

I think it can easily be amended, and the two Senators from Alabama will want to give the Alabama Legislature sufficient time to consider that amendment. I think that is appropriate, and I believe that we can now accept the Shelby-Hefflin amendment by voice vote. Assuming that we do so, Mr. President, there will only be one vote at 9:45.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as further modified.

So the amendment (No. 693), as further modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I have reservations about this in regard to what has occurred, but I am faced with reality, the reality of votes, and the reality of conference.

Senator SHELBY and I, therefore, are approaching this issue from a pragmatic, not philosophical, viewpoint. I just want to make that clear.

Mr. SHELBY. Mr. President, regarding the amendment we have worked out and that has been voted on, I agree with the senior Senator from Alabama. We can both count. We were counting votes and we were looking reality in the face.

Our State of Alabama is unique among the 50 States in that, as I have said before on the floor, we have had a wrongful death statute that assesses punitive damages only where someone is killed and there is a civil action because of the death. Most States in the Union—I guess all of them except Alabama—have compensatory damages.

If I had my "druthers," I would leave this like it was or like it is today, but this will give the Alabama Legislature until September 12, 1996, to consider changing it, if this proposed legislation were to become law.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 749

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 749, offered by the Senator from Iowa [Mr. HARKIN].

Mr. GORTON. I move to table the Harkin amendment, and I ask for the yeas and nays

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

The PRESIDING OFFICER (Mr. BURNS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 78, nays 20, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—78

Abraham	Feinstein	Mack
Ashcroft	Ford	McCain
Bennett	Frist	McConnell
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihhan
Bond	Graham	Murkowski
Bradley	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Nunn
Bryan	Gregg	Packwood
Burns	Hatfield	Pell
Campbell	Hefflin	Pressler
Chafee	Helms	Pryor
Coats	Hutchison	Robb
Cochran	Inhofe	Rockefeller
Cohen	Jeffords	Roth
Coverdell	Johnston	Santorum
Craig	Kassebaum	Simon
D'Amato	Kempthorne	Simpson
DeWine	Kerrey	Smith
Dodd	Kerry	Snowe
Domenici	Kohl	Specter
Exon	Kyl	Stevens
Faircloth	Lautenberg	Thomas
Feingold	Lott	Thompson
	Lugar	Thurmond

NAYS—20

Akaka	Dorgan	Levin
Baucus	Harkin	Mikulski
Boxer	Hatch	Reid
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Conrad	Kennedy	Wellstone
Daschle	Leahy	

NOT VOTING—2

Lieberman Warner

So the motion to lay on the table the amendment (No. 749) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred.)

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote 159 I voted "no." It was my intention to vote "yea." I ask unanimous consent I be permitted to change my vote. This will in no way change the outcome of the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 629 TO AMENDMENT NO. 690, AS AMENDED

(Purpose: To eliminate caps on punitive damage awards)

Mr. DORGAN. Mr. President, I would like to offer amendment No. 629. The amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 629 to amendment No. 690, as amended:

The amendment is as follows:

Insert at the appropriate place: "Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards."

Mr. DORGAN. Mr. President, the amendment which I have offered is not identical but nearly identical to the amendment I offered prior to cloture. The amendment deals with the punitive damage cap. The amendment I offered previously I offered to the Dole substitute. I now offer this amendment to the underlying bill.

Very simply, my amendment would remove the cap on punitive damages that exists in the bill. The amendment that I offered previously was defeated by a vote of 51 to 49. I would like for the Senate to express itself on that issue in light of the activities on this legislation since the Senate voted on it. While I think there is merit in a product liability reform bill and while I think there is merit on both sides of this issue, I believe the legislation should be like the legislation on product liability we considered last year. That legislation came to the floor of the Senate and was voted on with respect to the last cloture vote without any cap on punitive damages.

Last year, the bill that originated in the Commerce Committee and brought to the floor, did not include a cap on punitive damages. This year, the legislation, as it emerged in the Commerce Committee by the same authors, included a cap on punitive damages. I believe they were right last year and wrong this year on that particular section of the bill.

I believe some reform necessary in this area, but I believe their best impulses and best instincts last year served them better than this year when they decided to impose an arbitrary cap on punitive damages.

After all, the legislation requires you to provide clear and convincing evidence as a burden of proof that the harm caused was carried out with—let me quote this—"conscious and flagrant indifference to the safety of others." If a plaintiff has gone through trial and provided clear and convincing evidence that harm was caused or carried out with a conscious and flagrant indifference to the safety of others, then I do not understand why someone would suggest we ought to have a cap on punitive damages.

The legislation that is before us contains a cap on punitive damages in several different steps. It is, as I understand it, two times compensatory damages to a maximum of \$250,000, a distinction from that particular cap for small businesses, certain designated small businesses in the bill, and, third, a provision that a judge could increase the punitive damage award upon a petition by the plaintiff. That is my understanding of what is in the legislation that is before the Senate. My amendment says, notwithstanding any other provision of this act, nothing in this act shall impose limitations on punitive damage awards.

Again and finally, let me say that this is the same position Senator ROCKEFELLER and Senator GORTON had last year, no cap on punitive damages. And I think it is appropriate. The reason I think it is appropriate is we have changed the bar that you must get over in order to prove punitive damages. It requires clear and convincing evidence that the harm caused was carried out with conscious and flagrant indifference to the safety of others.

I just do not understand how, if you meet that burden of proof and demonstrate conscious and flagrant indifference to the safety of others, you can say to a corporation worth several billions of dollars, it would cost less to pay awards than it would to fix the problems. A punitive damages cap is appropriate. I really believe the Senate would improve this legislation by adopting the very position the two managers of the bill had last year. Their first and best instinct was not to have a punitive damages cap then. I believe that is the position the Senate ought to adopt now.

Mr. President, with that, I would hope, when we have another vote on this, the Senate will decide to eliminate the punitive damages cap. With that, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, unlike the situation at the time at which the Senator from North Dakota presented this amendment a week or so ago, we now have a bill in the Chamber in which there is no cap on punitive damages. I say that not in triumph but in regret. I believe that one of the great vices at which legislation of this sort properly should be aimed is at creating some kind of relationship between the actual damages caused by a tort, caused by a wrong, and the damages that can be recovered as a result. But with the latest set of amendments here, we have permitted a judge on certain findings of egregious conduct to go beyond what juries are permitted successfully to impose in the way of punitive damages.

The entire matter, Mr. President, is at one level an argument on philosophy but at another level it is a debate about the Constitution of the United States. The Supreme Court in several

recent cases, while not setting a specific ceiling or cap on punitive damages itself, has spoken of serious constitutional questions caused by unlimited punitive damages, or by punitive damages that are not related in any rational fashion to actual damages found by a jury or determined by a court.

In other words, the Supreme Court of the United States has invited the Congress to do exactly what I had hoped we would do more successfully than we have accomplished in this bill.

But just to go over it again, we have said that the maximum punitive damages that can effectively be awarded by a jury are in an amount twice the total of all economic damages and all non-economic damages that go for pain and suffering. And since those damages, in very serious cases of people being maimed for life, can well go into eight figures, and sometimes do, we have a very large potential remaining for punitive damages. But in addition to that provision, in the so-called Snowe amendment is a \$250,000 figure when twice the total of economic and non-economic damages would be less than \$250,000, together with the right of a judge to go beyond even the Snowe formula where the judge feels that formula to be too limited not to permit proper punitive damages for particularly egregious conduct.

So the Senator from North Dakota, in a number of respects, has already succeeded. There is no number. There is no specific formula which limits punitive damages.

As I have said frequently, I think there should be. Working with the laws of my own State and a handful of other States where punitive damages are not allowed at all, where the cap is zero in most cases, we find no difference in the safety or carefulness of business enterprises in those States. No case has been proven for the efficacy of punitive damages as a deterrent, in any event. My own view is that the original limitation in this bill was an appropriate one, but that original limitation has twice been liberalized in the course of this debate. And I express the fervent hope that in concerning ourselves with the proposition that we should not permit absolutely unlimited discretion on the part of juries, we should not have no maximum sentence in civil cases for wrongs, that we will make the partial and halting move toward some kind of rationalization which is now contained in this bill.

Mr. President, we are in a peculiar situation here this morning in that we have a potential of this amendment and one other to be dealt with and we do not have specific limitations on the amount of time that can be utilized for them. So I hope that, when either the Senator from West Virginia or the Senator from North Dakota next speaks, we can get an indication as to when they will finish to allow the other amendment to take place. There will be votes on any other amendments which come up, but we will be asking

unanimous consent that those votes take place after closing arguments and before the vote on final passage. So the sooner we know how long these two amendments will be debated, the earlier we will be able to predict to our Senators who are not here when they will have to come back to the floor to vote.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, a couple of points. I agree with what the Senator from the State of Washington said in argument to this amendment.

