When trends like these threaten the American Dream, and these trends are being felt, Mr. President, I was troubled by a Gallup-CBS polls taken recently that showed that 8 out of every 10 Americans believe it will be harder for the next generation to achieve the American Dream—8 out of every 10. When these trends threaten the American Dream of home ownership, we must be clear in our policies here in Washington, that we will continue to work to promote an environment of security and opportunity.

Mr. D'AMATO. Mr. President, I am pleased to join my distinguished colleague from Delaware, Senator ROTH, in submitting a resolution to prevent further restriction of the Federal income tax deduction for home mortgage interest. To further limit or eliminate the deductibility of mortgage interest for homeowners—the majority of which are middle-income Americans—would be to restrict their ability to buy into the American dream.

It is no secret that homeownership is a fundamental American ideal. Cutting or wiping out this deduction, which has been available to Americans since 1913, will simply put the possibility of homeownership out of reach for many Americans. The mortgage interest deduction is one of a number of tax benefits that serves a good social purpose. It is not an unintended loophole but, rather, a provision created to foster investment by the private sector. The home mortgage interest deduction has served as one of the cornerstones of our national housing policy, making us one of the best housed countries in the world and creating safe and secure neighborhoods.

Further restrictions could also have a disastrous effect on the American housing industry, especially if interest rates continue to rise. People simply will not be able to buy homes, which would have a devastating impact on the economy, particularly the banking, lending and construction industries. Higher unemployment rates would result and local governments would suffer, as shrinking homeownership would, in turn, mean a dwindling tax base.

Mr. President, the National Association of Home Builders estimates that eliminating the home mortgage interest deduction would reduce the value of an average American home by about 20 percent. For all intents and purposes this would have the effect of a heavy tax increase. For the sake of the economy and middle-income Americans we cannot erode the American dream: homeownership.

SENATE RESOLUTION 118—CONCERNING UNITED STATES-JAPAN TRADE RELATIONS

Mr. BYRD (for himself, Mr. DOLE, Mr. DASCHLE, Mr. BAUCUS, Mr. REID, Mr. ASHCROFT, Mr. WARNER, Mr. LEVIN, Mr. HOLLINGS, Mr. PRESSLER, Mr. DORGAN, Mr. SARBANES, Mr. SPECTER, Mr. BROWN, and Mr. D'AMATO) submitted the following resolution; which was considered and agreed to:

S. RES. 118

Whereas, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Whereas, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American automotive products to the Japanese market;

Whereas, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in automotive sector, and of which $12.8 billion is attributable to auto parts flows;

Whereas, in July, 1993, the Administration reached a broad accord with the Government of Japan, which established automotive trade as one of 5 priority areas for negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Whereas, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill its commitments to remain as an engaged, deployed, Pacific power;

Whereas, after 18 months of negotiations with the Japanese, beginning in September 1993, the U.S. Trade Representative concluded that no progress had been achieved, leaving the auto parts market in Japan ''virtually closed'';

Whereas, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Whereas, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor, stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues.''

Whereas, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached.

Now, therefore, be it

Resolved, That it is the Sense of the Senate that—

(1) The Senate regrets that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations, have collapsed;

(2) If negotiations under Section 301 of the Trade Act of 1974 fail to open the Japanese auto parts market, the United States Senate strongly supports the decision by the President to impose sanctions on Japanese products in accordance with Section 301.

SENATE RESOLUTION 119—AUTHORIZING REPRESENTATION BY LEGAL COUNSEL

Mr. GORTON (for Mr. DOLE, for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 119

Whereas, in the case of *United States* v. *George C. Matthews*, Case No. 95–CR–11, pending in the United States District Court for the Eastern District of Wisconsin, a subpoena for testimony has been issued to Darin Schroeder, an employee of the Senate on the staff of Senator Feingold;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2) (1994), the Senate may direct its counsel to represent committees, Members, officers and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

Resolved, That Darin Schroeder and any other employees in Senator Feingold's office from whom testimony may be necessary are authorized to testify and to produce records in the case of *United States* v. *George C. Matthews*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent Darin Schroeder and any other employee in connection with the testimony authorized under section 1.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

BYRD (AND OTHERS) AMENDMENT NO. 730

(Ordered to lie on the table.)

