know that for 99 percent of the American people economic damages will not amount to very much. Well, they certainly will not amount to enough to deter one of these big companies from putting a bad product on the market.

I urge a vote for the amendment of the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. I thank the chairman for yielding this time to me.

Mr. Chairman, let me say first of all that I hope we could have avoided some of the class war rhetoric that we have heard in debating this legislation. The fact is that in many cases in Europe, for example, where they probably have the safest automobiles in the world, there is no provision for punitive damages over there. The fact is that the American automobile manufacturers could not have child safety seats for about 7 years after Europe had introduced them because of the concern for product liability suits over here.

I suspect there are a number of young people who were killed in auto crashes before these child restraint seats were made available in the United States because of the fear of excessive litigation in this country versus Europe.

The idea behind our system was to make the plaintiff whole. It was basically to provide that the plaintiff be made whole. That is whole system that we talk about. Joint liability was created as a risk distribution insurance mechanism to insure that valid claimants would receive at least some compensation. However, no insurance program, not any workers' compensation program in any State, provides benefits or coverage for noneconomic damages.

The voters of California passed a State initiative in 1986 which eliminated joint liability for noneconomic damages. California trial attorney Suzel Smith, who practices for both defendants and plaintiffs, testified twice last year in the Senate that the elimination of joint liability for noneconomic damages in California has been fair and that there has been no effort to repeal or modify the law.

I think it is fundamentally unfair to have a situation where you have got a defendant who is found to be 1 percent responsible and yet, because they may have deep pockets, they will get 100 percent of the judgment.

Mrs. SCHROEDER. Mr. Chairman, I now yield 2 minutes to the distinguished gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. I thank the gentlewoman for yielding.

Mr. Chairman, we have already heard the outrage that this bill has, by discriminating against children, retirees and homemakers who may lose limbs, suffer blindness or others, without the economic loss. And they do not receive the same kind of treatment under this bill as someone with a big fat paycheck.

I want to talk a minute about joint and several liability. Mr. Chairman, we have heard the scare tactics of 1 percent fault having to pay the full damage. Well, Mr. Chairman, the majority saw an amendment proposed that would have said that only those with a substantial amount of participation, 20 percent, would be forced to pay the full freight, not those with 1 percent. That amendment was ruled out of order.

Mr. Chairman, if we have a situation where there is a problem with the design and the manufacture and the possible misrepresentation at sale, why should the victim have to sort all this out, getting three separate verdicts and having to chase down three separate defendants?

The fact is that in the business community you can insure for that loss and apportion it before it happens, and you ought not have to have that done by the defendant.

Mr. Chairman, there is a case, Gray versus Dayton Hudson Corp., where the manufacturers of children's pajamas had a product that the court found the manufacturer was uniquely aware that the product was flammable. The court noted that the pajamas in question burned almost as quickly as newsprint.

Mr. Chairman, this company could have, economically, feasibly treated the pajamas so they would not burn. This company would benefit if this amendment were not passed.

Children sleep safely tonight, Mr. Chairman, because punitive damages removed these from the market.

Let us not turn the clock on consumer protection.

Mr. HYDE. Mr. Chairman, does the gentleman from Illinois have the right to close debate?

The CHAIRMAN. The gentleman is correct. The chairman of the committee has the right to close.

Mr. HYDE. I have only one speaker left, Mr. Chairman, and I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I must say this has been frustrating because we have not been able to have a debate and all the artificial time limits on here have made this all really kind of a charade.

When you listen to people stand up and talk about how terrible it is we have punitive damages, there are no punitive damages and punitive damages are terrible. OK. But this bill does not do away with punitive damages, it just leaves it for economic interests. So if you guys think punitive damages are so bad, then be fair and do away with all of them. But you are leaving them for your fat cat friends. If you happen to have a paycheck, you get

economic damages and punitive damages. If you do not have a paycheck, if you are a child who has been burned by pajamas, it is tough bunchies, you do not get anything because they just burn a child who is not worth anything because a child is not working and does not have a paycheck.

Listen to what the gentleman from Virginia is saying. If that were your child, America, you would be angry.

Now, if we are going to do away with all punitive damages, fine. But this bill does not do it. It puts a fence around wage earners and fat cats, and it allows them joint and several liability. You heard the gentleman from Wisconsin saying how terrible joint and several liability is. Yes; this does not do away with it, it just limits it to people with a paycheck. So if you have a paycheck, America, we love you. If you have a paycheck, you get both joint and several liability, which means even if they are only 1 percent liable, they will pay your whole paycheck. And you also get punitive damages. But if you do not get a paycheck, you are nothing.