Just for the edification of my colleagues—this fact has not been brought out, I do not believe, in the debate—we have removed caps, but people do not realize, I think, often that there are caps on some rather extraordinary crimes in the Federal statutes. I will give some examples.

Many Federal criminal fines, even for particularly egregious crimes, do not exceed \$250,000. And that was our original proposal, economic damages times three or \$250,000, whichever is greater.

Listen to this. If you tamper with consumer products and it results in death, the Federal statute limitation is \$100,000 for punitive damages. If you retaliate against a witness, it is \$250,000. If you assault the President, it is \$10,000. If you rob a bank with the use of a deadly weapon, the punitive damage limit cap is \$10,000. Sexual exploitation of children for an individual, \$100,000; in terms of an organization—however that would work out—\$200,000. For treason—for treason—\$10,000.

Now I say that in no way to defend caps, because the Senator from West Virginia has fought for the removal of caps and we have, I believe, been able to do that.

I would, in closing, remind my esteemed friend and colleague from the State of North Dakota, who is as principled a person as I have ever met, that the Senator from the State of Washington and I have so bloodied ourselves in making sure we come back with effective removal of caps that we have said, and that we have been unable to obtain unanimous consent in this body to, in effect, make the cap total and complete because of a matter of 60 seconds in filing the amendment, that if we bring back the amendment with anything but the cap removed, that we will vote against the motion for cloture should there be a filibuster on the conference report.

So I really do believe that we are operating not only in good faith but in good substance on removal of the cap. I hope, therefore, that what I consider a redundant amendment by the Senator from North Dakota would be defeated.

I thank the Chair and yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I shall not prolong the debate. When I have completed with my remarks, I see no reason that you could not enter a unanimous-consent request to have a vote. I have no objection to a vote.

First, let me make a couple of comments. The Senator from Washington said, and I think the Senator from West Virginia also seemed to say, the way the bill is constructed, there really are not caps on punitive damage awards. If that, in fact, is the case, then I would think that they would have no objection to accepting language that says there are no caps on punitive damage awards. That is what my amendment says.

That was the Commerce Committee position last year on this bill. It was the right position. We raised the bar on what you must prove to receive a punitive damage award. Once we raised the bar, we felt it inappropriate to include caps. Now this year they want to include caps.

When the two Senators say there are not really caps, I understand what they are referencing. But, honestly, I think the claimants will find there are caps. There is \$250,000 written in. That is written there for a reason. Because, under ordinary circumstances, that will be a cap, two times compensatory damages.

Let me make two other quick points.

Mr. ROCKEFELLER. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. ROCKEFELLER. Just as a point of clarification, the reason that the \$250,000 was put in there in its new configuration was not in terms of the caps. We made certain that there was an alternate ceiling. So that if the economic damages and the noneconomic damages did not appear to arrive at \$250,000 multiplied by two, that the claimant would be guaranteed the \$250,000. It is an alternate ceiling.

Mr. DORGAN. If the Senators were building a floor rather than creating a cap, I say, God bless the floor and let us just get rid of the cap. Let us vote for my amendment and we will solve this.

But, let me make two other comments. First, if a company, a large company with vast resources, produces a product or a device that will be used in the field of medicine discovers, during its testing, the product is sufficiently faulty in its operation and it may cause some deaths; if the company fails to disclose that information and the product goes to market and some unsuspecting patient lies on a hospital gurney going into the operating room and dies during a routine procedure and later the family discovers that person died because the product used was faulty and the company knew it, I suppose they would want to bring a lawsuit against the company. In that case, I think society would want that company to be punished sufficiently so that other companies would understand you cannot do that, that kills

people; you ought to be punished for it. You ought not get a slap on the wrist, you ought to be punished for it.

That is what punitive damage awards are for. The case I just mentioned is a real case, and there are plenty of cases like that.

There is not an epidemic of punitive damage awards in this country. It happens rarely because it requires a substantial burden of proof, and we have increased that burden. There is no litigation crisis with respect to punitive damages. In 25 years, the survey that I have seen—1965 to 1990—says that 355 punitive damages were awarded in State and Federal product liability lawsuits nationwide. This is a country of 250 million people; 355 punitive damage awards nationwide. Of those awards, 35 are larger than \$10 million. All but one of these awards were reduced, and 11 of the 35 were reduced to zero.

The point I make is, this is not an epidemic or crisis. Punitive damage awards have not been escalating out of control. But I do think there are certain circumstances where an enterprise worth billions makes a conscious decision that we will risk whatever awards exist out there because we will gain more profit by selling this, knowing the defects, than we will risk paying the damages to someone injured or killed by that product.

My own view is that there is merit on both sides of the debate on product liability. That is why I have decided to support and have supported moving forward, increasing the standards, trying to shut down some of the litigation in this country, because there is too much frivolous litigation, as a matter of fact. The country is just prone to litigate almost everything. We have too many lawyers in America. And we keep training more and more every year.

I think there is merit to the position of the two Senators, that we ought to do something in a reasonable way on product liability. I think there is no merit to putting a cap on punitive damages. There was not merit to it last year. They did not have it in the bill last year. They changed their minds. Their first instinct is correct. Always stick with your first instinct. My amendment will allow us to stick with your first instinct. If the Senate agrees, we will live with your victory of last year deciding there shall not be punitive damages in the product liability bill.

Mr. President, with that, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Very briefly, Mr. President, I think that Members should know that this amendment by the Senator from North Dakota is all-encompassing and that it overrides the amendment which was supported by the vast majority of Members of the Senate that does have strict limits on

punitive damages in cases involving small businesses, businesses with fewer than 25 employees and individuals of relatively modest means whose total assets are less than half a million dollars.

So they, after having been the beneficiary of the last week of that very careful protection, protection against absolute bankruptcy, should the Dorgan amendment be adopted, they will be thrown into a situation in which absolutely unlimited punitive damages can be awarded against them. It is important for Members to understand that.

UNANIMOUS CONSENT AGREEMENT

Mr. GORTON. With that, Mr. President, now having cleared this with the Democratic side, I ask unanimous consent that the vote on, or in relation to, the Dorgan amendment, or in relation to any other amendment in order, and final passage occur back to back at the conclusion of the previously allotted time with the first vote limited to 15 minutes and the other consecutive votes in the voting sequence limited to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I was going to ask for the yeas and nays.

Mr. GORTON. I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise to speak against passage of this bill. I realize that, with cloture having been invoked, my words may not change many votes, but maybe they might change one or two. And then I feel like maybe my remarks, in a strong adversarial posture, might appeal to the reason of Senators to encourage them to eliminate some of the grossly unfair provisions that are in this bill.

I might say in the beginning that I believe the difference between the caps that are put in this bill and the fact that there were no caps in the last bill reflects a change in the makeup of the Senate, as a result of last November's elections.

There are caps in this bill with an additur provision whereby a judge could increase a jury's award of punitive damages. Clearly, that has already been ruled on by the Supreme Court as being unconstitutional. The case of Dimick versus Schiedt was decided in 1935 on that issue and makes the additur provision unconstitutional.

In my judgment, there are a number of other unconstitutional elements that should be pointed out. One is the matter pertaining to the role of the U.S. circuit courts of appeal being able to determine controlling precedent on the State courts within the jurisdiction of the Federal circuit.

Article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, has been construed to mean that the State courts must follow the decision of the Supreme Court and not the lower Federal courts.

The case of *Erie versus Tompkins* basically says that the Federal courts, in diversity cases, shall follow the substantive law of the State. There is no question that the Federal courts, through its rulemaking process and Congress, pursuant to its powers under the Rules Enabling Act, control in regards to procedural matters. I just want to mention that.

I want to direct the Senate's attention to a chart that Senator LEVIN produced and used in a previous argument. I thought it was an excellent presentation, and I ask unanimous consent that this table be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed
Alcohol or drug abuse defense	Do	Do
Misuse or alteration of product defense	Do	Do
Punitive damage limitations	Do	Do
Statute of limitations	Do	Prohibited
Statute of repose	Do	Allowed
Joint and several liability (non-economic damages)	Do	Do
Biomaterials provisions	Do	Do

Mr. HEFLIN. Mr. President, this is chart entitled "Preemption of State Product Liability Laws," and it has a column of State laws more favorable to plaintiffs and State laws more favorable to defendants and what happens as regards preemption under this legislation. First as to the liability of product sellers, that is retailers, this bill prohibits any laws more favorable to plaintiff, but it allows laws more favorable to the defendants. Second, with respect to the alcohol or drug abuse defense, the bill prohibits State laws more favorable to plaintiffs but it allows State laws more favorable to defendants. Third, as to the misuse or alteration of product defense, the bill prohibits State laws more favorable to plaintiffs but allows State laws more favorable to defendants.