Mr. BYRD (for himself, Mr. DOLE, Mr. BAUCUS, Mr. REID, Mr. LEVIN, and Mr. ASHCROFT) submitted an amendment intended to be proposed by them to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the appropriate place, insert

Inasmuch as, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Inasmuch as, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American products to the Japanese market;

Inasmuch as, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in automotive sector, and of which $12.8 billion is attributable to auto parts flows;

Inasmuch as, in July 1993, the Administration reached a broad accord with the Government of Japan, which established automotive trade regulations as one of 5 priority areas of negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Inasmuch as, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill is commitments to remain as an engaged, deployed, Pacific power;

Inasmuch as, after 18 months of negotiations with the Japanese, beginning in September, 1993, the U.S. Trade Representatives concluded that no progress has been achieved, leaving the auto parts market in Japan ''virtually closed;''

Inasmuch as, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Inasmuch as, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues;''

Inasmuch as, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached: Now, therefore, be it

Declared, That it is the Sense of the Senate that—

(1) The Senate regrets that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations, have collapsed;

(2) The Senate therefore strongly supports the decision by the President to impose trade sanctions on Japanese products in accordance with Section 301 of the Trade Act of 1974 unless an acceptable accord with Japan is reached in the interim that renders such action unnecessary.

HOLLINGS AMENDMENTS NOS. 731–745

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 15 amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 731

At the appropriate place, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed 2 times the sum of—

(1) the amount awarded to the claimant for the economic loss on which the claim is based; and

(2) the amount awarded to the claimant for noneconomic loss.

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 732

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law—

(1) if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected; or

(2) adopted after the date of enactment of this Act.

AMENDMENT NO. 733

At the appropriate place, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed the greater of—

(1) an amount equal to 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or

(2) $250,000.

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 734

At the appropriate place, insert the following:

SEC. . APPLICATION OF ACT LIMITED TO DOMESTIC PRODUCTS.

Notwithstanding any other provision of this Act, this Act shall not apply to any product, component part, implant, or medical device that is not manufactured in the United States within the meaning of the Buy American Act (41 U.S.C. 10a) and the regulations issued thereunder, or to any raw material derived from sources outside the United States.

AMENDMENT NO. 735

At the appropriate place, insert the following:

SEC. . STATE IMPLEMENTATION REQUIRED.

Notwithstanding any provision of this Act to the contrary, nothing in this Act shall supersede any provision of State law or rule of civil procedure unless that State has enacted a law providing for the application of this Act in that State.

AMENDMENT NO. 736

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law adopted after the date of enactment of this Act.

AMENDMENT NO. 737

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law inconsistent with this Act if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected.

AMENDMENT NO. 738

At the appropriate place, insert the following:

SEC. . Notwithstanding section 101(7) of this Act, the term ''harm'' includes commercial loss or loss of damage to a product itself; and notwithstanding section 102(a) of this Act, the provisions of title I apply to any product liability action brought for loss or damage to a product itself or for commercial loss.

AMENDMENT NO. 739

At the appropriate place, insert the following:

SEC. . Notwithstanding section 102(e) of this Act, nothing in this Act shall require that any decision of a circuit court of appeals interpreting a provision of this Act be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court.

AMENDMENT NO. 740

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act shall preclude the district courts of the United States from having jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered by this Act.

AMENDMENT NO. 741

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act requires the trier of fact in a product liability action, at the request of any party, to consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

AMENDMENT NO. 742

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act limits the amount of punitive damages that may be awarded in a product liability action or any other civil action.

AMENDMENT NO. 743

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, this Act shall not apply to the award of punitive damages in any product liability action or any other civil action.

AMENDMENT NO. 744

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product, against a manufacturer, seller, or any other person responsible for the distribution of the product in the stream of commerce, that involves a defect or design of the product.

AMENDMENT NO. 745

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act requires that, in a product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

BREAUX AMENDMENTS NOS. 746–747

(Ordered to lie on the table.)