So, if you are staying home taking care of your children, you do not get punitive damages and you do not get joint and several liability. If you are a child, you do not get that. If you take a drug and it ruins your reproductive organs, too bad. If you are caught up with breast implants, too bad. On and on and on.

I thought in America we had a few values left for things other than just paychecks. So, before you listen to this rhetoric that, ''That is right, we don't need punitive damages and we don't need joint and several,'' you are not getting the whole picture. This does not do away with those. It only does away with those for noneconomic damages. If you vote ''yes'' on this amendment, you will have a level playing field.

Mr. Chairman, this amendment can be called the family values amendment, because it amends two provisions in this bill that have the effect of discriminating against families and family values.

When I offered this amendment in committee, although it failed narrowly, it received votes from both sides of the aisle. This amendment should receive bipartisan support from everyone in this body who believes, as I do, that we Americans value our families more than their jobs, and that our ability to have children is more valuable than any paycheck could ever be.

Without my amendment, the bill before us today will establish into law the notion that the paycheck is valued more in our system of civil justice than our families, and our right to bear children. The bill divides compensatory damages into two categories, economic and noneconomic, and says that the type of loss that includes our paychecks—wages that a victim loses because of an injury—are to be given first class treatment, while family-related losses, including loss of reproductive capacity, are to be given second-class treatment. My amendment would make sure that economic and noneconomic losses are treated equally for purposes of joint and several liability—which in many cases means the difference between collecting or not collecting your damages. My amendment also makes sure that all compensatory damages could for purposes of calculating the cap on punitive damages, and not just economic losses. Noneconomic losses reflect real injury, and that is no reason to give them second-class status.

The two-class system of justice this bill would establish hurts women and children in several ways. First, because of the enduring wage gap between women and men in the workforce, any provision that gives preferential treatment to ''economic'' losses, and gives second-class treatment to ''noneconomic'' losses, will have a disproportionately harsh impact on women, as well as on children and lower-income workers. This second-class treatment will be particularly evident in the case of women who are housewives, and women who are staying home with their children, because the damages they suffer are strongly weighted toward ''noneconomic'' losses.

The second way this bill devastates families has to do with reproductive harm. Many of the most infamous, dangerous products ever sold have been products like DES and the Dalkon Shield that inflicted terrible reproductive injuries upon their victims. DES exposed approximately 10 million women and men to reproductive damage. The Dalkon Shield caused injuries to the reproductive systems of thousands of women. Accutane, an anti-acne medication, caused birth defects when women used it while they were pregnant.

Harm to the reproductive system is an extremely devastating form of loss. I feel very confident that if you surveyed Americans about whether they would consider the loss of their reproductive capacity to be of less importance to them than the loss of wages, you would find very few people who would say, as this bill does, that lost wages are more highly valued than loss of reproductive capacity. Yet, unless my amendment is adopted, this bill will write into the law of this land that lost wages are deserving of better treatment under the law than is loss of reproductive capacity.

Mr. Chairman, this amendment is truly a family values amendment. It makes sure that our justice system values the family as much as it values the paycheck. It eliminates the harsh, discriminatory impact this bill has on women, children, and lower income individuals. I urge the adoption of this family values amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 3 minutes to close debate.

Mr. HYDE. Mr. Chairman, we have heard for the last 2 days capping noneconomic damages and liability suits would hurt women. The reason given is that women stay at home, so juries cannot calculate economic damages for them in the way they can for men who work. This is a strange argument, even a bizarre argument, coming from women who have spent their political careers telling us the traditional family is dead and we had better get used to it. I never thought I would hear the gentlewoman portray an ''Ozzie and Harriet'' view of America.

The facts are, in fact, just the opposite. Many women now, of course, work. There is no problem in calculating the economic damages there. But even more striking, juries now regularly calculate what the market value of a woman's services to a household would cost on the open market. Every woman has done this calculation in her head. I dare say the gentlewoman from Colorado has: chauffeur, cook, nanny, housecleaner, manager of the family budget, child care professional; the list goes on and one.

I am told that when juries make this calculation, they regularly come up with six figures; in other words, more than what most families make through their jobs. Juries respect and honor the economic role of women, including homemakers.

Mr. Chairman, I am amazed that those in this Chamber who have been so self-righteous for so long about their role in defending women would make arguments that essentially demean the role of women in our society.