Punitive damage limitations are treated the same way—unfavorable as to plaintiffs and favorable as to defendants. As to the statutes of limitations, that is the one and only provision that really exists in this whole bill is as to uniformity.

With regard to the statute of repose provision of 20 years, this bill preempts State laws more favorable to plaintiffs but not those State laws more favorable to defendants.

On the issue of eliminating joint and several liability for noneconomic damages, this bill preempts State laws

which are more favorable to plaintiffs but allow State laws which are more favorable to defendants. And you have the biomaterials provisions which are treated in the same manner. I think this chart Senator LEVIN prepared is a very excellent chart, and I hope my colleagues will take time to reflect upon it.

Now, I want to also direct my colleagues attention to the potential costs of the bill, an issue which I hope will be investigated, because I do not believe CBO or anyone else has looked at this matter very closely. There is language in the bill that includes within the scope of the word "claimant" a governmental entity which includes the Federal Government and all of its entities.

I do not think there is any question that the purpose of this bill is to save product manufacturers money. The Government, as a claimant, would be bringing suit against a defendant, and if the purpose of the bill is to save money, it means it saves money for the defendant, for corporate America, when the Federal Government brings suit.

So the cost to the Government has never been calculated, and there are so many things that are involved, particularly like the statute of limitations and statute of repose as to helicopters, tanks, NASA equipment, and all of GSA's equipment, and every conceivable way regarding which products are purchased by the Government. The issue of costs to the Government ought to be looked at more closely in my judgment.

Now, there is also a provision dealing with foreign nationals and foreign governments, and I realize that this is under statutory construction, that nothing in this title can be construed to preempt State choice of law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation and, in effect, 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 grounds of inconvenient forum.

In the world of terrorism today, these issues ought to be addressed. Hopefully, in the terrorist bill that will come before the Senate in the coming weeks, we will give some consideration regarding this issue. The Senate ought to make certain that the provisions of this product liability bill do not in some unintended way give some advantage to a terrorist entity.

I think one of the most unfair provisions in this legislation is the provision that says that an injured party cannot introduce in the compensatory damage part of a trial elements of conduct that constitute a cause of action for punitive damages. Therefore, as I have pointed out before, gross negligence, recklessness, wantonness, intentional conduct, and all activity of a similar nature, is prohibited from being considered in the main trial for compensatory damages. To me, that is one of

the most unfair provisions that exist in this bill.

The biomaterials section and the definition of implants therein, where there is language regarding coming in contact through a surgically produced opening and coming in contact with bodily fluids or tissue, in my judgment, is a wide-open situation for a great deal of problems pertaining to component parts of the implant, and I urge that that be carefully reviewed.

Some of these issues which I have just reviewed—and I hope some people in the White House are listening to me as I speak about this—ought to be carefully considered not only by the Department of Justice and every agency of Government that could be affected. Certainly, the FDA ought to consider the language that is being placed into this bill as to matters dealing with the human body in that biomaterial definition of "loss."

Of course, the very basic unfairness of the bill begins with the fact that commercial loss, which is a business loss, is excluded from being within the purview of this bill.

Of course, I have given illustrations on the floor about the fact that if a factory blows up and people that are injured from the faulty, defective product, they come under this bill; but for commercial law, they do not.

Some say the commercial loss exemption might be applied to individuals. I remember there was a "Dear Colleague" letter circulated on this issue. I would imagine in that instance we would find it would be rarely ever used, we might find out of 2,000 employees in a factory where a boiler blows up, we might find that there might be one moonlighting sock salesman. That would be the only way that we would have, basically, any commercial loss that would occur to that individual.

Now, most of all of the business litigation and most of the punitive damages awards that have come about are business or commercial losses. The case of *Pennzoil versus Texaco* was, for example, probably the largest punitive damages case that has ever been awarded, and it was a commercial litigation where business was suing other business.

There are other provisions throughout the bill that are very unfair, and I have listed them in previous arguments. I hope that this bill will be carefully reviewed in conference and we will see the removal of a great number unwise provisions.

I just appeal to the conscience of the people that are involved who will be in conference on this, and appeal to the White House to look at this matter when it reaches conference between the House and Senate. It just shocks the conscience to see the unfairness that exists in all the various provisions of this bill and I hope that I have pointed out the key issue very clearly for my colleagues to consider. Mr. President, I urge that we vote no on final passage.

Mr. ROCKEFELLER. Mr. President, I encourage my colleagues would vote aye on this bill.

Mr. President, while I had my doubts, I have believed for a long time that the Senate would eventually come to this point. Inexorably, it would happen. After many years of debate, many years of filibusters on this Senate floor, this body finally has a chance to cast its vote for what I think is responsible, balanced punitive damages tort reform.

I think the vote yesterday was historic. The Senate, for the first time, broke the log jam that has blocked action on what I referred to last night as a deadly serious issue, and the Senate has blocked that for years and years. Now the Senate has said, "proceed."

My belief that this time would come is based on several points. First and foremost, the problems with our punitive damages system cry out for solutions. We are here for that purpose. We were elected to address the problems that require attention and action. We have done so to the best of our ability.

In this case, because products by definition, virtually, involve interstate commerce—that point has been made but not accepted, I suppose, by all—70 percent of everything we make in West Virginia is sold in another State. By definition, States cannot preoccupy this field. This is precisely an area where Congress needs to step in.

Each State really cannot fix the flaws of the country's interstate product liability system. That is because the biggest problem involves the patchwork—varied, unpredictable nature—of every State in the union having different product liability rules and standards.

Businesses that sell or manufacture products are subject to the endless confusion, the hassle, the court costs, the wasteful costs, in general, of this maze.

Consumers who want safe products want more products that will increase their safety and cannot get them. Consumers who are victims of defective products and cannot get recompensed for an average of 3 years, are also hurt by the delays and the costs that stem from the product liability system. So businesses hurt, consumers are hurt. We have a problem.

My interest in these problems really stem from seeing the way they hurt my own State of West Virginia. Manufacturers, small businesses, the fear, consumers, workers, and the victims of defective products.

The Senator from North Dakota several moments ago said that there has only been *x* numbers of liability cases in the last 2 years, 10 years whatever. That argument has been used many, many times. It is a very misleading, false argument. It is not the number of punitive damages awards that have been granted. It is the threat which exists in every case, in every suit, of which there are unending numbers in this litigious society.

It is the threat of litigation that is the problem and has crushed so much innovation and research and development which would help consumers.

My interest, again, in West Virginia comes from knowing people who directly have suffered from this and have gone out of business from this, as well as victims who have been hurt by this. I have seen the victims who came back from the Persian Gulf war with something called a mystery syndrome illness which the Defense Department says does not exist, but I see these people and I know it does exist.

When we see the people, and we see the individuals and we see they are hurt, we want to help them. To put it simply, then, the product liability system is broken. The Congress and the President must have parity.

Second, I have believed that a product liability reform bill would eventually pass this Senate because of the way some Members have approached the effort to cause it to pass, which I believe it will.

Members of both sides of the aisle have been troubled by the problems with product liability. Some time ago the bipartisan team work necessary to enact legislation began to form. In the past 4 years, the Senator from the State of Washington and I have had the job of leading that team. The Senator from Washington and I made a pact: To promote a balanced, moderate, serious, legislative remedy to these problems in product liability, tort reform.

We let the businesses interested in reform know that the consumers and victims had to be the winners of reform, too. We made that very clear and have made that very clear up until the very last moments. We have kept making it clear.

We explained to the general public that the harm done to business by the problems with product liability also hurt the general public, which is called the rest of the country. They cost jobs, they stifle the innovation needed to make safer drugs and products, and they impose an enormous hidden tax on every American.

That is why we devised a bill to deal with the range of problems that affect different sectors of the society, and we did it fairly. In this legislation we promote quicker settlements through alternative dispute resolution. We insisted on that so victims get compensation faster. We give the victims of harm done by substances like asbestos enough time to seek relief by saying the clock can only run after they discover the harm that they are suffering and, again, the reason, the cause of the harm they are suffering.

We have made a number of adjustments in the way businesses are made liable for the impact of products where the rules are not fair to them.

But my point is also that this bill reflects the balance and the moderation that emerges when Members of both sides of the aisle choose to work together, choose to trust one another,

choose to accommodate the diverse concerns that arise when a complicated topic like product liability comes up.