Mr. BREAUX submitted two amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 746

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

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SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) ''claimant'' means any person who brings a civil action pursuant to this Act, 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, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) ''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;

(4) ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of that State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A);

(5) ''commercial loss'' means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation;

(6) ''economic loss'' means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities and the fair market value of any property loss or property damage), to the extent recovery for such loss is allowed under applicable State law;

(7) ''exercise of reasonable care'' means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) ''harm'' means any bodily injury to an individual sustained in an accident and any illness, disease, or death of that individual resulting from that injury; the term does not include commercial loss or loss or damage to a product itself;

(9) ''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 designs, formulates or constructs the product (or component part of the product) or has engaged another person to design, formulate or construct the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design, formulate or construct, an aspect of a product (or component part of a product) made by another; or

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

(10) ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(11) ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) ''preponderance of the evidence'' is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, or otherwise is involved in placing a product in the stream of commerce; 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; and

(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; and

(15) ''State'' means any State of the United States, the District of Columbia, 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 thereof.

SEC. 4. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law. A civil action for negligent entrustment is similarly not subject to this Act and shall be subject to applicable State law.

(b) SCOPE OF PREEMPTION.—(1) Except as provided in paragraph (2), this Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(2) The provisions of title I shall not supersede or otherwise preempt any provision of applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of 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 including those with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(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 forum non conveniens; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined

in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(d) CONSTRUCTION.—This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Any decision of a United States court of appeals interpreting the provisions of this Act shall be considered a controlling precedent and followed by each Federal and State court within the geographical boundaries of the circuit in which such court of appeals sits, except to the extent that the decision is overruled or otherwise modified by the United States Supreme Court.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act, but shall not apply to claims existing prior to the effective date of this Act.

TITLE I—ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 101, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—The court shall assess reasonable attorney's fees (calculated in the manner described in section 101(f)) and costs against the offeree, if—

(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;

(2) final judgment is entered against the defendant for harm caused by a product; and

(3) the defendant's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) GOOD FAITH REFUSAL.—In determining whether an offeree's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, the court shall consider such factors as the court deems appropriate.

TITLE II—STANDARDS FOR CIVIL ACTIONS

SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY.

(a) STANDARDS OF LIABILITY.—In any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (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, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the product seller's warranty; and (C) the failure of the product to conform to the product seller's warranty caused the claimant's harm; or

(3)(i) the product seller engaged in conduct representing a conscious or flagrant indifference to safety or in conduct representing intentional wrongdoing; and

(ii) such conduct was approximate cause of the harm that is the subject of the complaint.

(b) CONDUCT OF PRODUCT SELLER.—(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this Act based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with the warnings and instructions with it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) TREATMENT AS MANUFACTURER.—A product seller shall be deemed to be the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the 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.

(d) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 314(a)(b)(c) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 203. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer's or product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Punitive damages may not be awarded in the absence of an award of compensatory damages.

(b) JUDICIAL DETERMINATION.

SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—Any civil action subject to this Act shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b) STATUTE OF REPOSE FOR CAPITAL GOODS.—(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or train, used primarily to transport passengers for hire, shall not be subject to this subsection.

(3) As used in this subsection, the term—

(A) ''capital good'' means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(B) ''time of delivery'' means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(c) EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of this section would shorten the period during which a civil action could be brought under otherwise applicable law, the claimant may, notwithstanding such provision of this section, bring the civil action pursuant to this Act within one year after the effective date of this Act.

(d) EFFECT ON RIGHT TO CONTRIBUTION OR INDEMNITY.—Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

(e) Paragraph (b)(1) does not bar a product liability action against a defendant who made a warranty in writing as to the safety of the specific product involved which was longer than 25 years, but it will apply at the expiration of that warranty.

SEC. 205. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) IN GENERAL.—(1) An employer or workers' compensation insurer of an employer

shall have a right of subrogation against a manufacturer or product seller to recover the sum of the amount paid as workers' compensation benefits for harm caused to an employee by a product if the harm is one for which a civil action has been brought pursuant to this Act. To assert a right of subrogation an employer or workers' compensation insurer of an employer shall provide written notice that it is asserting a right of subrogation to the court in which the claimant has filed a complaint. The employer or workers' compensation insurer of the employer shall not be required to be a necessary and proper party to the proceeding instituted by the employee.