This amendment severely weakens the much-needed punitive damages reform.

☐ 1300

It will undermine the punitive damages reform contained in the bill by lumping in highly speculative, noneconomic damages such as pain and suffering, and emotional distress, into the basis for determining punitive damages. This will result in a continuation of inflated punitive damages awarded, exactly what this bill is seeking to contain.

Mr. Chairman, I respectfully request my colleagues to vote no on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Of course, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Would the gentleman like to talk about children? Would he like to talk about the elderly? Would he like to talk about——

Mr. HYDE. I am one of each.

Mrs. SCHROEDER. Reproductive organs?

I also think the gentleman knows that economic damages for women in the workplace are very severely limited—who are not in the workplace, and I think——

Mr. HYDE. Reclaiming my time, Mr. Speaker, I respectfully disagree with the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 247, not voting 8, as follows:

[Roll No. 219]

AYES—179

Abercrombie	Furse	Neal
Ackerman	Gejdenson	Oberstar
Andrews	Gephardt	Obey
Baldacci	Gonzalez	Olver
Barcia	Gordon	Ortiz
Barrett (WI)	Green	Owens
Bateman	Gutierrez	Pallone
Becerra	Hall (OH)	Pastor
Beilenson	Harman	Payne (NJ)
Bentsen	Hastings (FL)	Peterson (FL)
Berman	Hefner	Poshard
Bevill	Hilliard	Rahall
Bishop	Hinchey	Reed
Bonior	Holden	Reynolds
Borski	Hoyer	Richardson
Boucher	Jackson-Lee	Rivers
Browder	Jefferson	Rose
Brown (CA)	Johnson (SD)	Roybal-Allard
Brown (FL)	Johnson, E.B.	Rush
Brown (OH)	Johnston	Sabo
Bryant (TX)	Kanjorski	Sanders
Cardin	Kaptur	Sawyer
Chapman	Kennedy (MA)	Schiff
Clay	Kennedy (RI)	Schroeder
Clayton	Kennelly	Schumer
Clyburn	Kildee	Scott
Coble	Kleczka	Serrano
Coleman	Klink	Skaggs
Collins (IL)	LaFalce	Skelton
Collins (MI)	Lantos	Slaughter
Conyers	Levin	Spratt
Costello	Lewis (GA)	Stark
Coyne	Lincoln	Stokes
Cramer	Lipinski	Studds
de la Garza	Lofgren	Stupak
DeFazio	Lowey	Tejeda
DeLauro	Luther	Thompson
Dellums	Maloney	Thornton
Deutsch	Manton	Thurman
Diaz-Balart	Markey	Torres
Dicks	Martinez	Torricelli
Dingell	Mascara	Towns
Dixon	Matsui	Traficant
Doggett	McCarthy	Tucker
Doyle	McDermott	Velazquez
Durbin	McHale	Vento
Engel	McKinney	Visclosky
English	McNulty	Volkmer
Eshoo	Meehan	Ward
Evans	Meek	Waters
Farr	Menendez	Watt (NC)
Fattah	Mfume	Waxman
Fazio	Miller (CA)	Williams
Fields (LA)	Mineta	Wilson
Filner	Minge	Wise
Flake	Mink	Woolsey
Foglietta	Moakley	Wyden
Ford	Morella	Wynn
Frank (MA)	Murtha	Yates
Frost	Nadler	