We are not seeing a lot of bipartisanship in the legislative process these days, and it is sad. It is more than sad for the country, it is grievous. I find all of that very troublesome. I think it is essentially a disservice to the country. We are a diverse nation with a Government designed to represent our differences and built with checks and balances on one another. We should draw on the strength of that diversity. Democrats and Republicans in the Senate should spend more time, I think, working together on the country's problems, working out solutions that will last and that will take root.

I think we do that in this bill. And when we do have bipartisan cooperation and it works, it only encourages us to do more, I hope. That is why the Senator from Washington and I formed the team to deal with the problems of product liability, and we intend to maintain that bipartisanship until we see a bill signed into law sometime later this year.

Finally, my belief that product liability legislation would pass has been based on the talent and the leadership that have been invested in this effort. Many Members of this body have contributed to this arduous, difficult effort. Senators DODD and LIEBERMAN have been staunch allies, and their staffs, Tony Orza and Nina Bang-Jensen. Senators on the other side of the aisle, from the majority leader to the chairmen of the Commerce and Judiciary Committees, have played essential roles in this. It is impossible to fully explain how much I respect and appreciate the Senator from Washington, SLADE GORTON. I think he stands out for, first of all, his acumen, his amazing mind, his tenacity, the wisdom of his counsel, his calmness under substantial fire, and his commitment to reform.

The staff who have assisted in this effort I think deserve medals for their valor and service and for their, by the way, exhaustion. On Senator GORTON's staff, Lance Bultena and Trent Erickson have been steady, quiet, dogged, and perfect in helping us work this through.

Assisting me, I cannot thank enough, and I would need to start with Tamara Stanton, who is my legislative director who sits at my left as I speak, who masters all subjects with tenacity and with understanding, is skillful in her sense of nuance, strategy, politics, and policy; Ellen Doneski, who does not know how to stop working, and as a result never does stop working and accomplishes incredible, amazing things, often many at the same time, so she just never stops working; Jim Gottlieb and Bill Brew, both in fact lawyers, which we need in our office. And they have both been brilliant, skillful, dogged, and successful. Without their labors and their incredible talent we would not be at this point.

I do not want to take the body's time, but I just want to make the point again that, if you pick up the paper, you will read Senator GORTON's name. If you listen to the television, you will hear his name and Senator HOLLINGS' name. And they can both do all of this on their own, pretty much, anyway. But actually it does not quite work out that way. Just as Senator HOLLINGS, Kevin Curtin, and others—it is the public that needs to know, while they are in their orgy of dislike for the Federal Government, that there are incredible people called staff of the U.S. Senators who make possible what it is that we do.

I want to acknowledge with respect the persistence and commitment of the flag-bearers who took the other side on this issue. The Senators from Alabama and South Carolina are daunting in their own legal minds and ferocity when it comes to this issue—both of them. They are different in many ways, the same in many ways, but both of them are extraordinary in their commitment to their beliefs. I hope they would agree it was a fair and open debate. They prevailed in the past without exception. It worked out the other way this time.

This has not been an easy issue for anybody involved. The legal system is a very serious part of our national fabric and life. The rights of every American are fundamental and are not to be tampered with easily. I have always felt that, as I have fought for product liability reform, in a sense I restate my pledge to navigate the remainder of the legislative process with a deep commitment to the principles of fairness and justice.

But I remain absolutely sure that it is time to fix this broken part of our legal system, and I think we have done a lot of it. The country is saddled with costs, with waste, with problems that can be eased with the reforms in this legislation.

The PRESIDING OFFICER (Mr. SANTORUM). The time of the Senator has expired.

Mr. ROCKEFELLER. Mr. President, I ask for an additional 60 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. I am proud to give the Senate a chance, finally, to cast its vote on a balanced legislative remedy. I am relieved we restored a bill simply dealing with product liability and with the important changes worked out in the final hours that represent the bipartisanship and the balance that we sought from the beginning of this effort.

I am confident that President Clinton will sign this bill with whatever perfections we can make. I hope we will soon see the benefits of reform and demonstrate to the skeptics that the changes are in the entire Nation's interests.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first a procedural announcement. Thirty minutes remains under the order with respect to debate on product liability. Senators in their offices, therefore, should be on notice that approximately at 11:40 there will be a vote on my motion to table the Dorgan amendment, followed immediately by a vote on final passage of the product liability bill with, we think, the substitute adopted by voice vote. So Members should be prepared to come to the floor at or shortly after 11:40.

On a second matter, in which I know I am joined by my colleague from West Virginia, regrettably, due to the inability of the Senators from Washington and West Virginia to get unanimous consent to make one additional change in their proposal, the so-called new trial provision after an additur remains in this bill. The Senators from West Virginia and Washington have pledged that the bill will not be presented by them to this body with that provision in it, and that pledge remains.

Other than that, this bill is the work of many years of effort culminated in this Congress, as in the last Congress, by the joint efforts of the Senator from West Virginia and myself, and of many others whom I will mention after we have had a final vote. Together, with the input from Members on both sides of the aisle, I am confident that the bill will pass and that it will represent a significant step forward.

Mr. President, one other comment that I make as a sponsor and one of the people who drafted this bill in the punitive damages section, we included an additive provision at the request of the Department of Justice of the United States, with the assurance that the provision is constitutional. That opinion, in my view, is correct. Such provisions are found in the laws of many States. If a court should, however, find the additive provisions to be unconstitutional, it is our intention that the remainder of the punitive damages provision will stand and that only the additive provision which is now found in section 107(b)(3) would be severed.

Mr. President, one argument against congressional legislation in this field, which has been raised by almost all of those who have come here to speak against it, is that we should not interfere in the Federal system with the laws of the 50 States. It is a curious argument as it is generally advanced by those Members of this body who are most anxious to interfere with the prerogatives of the States in many areas for which there is no explicit constitutional warrant. This, however, is a case in which congressional legislation is expressly warranted by the Constitution, and may very well have been anticipated, or would have been anticipated had they known what the economy of the United States would look like in the late 20th century, by those who wrote the Constitution itself. One of the principal reasons for the Constitutional Convention was the chaos

that attended interstate commerce among the 13 States after the close of the War of the Revolution and before the adoption of the Constitution.

So under article I, section 8, clause 3, the interstate commerce clause, the Congress is invited, is given plenary power over interstate commerce. Of course, most of the products with which this bill deals are made of materials that arrive in interstate commerce and are sold after they are manufactured in interstate commerce, and a far greater degree of uniformity that is now in this bill would be constitutionally warranted. The compromises in this bill are in certain cases political and in other cases highly principled attempts to provide a degree of predictability and uniformity which will lead to more economic development, greater jobs, and better products for consumers with the very real history of local control over our courts and over our litigation. But as long ago as in the Federalist Papers, Alexander Hamilton made it clear that one of the key purposes of the Constitution was to prevent interstate commerce from being, and I quote him: "Fettered, interrupted, and narrowed" by parochial State regulations.

That, regrettably, is exactly what we have, particularly in that handful of States, often in rural counties, in which we find repeated huge punitive damage awards, almost invariably entered against out-of-State defendants or out-of-State corporations in a way which fetters, interrupts, and narrows interstate commerce by discouraging research and development and discouraging the marketing of new products. We have seen that happen in instance after instance in which companies large and small have found it imprudent to develop new products to cure previously incurable diseases or to solve problems in our society because they might have an adverse impact on some individual, and that individual might sue and that individual might persuade a jury in someplace or another to award punitive damages in an amount that would make it utterly unprofitable ever to have entered that business in the first place.

Perhaps worse, and perhaps a greater interference with interstate commerce, is successful defense litigation where large companies find that they have spent tens of millions of dollars successfully defending against product liability litigation over products, that gross price of which is far less than those legal fees. So they say, "Why produce parts for implant into the bodies of people of the United States, as much good as those things do?"

It is our hope to make a modest step forward in creating a balance, not by denying any person the right to go to court, not by limiting the actual damages that any individual can receive for an act which is the responsibility of the individual or company which is called upon to make payment, but to see to it that there are fewer arbitrary

judgments; that less of the time defendants are required to pay for the negligence or for the acts of others.

Mr. President, a day or so ago, the Senator from California [Mrs. BOXER], argued at length with respect to the McCain-Lieberman portions of this bill on biomaterials and that corporations would be allowed to set up shell subsidiaries and protect themselves from liabilities.

That concern was raised in the Commerce Committee by the Senator from Nebraska [Mr. EXON], and expressly taken care of by an amendment that will allow piercing that corporate shell and not preventing the corporation, which is actually in control and which has assets, from protecting itself from the consequences of its own negligence.