(2) In any proceeding against or settlement with the manufacturer or product seller, the employer or the workers' compensation insurer of the employer shall have an opportunity to assert a right of subrogation upon any payment and to assert a right of subrogation upon any payment made by the manufacturer or product seller by reason of such harm, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise. The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without notifying the employer in writing prior to settlement. However, the preceding sentence shall not apply if the employer or workers' compensation insurer of the employer is made whole for all benefits paid in workers' compensation benefits or has not asserted a right of subrogation pursuant to this section.

(3) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the trier of fact as to this issue as fully as though the employer were a party although not named or joined as a party to the proceeding. Such issue shall be the last issue submitted to the trier of fact. If the trier of fact finds by clear and convincing evidence that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the court shall proportionally reduce the damages awarded by the trier of fact against the manufacturer or product seller (and correspondingly the subrogation lien of the employer) by deducting from such damages a sum equal to the percentage at fault found attributable to the employer or coemployee multiplied by the sum of the amount paid as workers' compensation benefits. The manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer for such sums. However, the employer shall not lose its right of subrogation because of an intentional tort committee against the claimant by the claimant's coemployees or for acts committed by coemployees outside the scope of normal work practices.

(4) If the verdict shall be that the claimant's harm was not caused by the fault of the claimant's employer or coemployees, then the manufacturer or product seller shall reimburse the employer or workers' compensation insurer of the employer for reasonable attorney's fees and court costs incurred in the resolution of the subrogation claim, as determined by the court.

(b) EFFECT ON CERTAIN CIVIL ACTIONS.—(1) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured.

(3) Nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) IN GENERAL.—Except as provided in subsection (b), in any civil action subject to this Act, the liability of each defendant for noneconomic loss shall be joint and several.

(b) DE MINIMIS EXCEPTION.—Notwithstanding subsection (a), in any civil action subject to this Act, the liability for noneconomic loss of each defendant found to be less than 15% at fault shall be several only and shall not be joint. Each such defendant shall be liable only for the amount of noneconomic loss allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (c). A separate judgment shall be rendered against such defendant for that amount.

(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(b) OTHER CIVIL ACTIONS.—In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a proximate cause of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c) INTOXICATION DETERMINATION TO BE MADE UNDER STATE LAW.—For purposes of this section, 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.

(d) DEFINITION.—As used in this section, the term ''drug'' means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

In lieu of the language proposed to be inserted, insert the following:

AMENDMENT NO. 747

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TABLE OF CONTENTS

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) ''claimant'' means any person who brings a civil action pursuant to this Act, 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, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) ''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;

(4) ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of that State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A);

(5) ''commercial loss'' means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation;

(6) ''economic loss'' means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities and the fair market value of any property loss or property damage), to the extent recovery for such loss is allowed under applicable State law;

(7) ''exercise of reasonable care'' means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) ''harm'' means any bodily injury to an individual sustained in an accident and any illness, disease, or death of that individual resulting from that injury; the term does not include commercial loss or loss or damage to a product itself;

(9) ''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 designs, formulates or constructs the product (or component part of the product) or has engaged another person to design, formulate or construct the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design, formulate or construct an aspect of a product (or component part of a product) made by another; or

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

(10) ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(11) ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) ''preponderance of the evidence'' is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, or otherwise is involved in placing a product in the stream of commerce;

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; and

(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; and

(15) ''State'' means any State of the United States, the District of Columbia, 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 thereof.

SEC. 4. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law. A civil action for negligent entrustment is similarly not subject to this Act and shall be subject to applicable State law.

(b) SCOPE OF PREEMPTION.—(1) Except as provided in paragraph (2), this Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(2) The provisions of title I shall not supersede or otherwise preempt any provision of applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of 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 including those with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(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 forum non conveniens; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(d) CONSTRUCTION.—This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Any decision of a United States court of appeals interpreting the provisions of this Act shall be considered a controlling precedent and followed by each Federal and State court within the geographical boundaries of the circuit in which such court of appeals sits, except to the extent that the decision is overruled or otherwise modified by the United States Supreme Court.