NOES—247

Allard	Calvert	Dreier
Archer	Camp	Duncan
Armey	Canady	Dunn
Bachus	Castle	Edwards
Baesler	Chabot	Ehlers
Baker (CA)	Chambliss	Ehrlich
Baker (LA)	Chenoweth	Emerson
Ballenger	Christensen	Ensign
Barr	Chrysler	Everett
Barrett (NE)	Clement	Ewing
Bartlett	Clinger	Fawell
Barton	Coburn	Fields (TX)
Bass	Collins (GA)	Flanagan
Bereuter	Combest	Foley
Bilbray	Condit	Forbes
Bilirakis	Cooley	Fowler
Bliley	Cox	Fox
Blute	Crane	Franks (CT)
Boehlert	Crapo	Franks (NJ)
Bonilla	Cremeans	Frelinghuysen
Bono	Cubin	Frisa
Brewster	Cunningham	Funderburk
Brownback	Danner	Gallegly
Bryant (TN)	Davis	Ganske
Bunn	Deal	Gekas
Bunning	DeLay	Geren
Burr	Dickey	Gilchrest
Burton	Dooley	Gillmor
Buyer	Doolittle	Gilman
Callahan	Dornan	Goodlatte
Goodling	Lucas	Salmon
Goss	Manzullo	Sanford
Graham	Martini	Saxton
Greenwood	McCollum	Scarborough
Gunderson	McDade	Schaefer
Gutknecht	McHugh	Seastrand
Hall (TX)	McInnis	Sensenbrenner
Hamilton	McIntosh	Shadegg
Hancock	McKeon	Shaw
Hansen	Metcalf	Shays
Hastert	Meyers	Shuster
Hastings (WA)	Mica	Sisisky
Hayes	Miller (FL)	Skeen
Hayworth	Molinari	Smith (MI)
Hefley	Mollohan	Smith (NJ)
Heineman	Montgomery	Smith (TX)
Herger	Moorhead	Smith (WA)
Hilleary	Moran	Solomon
Hobson	Myers	Souder
Hoekstra	Myrick	Spence
Hoke	Nethercutt	Stearns
Horn	Neumann	Stenholm
Hostettler	Ney	Stockman
Houghton	Norwood	Stump
Hunter	Nussle	Talent
Hutchinson	Orton	Tanner
Hyde	Oxley	Tate
Inglis	Packard	Tauzin
Jacobs	Parker	Taylor (MS)
Johnson (CT)	Paxon	Taylor (NC)
Johnson, Sam	Payne (VA)	Thomas
Jones	Peterson (MN)	Thornberry
Kasich	Petri	Tiahrt
Kelly	Pickett	Torkildsen
Kim	Pombo	Upton
King	Pomeroy	Vucanovich
Kingston	Porter	Waldholtz
Klug	Portman	Walker
Knollenberg	Pryce	Walsh
Kolbe	Quillen	Wamp
LaHood	Quinn	Weldon (FL)
Largent	Radanovich	Weldon (PA)
Latham	Ramstad	Weller
LaTourette	Regula	White
Laughlin	Riggs	Whitfield
Lazio	Roberts	Wicker
Leach	Roemer	Wolf
Lewis (CA)	Rogers	Young (AK)
Lewis (KY)	Rohrabacher	Young (FL)
Lightfoot	Ros-Lehtinen	Zeliff
Linder	Roth	Zimmer
Livingston	Roukema	
Longley	Royce	

NOT VOTING—8

Boehner	LoBiondo	Rangel
Gibbons	McCrery	Watts (OK)
Istook	Pelosi	

□ 1320

The Clerk announced the following pair:

On this vote:

Mr. Rangel, with Mr. Watts of Oklahoma for against.

Mr. CLEMENT changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Chairman, I was unavoidably absent for rollcall No. 219, the amendment offered by the gentlewoman from Colorado, Mrs. SCHROEDER. Had I been present I would have voted ''aye''.

I support the Schroeder amendment which would strike from the bill the section which abolishes joint and several liability and would modify the bill's cap on punitive damage.

As written, this bill will discriminate against women, children, and the elderly by placing greater value on economic losses over noneconomic losses. Similarly, placing a cap on punitive damages awards also discriminates against these groups.

Women, for example, will suffer because noneconomic losses such as reproductive capacity and physical disfigurement are much harder to qualify than annual earning capacity. In addition, women's earning capacity is historically and currently less than men and would be punished by this bill.

The Schroeder amendment acknowledges this legal discrimination and deserves our support.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 12, strike lines 8 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, every State has statutes of limitation that prescribe the period of time within which a law must be brought. Similar but not identical is a statute of repose. Statutes of repose specify the period of time after which a manufacturer may not be sued for an alleged injury caused by its product. Consequently, a statute of limitations specifies when an existing right to bring a suit expires, while statutes of repose specify the period of time after which no right to sue will be recognized at all.

Seventeen States have enacted statutes of repose, but they vary in length and in their applicability to various products. A uniform statute of repose is needed in order to provide certainty and finality in commercial transactions. Section 108 of H.R. 956 would establish a 15-year Federal statute of repose in product liability cases. Thus, a product liability action against a manufacturer would be barred 15 years after the date of first delivery of the product.

To be fair to plaintiffs, the provision would not apply in instances involving a latent illness—a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product. In addition, the statute of repose does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved where the express warranty given was longer than 15 years.

This legislation is similar to legislation that passed the Congress last year known as the General Aviation Revitalization Act of 1994 (Public Law 103–298). That Federal statute created an 18-year statute of repose for general aviation aircraft.