But basically, Mr. President, we now have a product liability bill which includes a statutory repose for products that are used in a business enterprise. We have a limitation on joint liability with respect to noneconomic damages—that is, pain and suffering—under which we simply say that you are responsible as a defendant for the degree to which you have harmed the claimant, but that a defendant that is only 10 or 20 percent responsible for these damages is not going to be charged for the entire verdict simply because some other defendant cannot be reached.

We have imposed some modest rationality on the award of punitive damages. My colleague here this morning came up with one of the best sets of examples I have ever heard, something which has not been brought before the Senate in this 3 weeks, when he points out that for all practical purposes every Federal criminal statute which includes the right to a fine as a part of the sentence has a limitation on those fines, and yet to be subjected to a criminal fine one must be found guilty beyond a reasonable doubt. One has all of the protections of the fifth amendment against self-incrimination. And yet here we, the Congress of the United States, have set a maximum fine, \$10,000; maximum fine, \$25,000. I think the maximum fine they found was \$250,000.

We vote for these criminal penalties, and yet our opponents tell us how outrageous it is in a civil case, with no fifth amendment rights, no standard of proof beyond a reasonable doubt, how unreasonable it is to set any limit on what a jury can do in the way of punishment—punishment over and beyond all of the damages that are actually proven by the claimant in a particular case.

Mr. President, this bill is not a perfect bill, in my view, and it is not a perfect bill because it does not limit that form of arbitrary punishment sufficiently. But it does begin down a road which we have been invited to take by the Supreme Court of the United States which says without having set standards itself that there are constitutional implications to unlimited

punitive damage verdicts. And so here we have an experiment. We attempt to balance the rights of trial lawyers against the necessity for a better and more effective economy, one in which people are encouraged to innovate, to create new jobs and to create new products for the American people.

We have been at this for a long time. I know from personal experience that there were product liability bills in the Senate and in the Commerce Committee on which I serve as long ago as 1982. I suspect that they existed before that time. I can remember one product liability bill in that committee against which I voted myself because it seemed to me it went too far, that it was unbalanced on the other side. This one is not, Mr. President. This one is a good piece of legislation. It is something that will help the American economy and help the cause of balanced and appropriate justice.

Finally, Mr. President, it is a precedent in a sense but it has one preceding element. A year or so ago, we passed a very modest product liability bill for piston driven aircraft. The legal system, the legal system defended by the other side here, had destroyed that business, reduced its production by 95 percent. A modest change in the law at the Federal level has already contributed to the recovery, the beginning of the recovery of that business—a dramatic illustration that the horror stories are not true and that the promises made by the proponents of this litigation have been proven to be valid by history. If my colleagues will vote for this, if we get it accepted by the House and signed by the President of the United States, this country will be significantly better off.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Oh, so reasoned, says my distinguished colleague from Washington. It is so balanced. GOPAC has taken over. GINGRICH is the Speaker, and there is a contract. Look at the elements of this contract. Part and parcel either by way of amendments here or in bills on the House side or what they have in mind is not just product liability but they have limiting pain and suffering damages; they have limiting the punitive damages; they tried to fit in medical malpractice; they tried to then limit plaintiff's attorney's fees. They voted against the fees on the defendants. They were not making enough. They ought to make more than \$133,000 a year. They tried to limit punitive damages in all civil cases. The English rule is in the bill over on the House side; the alternative dispute resolution with the plaintiff having to pay all the fees; the securities litigation, the FDA and FAA rules where they would bar damages if the product is approved by either of those entities; they exempt the medical devices and the doctors, a provision about frivolous suits, statutes of repose; restricted submission of evi-

dence is in this bill, in the House bills, bifurcation of the trials, both actual and punitive damages. Then they even put in an unconstitutional additur provision here.

Like the sheepdog had tasted blood, with product liability they are going to gobble up all the other rights and say it is so reasoned and so balanced.

One exemption they have from all this, Mr. President. One exemption—the manufacturers, the very crowd that through this bill continue to put in the amendments and everything else. They exempt the manufacturer and apply this all to the injured party and have the unmitigated gall to come up here and say they are for consumers. Why, heavens above. Come on.

I ask unanimous consent to include in the RECORD the State-based organizations opposed to this legal reform bill.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

STATE BASED ORGANIZATIONS OPPOSED TO "LEGAL REFORM" IN THE SENATE (S. 565)

Alaska PIRG.
 Arizona Citizen Action.
 California Citizen Action.
 Center for Public Interest Law at the University of San Diego.
 California Crime Victims Legal Clinic.
 Fair Housing Council of San Gabriel Valley.
 Colorado Steelworkers Union Local 2102.
 Coalition of Silicon Survivors.
 Colorado DES Action.
 Denver UAW.
 Colorado ACLU.
 Denver Gray Panthers.
 Colorado Public Interest Research Group (CoPIRG).
 Colorado Clean Water Action.
 Colorado Senior Lobby.
 Connecticut Citizen Action Group.
 ConnPIRG (Connecticut Public Interest Research Group).
 Delaware Coalition for Accountability and Justice.
 Delaware AARP.
 Delaware Council of Senior Citizens.
 Delaware AFL-CIO.
 Delaware Federation of Women's Clubs.
 Delaware Women and Wellness.
 Delaware Breast Cancer Coalition.
 Building Trades Council of Delaware.
 UAW Local 1183—Delaware.
 Delaware Sierra Club.
 Delaware Audubon Society.
 Save the Wetlands and Bays—Delaware.
 Georgia Consumer Center.
 Idaho Citizens Action Network.
 Idaho Consumer Affairs, Inc.
 Illinois Council Against Handgun Violence.
 Citizens Action Coalition of Indiana.
 Planned Parenthood of Maryland.
 Law Foundation of Prince George's County.
 Maryland Sierra Club.
 Teamsters Joint Council No. 62.
 UFCW Local 440.
 White Lung Association & National Asbestos Victims.
 Sexual Assault/Domestic Violence Center, Inc.
 IBEW Local 24.
 Maryland Clean Water Action.
 Maryland Employment Lawyers Association.
 Health Education Resource Organization (H.E.R.O.).
 Environmental Action Foundation.

Massachusetts Consumer Association.
 Minnesotans for Safe Foods.
 Missouri PIRG.
 Montana PIRG.
 Nebraska Coalition for Accountability & Justice.
 Nebraska Farmers Union.
 Nebraska Women's Political Network.
 Nebraska National Organization for Women.
 United Rubber Workers of America, Local 286.
 Communications Workers of America, Local 7470.
 Nebraska Head Injury Association.
 Nebraska Center for Rural Affairs.
 White Lung Association of New Jersey.
 Consumers League of New Jersey.
 Cornucopia Network of New Jersey.
 New Jersey DES Action.
 New Jersey Environmental Federation.
 New Mexico Citizen Action.
 Essex West Hudson Labor Council.
 Uniformed Firefighters Association of Greater New York.
 New York Consumer Assembly.
 Niagara Consumer Association.
 North Carolina Consumers Council.
 North Dakota Public Employees Association.
 North Dakota DES Action.
 North Dakota Clean Water Action.
 Dakota Center for Independent Living.
 North Dakota Breast Implant Coalition.
 North Dakota Progressive Coalition.
 Laborer's International Union, Local 580.
 Boilermaker's Local 647.
 Ironworkers Local 793.
 United Transportation Union.
 Sierra Club, Agassiz Basin Group.
 Plumbers & Pipefitters Local 338.
 United Church of Christ.
 Teamsters Local 116.
 Teamsters Local 123.
 Plumbers & Pipefitters, Local 795.
 Workers Against Inhumane Treatment.
 Ohio Consumer League.
 Oregon Fair Share.
 Oregon Consumer League.
 Pennsylvania Citizens Consumer Council.
 Pennsylvania Institute for Community Services.
 SmokeFree Pennsylvania.
 South Dakota AFS-CME.
 East River Group Sierra Club.
 Black Hills Group Sierra Club.
 South Dakota State University.
 IBEW, Local 426.
 South Dakota DES Action.
 South Dakota Peace & Justice Center.
 Native American Women's Health & Education Center.
 Native American Women's Reproductive Rights Coalition.
 South Dakota AFL-CIO.
 UFCW Local 304A.
 Yankton Sioux Tribe.
 South Dakota Coalition Against Domestic Violence.
 South Dakota Advocacy Network.
 South Dakota United Transportation Union.
 South Dakota United Paperworkers International Union.
 Texas Alliance for Human Needs.
 Texas Public Citizen.
 Vermont PIRG.
 WASHPIRG (Washington Public Interest Research Group).
 Wisconsin PIRG.

CITIZEN ACTION,
 Montgomery, AL, April 26, 1995.

Hon. RICHARD SHELBY,
 U.S. Senate,
 Washington, DC.