SEC. 5. JURISDICTION OF FEDERAL COURTS.

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

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act, but shall not apply to claims existing prior to the effective date of this Act.

TITLE I—ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 101, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—The court shall assess reasonable attorney's fees (calculated in the manner described in section 101(f)) and costs against the offeree, if—

(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;

(2) final judgment is entered against the defendant for harm caused by a product; and

(3) the defendant's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) GOOD FAITH REFUSAL.—In determining whether an offeree's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, the court shall consider such factors as the court deems appropriate.

TITLE II—STANDARDS FOR CIVIL ACTIONS

SEC. 201. CIVIL ACTIONS.

A person seeking to recover for harm caused by a product may bring a civil action against the product's manufacturer or product seller pursuant to applicable State or Federal law, except to the extent such law is inconsistent with any provision of this Act.

SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY.

(a) STANDARDS OF LIABILITY.—In any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (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, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the product seller's warranty; and (C) the failure of the product to conform to the product seller's warranty caused the claimant's harm; or

(3)(i) the product seller engaged in conduct representing a conscious or flagrant indifference to safety or in conduct representing intentional wrongdoing; and

(ii) such conduct was approximate cause of the harm that is the subject of the complaint.

(b) CONDUCT OF PRODUCT SELLER.—(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this Act based upon an

alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with the warnings and instructions with it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) TREATMENT AS MANUFACTURER.—A product seller shall be deemed to be the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the 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.

(d) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 314(a)(b)(c) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 203. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer's or product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Punitive damages may not be awarded in the absence of an award of compensatory damages.

(b) JUDICIAL DETERMINATION—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) FACTORS.—Notwithstanding any other provision of this Act, in determining the amount of punitive damages awarded in action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—Any civil action subject to this Act shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b) STATUTE OF REPOSE FOR CAPITAL GOODS.—(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or train, used primarily to transport passengers for hire, shall not be subject to this subsection.

(3) As used in this subsection, the term—

(A) ''capital good'' means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(B) ''time of delivery'' means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(c) EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of this section would shorten the period during which a civil action could be brought under otherwise applicable law, the claimant may, notwithstanding such provision of this section, bring the civil action pursuant to this Act within one year after the effective date of this Act.

(d) EFFECT ON RIGHT TO CONTRIBUTION OR INDEMNITY.—Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

(e) Paragraph (b)(1) does not bar a product liability action against a defendant who made a warranty in writing as to the safety of the specific product involved which was longer than 25 years, but it will apply at the expiration of that warranty.

SEC. 205. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) IN GENERAL.—(1) An employer or workers' compensation insurer of an employer shall have a right of subrogation against a manufacturer or product seller to recover the sum of the amount paid as workers' compensation benefits for harm caused to an employee by a product if the harm is one for which a civil action has been brought pursuant to this Act. To assert a right of subrogation an employer or workers' compensation insurer of an employer shall provide written notice that it is asserting a right of subrogation to the court in which the claimant has filed a complaint. The employer or workers' compensation insurer of the employer shall not be required to be a necessary and proper party to the proceeding instituted by the employee.

(2) In any proceeding against or settlement with the manufacturer or product seller, the employer or the workers' compensation insurer of the employer shall have an opportunity to assert a right of subrogation upon any payment and to assert a right of subrogation upon any payment made by the manufacturer or product seller by reason of such harm, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise. The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without notifying the employer in writing prior to settlement. However, the preceding sentence shall not apply if the employer or workers' compensation insurer of the employer is made whole for all benefits paid in workers' compensation benefits or has not asserted a right of subrogation pursuant to this section.

(3) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the trier of fact as to this issue as fully as though the employer were a party although not named or joined as a party to the proceeding. Such issue shall be the last issue submitted to the trier of fact. If the trier of fact finds by clear and convincing evidence that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the court shall proportionally reduce the damages awarded by the trier of fact against the manufacturer or product seller (and correspondingly the subrogation lien of the employer) by deducting from such damages a sum equal to the percentage at fault found attributable to the employer or coemployee multiplied by the sum of the amount paid as workers' compensation benefits. The manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer for such sums. However, the employer shall not lose its right of subrogation because of an intentional tort committee

against the claimant by the claimant's coemployees or for acts committed by coemployees outside the scope of normal work practices.