DEAR SENATOR SHELBY: On behalf of our members, I am writing to thank you for your

past opposition to federal "tort reform" legislation and to offer our support in your efforts this year.

As you know, Governor Fob James, in his April 18th State of the State Address, stated that "intrusive federal law should not dictate tort reform legislation to the states." You might also be interested to know that similar sentiments have been reflected by the majority of audiences in several forums I have attended on the issue in the past month.

Our members also are deeply concerned about the consequences of capping punitive damages and eliminating joint and several liability for non-economic damages. Proposals such as these threaten public safety in Alabama by removing the deterrent effect of punitive damages, and they discriminate against those most likely to suffer non-economic damages, such as women, seniors, and children.

Thank you again for your leadership in fighting to uphold the democratic principles embodied in our state civil justice system and for voting "no" on the upcoming cloture votes on S. 565. Please do not hesitate to call on me for any assistance on this matter in the coming weeks.

Sincerely yours,

MIKE ODOM,
 Executive Director.

ARIZONA CONSUMERS COUNCIL,
 Phoenix, AZ, April 19, 1995.

Senator JOHN MCCAIN,
 Russell Office Building,
 Washington, DC.

DEAR SENATOR MCCAIN: Two bills are expected to come to the floor this week—The Telecommunications Competition and Deregulation Act of 1995, and the Product Liability Fairness Act of 1995. We believe that these bills are both anti-consumer and anti-competitive.

Consumers have been strong in their requests to continue regulation of cable and in feeling that their bills have gone too high—three times the rate of inflation—for this service. Reregulation was the ONLY bill which was passed over the veto of President Bush.

Your office asked me to represent you on KFYI in favor of reregulation at that time. I did my best on that program.

Local cable companies now have a network which pass 96% of the homes in the country. They are best positioned to compete with the monopoly local telephone companies. This bill would permit these local monopolies to buy each other, merge or joint venture, thus eliminating the most likely competitor in each market. This means the promised benefits of competition, including lower prices, greater innovation and better service may never be realized by most consumers.

S. 565 sets arbitrary limits on punitive damages and eliminates joint and several liability for non-economic damages. This bill will restrict the ability of injured consumers to obtain full and fair compensation for their injuries, and for juries to act to prevent further wrongdoing.

The Arizona Consumers Council which represents consumers in all countries of the state and was organized in 1966 is also a member of Consumer Federation of America, who represent 50 million consumers nationwide, we urge you to oppose S. 652. and also S. 565.

Sincerely,

PHYLLIS ROWE,
 President.

CONSUMER FEDERATION
 OF CALIFORNIA,
 Westminster, CA, April 18, 1995.

Re Opposition to S. 565 and S. 454.

Senator BARBARA BOXER,
 U.S. Senate,
 Washington, DC.

DEAR SENATOR BOXER: On behalf of the Consumer Federation of California, I wish to express strong opposition to S. 565, the "Product Liability Fairness Act of 1995." Injured consumers would not be able to obtain full and fair compensation if this legislation is passed.

The two major provisions of this legislation would have a far reaching, negative impact on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of \$250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Consumer Federation of California also urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of the consumer to be compensated fully for injuries and to act to prevent further wrong doing.

Sincerely,

Dr. REGENE L. MITCHELL,
 President.

MOTOR VOTERS,
 Sacramento, CA, April 19, 1995.

Re S. 565: Oppose.
 Hon. DIANE FEINSTEIN,
 U.S. Senate,
 Washington, DC.

DEAR SENATOR FEINSTEIN: Motor Voters is a non-profit, non-partisan auto safety organization founded in Lemon Grove, outside San Diego, in 1979.

This letter is to urge you to oppose S. 565, the product liability measure. Our members include parents of children who suffered permanent, debilitating brain injuries or who were killed due to the deliberate disregard of auto manufacturers.

It would be impossible to tell you how strongly those parents feel that companies need to be held accountable for their actions. In fact, they wish to see the law strengthened to provide for felony criminal penalties for corporate executives who knowingly market unsafe products.

Corporate executive are too insulated from the damage they inflict upon their customers and the public at large. If they were more personally accountable, it would provide a desperately needed incentive for them to consider more than their bottom line.

In the absence of criminal penalties, the only hope we have of curbing rampant corporate misconduct is through product liability laws. It is appalling that special interests are seeking to restrict remedies in consumers' court of last resort. The "loser pays" concept is particularly pernicious, as it entirely ignores the unequal footing of the two

parties. Individuals already risk a great deal when they sue a giant corporation, and experience tremendous stress. A family with a brain-injured child has enough to worry about without the danger that, if their attorney makes a mistake, they can be totally impoverished.

Ironically, many advances in safety technology, spurred by lawsuits, end up benefiting everyone—including companies. For example, here in California, many former defense contractors are converting to making auto safety components such as air bags. The demand for improved safety is spawning an entire new industry and creating new, high-tech jobs. It is time to move forward, not back.

For all of the above reasons, I urge your "no" vote on S. 565.

Sincerely,

ROSEMARY SHAHAN,
President.

CALIFORNIA PUBLIC INTEREST
RESEARCH GROUP,
Los Angeles, CA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote "No" on S. 565.

Hon. DIANNE FEINSTEIN,
*U.S. Senate,
Washington, DC.*

DEAR SENATOR FEINSTEIN, We are writing on behalf of CALPIRG's members, and on behalf of all residents of California to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, CALPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MARY RAFTERY,
Legislative Director.

COALITION FOR
ACCOUNTABILITY & JUSTICE,
April 21, 1995.

Hon. BEN NIGHTHORSE CAMPBELL,
*U.S. Senate,
Washington, DC.*

DEAR SENATOR CAMPBELL: We, the undersigned individuals and organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Colorado.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tier system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Colorado exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protection for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill. Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Julie Shiels, Son killed by defective bunkbed; International Steelworkers Union, Local 2102; Coalition of Silicon Survivors; DES Action, Colorado Chapter; Denver United Auto Workers; ACLU of Colorado; Gray Panthers of

Denver; Colorado Public Interest Research Group (CoPIRG); Clean Water Action, Colorado Chapter; Ann Ives, Silicon breast survivor, DES survivor; Oil, Chemical & Atomic Worker International Union, AFL-CIO; Colorado Senior Lobby.

COLORADO PUBLIC INTEREST
RESEARCH GROUP,
Denver, CO, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote No. on S. 565.

Hon. BEN NIGHTHORSE CAMPBELL,
*U.S. Senate,
Washington, DC.*

DEAR SENATOR NIGHTHORSE CAMPBELL: We are writing on behalf of COPIRG's members, and on behalf of all residents of Colorado to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, COPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

RICHARD MCCLINTOCK,
Executive Director.

CONNECTICUT PUBLIC INTEREST
RESEARCH GROUP,
Hartford, CT, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote "No" on S. 565

Hon. CHRIS DODD,
*U.S. Senate
Washington, DC.*

DEAR SENATOR DODD: We are writing on behalf of all residents of Connecticut to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, ConnPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its cap on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

JAMES AMSPACHER,
Organizing Director.

CONNECTICUT CITIZEN
ACTION GROUP,
West Hartford, CT.

Senator CHRISTOPHER DODD,
*Senate Office Building,
Washington, DC*

DEAR SENATOR DODD: On behalf of the Connecticut Citizen Action Group, I'm asking you to oppose Senate Bill 565 and to vote against cloture. S. 565, called the "Product Liability Fairness Act" does nothing to protect consumers. Instead, it lets corporate wrongdoers off the hook when they produce products that injure consumers.

First, this bill sets arbitrary caps on punitive damages of \$250,000 or three times the out-of-pocket expenses. Ordinary citizens serving on juries use these awards to punish and deter outrageous and dangerous behavior by corporations.

Second, this bill makes it more difficult for victims with less earning power—particularly seniors, women and children—to recover the fair cost of their injuries. Consumers and workers injured through no fault of their own, but by the actions of more than one wrongdoer would have to prove the degree of fault of each liable party. If any wrongdoer were unable to pay its share, the injured consumer would have to bear the cost.

Senator Dodd, these reforms are wrong-minded. They imperil ordinary consumers and we ask that you work to defeat such measures. Again, please vote against S. 565 and against cloture.

GREGORY HADDAD,
Legislative Director.

DELAWARE COALITION FOR
ACCOUNTABILITY AND JUSTICE,
April 24, 1995.