(4) If the verdict shall be that the claimant's harm was not caused by the fault of the claimant's employer or coemployees, then the manufacturer or product seller shall reimburse the employer or workers' compensation insurer of the employer for reasonable attorney's fees and court costs incurred in the resolution of the subrogation claim, as determined by the court.

(b) EFFECT ON CERTAIN CIVIL ACTIONS.—(1) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured.

(3) Nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) IN GENERAL.—Except as provided in subsection (b), in any civil action subject to this Act, the liability of each defendant for noneconomic loss shall be joint and several.

(b) DE MINIMIS EXCEPTION.—Notwithstanding subsection (a), in any civil action subject to this Act, the liability for noneconomic loss of each defendant found to be less than 15% at fault shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (c). A separate judgment shall be rendered against such defendant for that amount.

(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(b) OTHER CIVIL ACTIONS.—In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a proximate cause of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c) INTOXICATION DETERMINATION TO BE MADE UNDER STATE LAW.—For purposes of this section, 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.

(d) DEFINITION.—As used in this section, the term ''drug'' means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

McCONNELL AMENDMENT NO. 748

(Ordered to lie on the table.)

Mr. BREAUX submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

In amendment No. 655, add the following new subsection (c):

(c) This Section shall not apply to foreign manufacturers located in a country:

(i) with which the United States has an Agreement of Friendship, Commerce and Navigation, or the equivalent, which provides for nationals of that country to receive national treatment with respect to access to the courts of justice within the territory of the United States;

(ii) with that is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;

(iii) with that is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; or

(iv) with which the United States has a Consular Agreement, or the equivalent, permitting consular service of process within that country;

at the time a relevant product liability action is initiated.

HARKIN AMENDMENT NO. 749

Mr. HARKIN proposed an amendment to amendment No. 690 proposed by Mr. COVERDELL to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section 107(b) of the amendment as amended by amendment No. 709, insert the following:

(6)(i) Notwithstanding paragraph (1), the amount of punitive damages that may be awarded in any product liability action that is subject to this title against an owner of an unincorporated business, or any partnership, corporation, unit of local government, or organization that has 25 or more full-time employees shall be the greater of—

(I) an amount determined under paragraph (1); or

(II) 2 times the average value of the annual compensation of the chief executive officer (or the equivalent employee) of such entity during the 3 full fiscal years of the entity immediately preceding the date on which the award of punitive damages is made.

(ii) For the purposes of this subparagraph, the term 'compensation' includes the value of any salary, benefit, bonus, grant, stock option, insurance policy, club membership, or any other matter having pecuniary value.''.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. STEVENS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SD–106, Dirksen Senate Office Building, on Thursday, May 11, 1995, at 9:30 a.m., to receive testimony on the Smithsonian Institution: Management Guidelines for the Future.

For further information concerning this hearing, please contact Christine Ciccone of the committee staff on 224–5647.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to review Nuclear Regulatory Commission licensing activities with regard to the Department of Energy's civilian nuclear waste disposal program and other matters within the jurisdiction of the Nuclear Regulatory Commission.

The hearing will take place Tuesday, May 16, 1995, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Witnesses may testify by invitation only. For further information, please call Karen Hunsicker at (202) 224–4971.

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. CAMPBELL. Mr. President, I would like to announce for the public that an oversight hearing has been scheduled before the Subcommittee on Parks, Historic Preservation and Recreation.

The hearing will take place Tuesday, May 23, 1995, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this oversight hearing is to review the Department of the Interior's programs, policies, and budget implications on the reintroduction of wolves in and around Yellowstone National Park.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the subcommittee staff at (202) 224–5161.

SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Forests and Public Lands to receive testimony on the property line disputes within the Nez Perce Indian Reservation in Idaho.

The hearing will take place on May 25, 1995, at 9:30 a.m. in room SD 366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who which to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Andrew Lundquist at (202) 224–6170.