Hon. WILLIAM ROTH,
Hon. JOSEPH BIDEN,
*U.S. Senate,
Washington, DC.*

DEAR SENATORS: We, the undersigned individuals and organizations, urge you to op-

pose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Delaware.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages, and deterring harmful behavior. By giving "noneconomic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Delaware exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuse or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 959, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Edward Cahill, State Director, Delaware AARP; Edward Peterson, President, Delaware AFL-CIO; Deirdre O'Connell, Executive Director, Women and Wellness; Rick Crawford, President, Building Trades Council of Delaware; Debbie Heaton, President, Delaware Sierra Club; Til Purnell, Executive Director, Save Wetlands and Bays; Amos McCluney, Jr., President, Delaware Council of Senior Citizens; May Northwood, President, Delaware Federation

of Women's Clubs;¹ Maureen Lauterbach, Women and Wellness and National Breast Cancer Coalition;¹ Don Cordell, President, United Auto Workers Local 1183; Ann Rydgren, President, Delaware Audubon Society.

CONSUMER FRAUD WATCH,
Tallahassee, FL, April 19, 1995.

Senator CONNIE MACK,
*U.S. Senate,
Washington, DC.*

DEAR SENATOR MACK: I want to express our strong opposition to S. 565, the "Product Liability Fairness Act of 1995". This bill would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of \$250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely,

WALTER T. DARTLAND,
Executive Director.

FLORIDA CONSUMER ACTION NETWORK,
Tallahassee, FL, April 24, 1995.

Senator BOB GRAHAM,
*Hart Senate Office Building,
Washington, DC.*

DEAR SENATOR GRAHAM: The Florida Consumer Action Network (FCAN) is requesting that you vote "NO" on Senate Bill 565, the Product Liability Bill. Additionally, we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the more than 40,000 families that are members of FCAN and on all Florida consumers.

By capping punitive damages at \$250,000 or three times the economic loss (whichever is greater) the legislation removes the punitive impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages rather than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of Florida's consumers. We again ask for

¹For identification purposes only. Endorsements are by the individual, not the organization.

your vote against S. 565 and against cloture in the upcoming debate.

Sincerely,

MONTE E. BELOTE,
Executive Director.

FLORIDA PIRG,
FLORIDA PUBLIC INTEREST RESEARCH
GROUP,

Tallahassee, FL, April 24, 1995.

Re Protect Victims of Dangerous Products,
Oppose Cloture and Vote No on S. 565.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: We are writing on behalf of Florida PIRG's members, and on behalf of all residents of Florida to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Florida PIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANN WHITFIELD,
Executive Director.

CITIZEN ACTION,
Atlanta, GA, April 18, 1995.

Hon. PAUL COVERDELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR COVERDELL: On behalf of the 40,000 members of Georgia Citizen Action, I am writing to express our opposition to S. 565 and to urge you to vote against cloture.

S. 565, the Product Liability Fairness Act of 1995, is anything but fair to consumers. In fact, it will effectively leave citizens unprotected against the manufacture and sale of hazardous or defective products. Capping punitive damages at \$250,000 or three times economic loss defeats the purpose of punitive damages, which is to punish for a wrongdoing. Multi-million dollar corporations will consider these caps merely the cost of doing

business, rather than a punishment for injuring unsuspecting consumers, and consequently, punitive damages will no longer serve as a deterrent to irresponsible and unscrupulous companies who would manufacture or sell harmful products.

Additionally, the provisions to eliminate joint and several liability for non-economic damages discriminates against women, children, and senior citizens as they are less likely to recover high economic damages (i.e. lost wages). Joint and several liability ensures that the parties at fault pay, not the victim, and by eliminating this, those victims who suffer loss of reproductive capacity, disfigurement, or loss of sight, for example, could be further wronged by not being able to recover the full amount of their awarded damages.

For these reasons, Georgia Citizen Action strongly urges you to oppose S. 565 and to vote against cloture. Please inform us of your actions regarding this bill.

Sincerely,

LORI GLIDEWELL,
Director.

CITIZEN ADVOCACY CENTER,
Elmhurst, IL, April 20, 1995.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: The Citizen Advocacy Center, a non-partisan, not-for-profit organization in DuPage County, is dedicated to building democracy for the 21st century. We promote good citizenship, participation in civic affairs, access to justice, and accountability of local governments to the citizens of the western suburbs of Chicago. We are writing to urge you to vote "no" both on the upcoming cloture vote of S. 565, and the vote on the merits. We oppose any legislation that makes access to justice more difficult for individual citizens.

As you know Senator Braun, the large crossover vote in the western suburbs of Chicago, particularly the crossover vote of women, helped to elect you to represent our interests in the United States Senate. We expect you to make access to justice easier, not more difficult, for consumers viciously injured by defective products. The provisions of S. 565 are an undisguised attempt to take control and common sense away from Illinois citizens in the jury box and to replace it with Washington-dictated arbitrariness designed to protect and payback the business interests that have paid so handsomely for this legislation. In particular, we find the provisions of S. 565 do great damage to women—and as one of the few women Senators, we frankly expect you to take a good hard look at how the specific provisions of this bill will prevent women with low economic damage awards from being adequately compensated for lifelong injuries caused by corporate greed.

Moreover, after last Sunday's Chicago Tribune Magazine cover story, it seems that you are burnishing your business image after having recently secured a seat on the Finance Committee. Nonetheless, Illinois voters remember that last year you voted against a less damaging products liability bill, and a flip-flop vote now will look like you are selling out ordinary citizens and consumers to cozy up to business interests. We are happy that you have won a seat on the committee, but we expect you to use that seat to remain true to the agenda that put you in the Senate in the first place. Please do not sell out the citizens of Illinois.

Very truly yours,

THERESA AMATO,
Executive Director,
Citizen Advocacy Center.

CHICAGO AND CENTRAL STATES JOINT
BOARD, ACTWU, AMALGAMATED
CLOTHING AND TEXTILE WORKERS
UNION,

Chicago, IL, March 31, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: On behalf of the members of our union we urge you to vote against consideration of any legislation that lessens the financial responsibility of corporate polluters or manufacturers of dangerous products. These, so called, efforts at "tort reform" are more aptly known as the Wrongdoer Protection Act.

Furthermore, these attempts at reform are plainly anti-workers and anti-consumer.

Your opposition to the more onerous parts of these tort reforms proposals is not enough. Your leadership is needed to stop passage of any restrictions limiting the access of consumers and workers to the courts.

Your leadership against these tort restrictions can send a positive signal that you stand on the side of workers and consumers.

Sincerely,

JAMES K. TRIBBLE,
International Vice
President.

RONALD WILLIS,
Manager, ACTWU,
Chicago and Central
States Joint Board.

PUBLIC ACTION,
Chicago, IL, April 24, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: Illinois Public Action is requesting that you vote "NO" on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the 215,000 families that are members of Public Action and on all Illinois consumers.

By capping punitive damages at \$250,000 or three times the economic loss (which ever is greater), the legislation removes the punitive impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of the damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of the Illinois public. We again ask for your vote against the bill and against cloture in the coming debate.

Sincerely,

ROBERT B. CREAMER,
Executive Director.

ILLINOIS PIRG, Illinois Public
INTEREST RESEARCH GROUP,
Chicago, IL, April 24, 1995.

Re: Protect Victims of Dangerous Products,
Oppose Cloture and Vote No on S. 565.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: We are writing on behalf of Illinois PIRG's members, and on behalf of all residents of Illinois to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Illinois PIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has

fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DIANE BROWN,
Executive Director.

IOWA CITIZEN
ACTION NETWORK,
Des Moines, IA, April 14, 1995.

Hon. TOM HARKIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HARKIN: We are writing to communicate ICAN's views about the so-called Products Liability "Fairness" Act—S. 565. It is our understanding that S. 565 is set for two weeks of debate on the Senate floor, beginning on or about April 24.

We are pleased that you have indicated that, as in the past, you will lead the fight against this legislation. We heartily commend your determination to use all means available to keep the bill from coming to a vote on final passage.

S. 565 is a bill that would produce extremely detrimental consequences for citizens, workers, and consumers. There are a number of objectionable provisions in the legislation, but for the purposes of this letter we would like to focus on provisions relating to joint and several liability and punitive damages.

As you know, S. 565 eliminates joint and several liability for non-economic damages. This clearly discriminates against women, children, senior citizens, persons with disabilities, the poor, and low-wage workers, who more often receive the bulk of compensation for their injuries due to sustained non-economic losses, such as loss of reproductive capacity, loss of vision, disfigurement, etc. S. 565 treats these first rate members of society as second class citizens.

Under current Iowa law, in cases where more than one party is found to have been at fault in causing a plaintiff's injuries, a guilty party that caused more than 50% of the harm can be held jointly and severally liable for damages. S. 565 would supersede Iowa law, making it more likely that injured parties would be forced to forego amounts of compensation for their non-economic losses

when one or more of the defendants are unable to pay. This Washington-Knows-Best bill reshuffles the cards and stacks the deck against plaintiffs in Iowa.

S. 565 also imposes an arbitrary and unreasonable cap on punitive damages that would undermine the important deterrent effect which these damages have on corporate wrongdoers. This is unnecessary and rash in light of the fact that punitive damages in product liability cases are rare but have made Americans much safer.

The bill limits punitive damage judgments to the greater of three times the amount of economic losses or \$250,000. Once again, this provision is a slap in the face to women, children, senior citizens, persons with disabilities, the poor, and low-wage workers. And the provision sends a warped message to corporate wrongdoers: If you injure a woman, a child, an elderly grandparent, a disabled person, or a minimum wage worker, you are likely to be punished less than if you injure a corporate CEO. The consequences of such a legal policy would be lethal to many average Americans.

In addition, S. 565 imposes an unreasonable standard of "conscious flagrant indifference to safety" for assessment of punitive damages. A defendant whose conduct was merely "reckless" or "wanton" would escape punitive damages. If the superheightened punitive damage standards in S. 565 had applied to the Exxon-Valdez case, Exxon would probably not have paid a dime in punitive damages since the punitive damages were awarded for "reckless" conduct. Moreover, proving a corporate defendant's "state of mind" would be next to impossible in most product liability cases.

S. 565 is imprudent and unwarranted legislation. Product liability tort filings make up an extremely small percentage of all civil filings and the number of product liability filings has been steadily declining. We are mobilizing concerned citizens in Iowa to oppose this bogus bill.

We are grateful for your leadership in opposing this legislation. Please let us know whether and how we can provide any information or assistance to support your efforts.

Your commitment to civil justice for all Americans is greatly appreciated.

Respectfully,

STEVE SIEGEL/BL
President.

BRAD LINT,
Executive Director.

UAW SUB-REGIONAL OFFICE
REGION 4,
Des Moines, IA, April 20, 1995.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: On behalf of the UAW men and women who live, work, and vote in Iowa, I am writing to express our opposition to S. 565—the so-called Products Liability "Fairness" Act. This legislation is grossly unfair and one-sided.

S. 565 would, without a doubt, take away the right of workers to hold large corporations fully accountable for the injuries they cause when they manufacture and sell defective products—including dangerous workplace machinery. Employers claims, however, appear to be unaffected by the law—only workers would lose their right to be heard.

S. 565 sets up a series of hurdles and obstacles to the ability of injured workers and consumers to recover from the manufacturers of defective products. In fact, under the bill's statute of repose, workers injured by defective machinery more than twenty years old could not recover *at all*, but businesses

apparently could recover all their losses—including lost profits.

S. 565 would also cap punitive damages far below the point of effectiveness. If the bill becomes law it would be much more difficult for ordinary Iowans to punish and deter corporate misbehavior, even when they are maimed or killed by the recklessness or negligence of a corporation.

In summary, S. 565 is unfair to workers and consumers. The UAW is delighted that you will be voting against cloture during debate and, if needed, against the bill on final passage.

Thank you for your firm commitment to civil justice for workers and consumers.

Respectfully,

CHUCK GIFFORD,
President.

IOWA STATE COUNCIL
OF SENIOR CITIZENS,
Waterloo, IA, April 20, 1995.

Hon. TOM HARKIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HARKIN: I am writing to express our concern about S. 565—the so-called Products Liability "Fairness" Act. The Iowa State Council of Senior Citizens believes the bill to be unfair to senior citizens and we are grateful for your announced opposition to it.

It is my understanding that S. 565 eliminates joint and several liability for non-economic losses. Senior citizens do not generally incur substantial economic losses when they are injured by defective products. They tend to receive compensation for non-economic losses resulting from disfigurement, loss of vision, pain and suffering, etc.

Under S. 565 when multiple parties are found to have caused the harm to an injured consumer the amount of compensation for non-economic losses would, without exception, be reduced when one or more of the at-fault parties is unable to pay. This situation would be worse than current Iowa law where injured consumers can at least recover non-economic damages jointly and severally whenever one of the parties at fault is more than 50% responsible for the harm caused to the injured consumer.

It is also my understanding that S. 565 limits punitive damages in product liability cases to the greater of three times the amount of economic losses or \$250,000. This provision also discriminates against senior citizens. Again, since seniors do not usually have large economic losses, corporate wrongdoers who injure a senior are likely—if their misconduct was bad enough to warrant punitive damages—to be punished less than if they injure a corporate executive who has large earnings. Is this wise legal policy?

The Iowa State Council of Senior Citizens believes that, taken together, these two discriminatory provisions could lead to less safe medical devices and consumer products primarily manufactured for use by senior citizens. Women, children, disabled persons, and low-wage workers are also likely to be adversely affected by these ill-conceived provisions.

S. 565 could have a devastating effect on the economic security and safety of older Iowans. The Iowa State Council Citizens is glad you will oppose S. 565 during the coming Senate debate by voting against cloture and, if necessary, against the bill.

Thank you for your considerate attention to our point of view. Please let us know if we can be of any further assistance.

Respectfully,

FRANK ALEXANDER,
President.

CITIZEN ACTION,

Louisville, KY, March 14, 1995.

Hon. MITCH MCCONNELL,
U.S. Senate, Senate Russell Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of Kentucky Citizen Action, I would like to express our strong opposition to the so-called "Product Liability Fairness Act", S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a "moderate" light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of \$250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 25 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting "No" on cloture.

Sincerely,

LORI EVERHART,
State Director.

CITIZEN ACTION,

Baton Rouge, LA, April 14, 1995.

Hon. JOHN BREAUX,
U.S. Senate,
Washington, DC.

DEAR SENATOR BREAUX: On behalf of our members, your constituents, Louisiana Citizen Action once again asks that you vote "No" on S. 565 and "No" on cloture. We strongly believe that it is your responsibility to hold negligent businesses accountable to the public.

By setting caps on punitive damages, S. 565 would send a clear message that corporations do not really have to worry about liability for dangerous products and practices. Punitive damages, after all, were meant to be deterrents to corporate misconduct.

This law, which favors the financial interests of big business over protecting the pub-

lic, is especially threatening to the most vulnerable—women, children, and seniors. Elimination of joint and several liability for non-economic damages deeply undervalues the impact of injuries upon these citizens.

Please take a firm stand to support fairness and responsibility in our judicial system. We will be happy to inform our members when you vote no to S. 565 and no to cloture. Thank you for your consideration on this issue.

Sincerely,

PAULA HENDERSON,
State Director.

MAINE PEOPLE'S ALLIANCE.

April 21, 1995.

Senator OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: As you know, debate will begin next week on the Rockefeller-Gorton Bill (S. 565). We wanted to write you in hopes that with your concern for the citizens of Maine—particularly women, children and other economically underprivileged—you will join with us in opposition to that bill. The Contract With America effort is bulldozing ahead with legal reforms that only benefit the manufacturers of defective products.

The bill's supporters claim it is designed to reduce the "explosion" of product liability lawsuits, but there is no evidence suggesting that such a problem exists. In fact, close study of 30 years of case law in Maine reveals that punitive damages have been awarded in only three cases. At \$250,000, companies will not be deterred and will simply write the cost of a punitive damage award into the cost of doing business.

An especially worrisome provision of this bill will be the elimination of joint and several liability for non-economic damages. Since women, seniors, and children are more likely to suffer non-economic injuries than high economic injuries (e.g. lost wages), the elimination of joint and several liability discriminates against them. This provision basically states that corporations which manufacture child car seats or children's pajamas can be less careful than manufacturers of golf carts.

As you know, our organization has differed with you on some issues in the past, however we know that you will join with us in opposing this tort reform effort. The notion of Federal Legislation that would preempt the ability of states like Maine to hold wrongdoers accountable and deter their future wrongdoing is unacceptable. As you know our organization has had differences with you in the past, but we hope that you will join us in standing against the bill. All Mainers, especially those without the largest salaries (especially women and children) deserve access to a fair and supportive legal system.

Sincerely,

JOE DITRE,
Executive Director.

CITIZEN ACTION,

Bethesda, MD, April 17, 1995.

Hon. BARBARA MIKULSKI,
Hart Building,
Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of Maryland Citizen Action and our 50,000 members I am writing to urge you to oppose "The Product Liability Fairness Act" (S. 565). Please vote pro-consumer and against cloture when this bill comes up in the Senate. If enacted the most vulnerable citizens in our state would be further disadvantaged and the rights of consumers to hold irresponsible manufacturers accountable for their wrongful behavior would be severely limited.

As a champion of women's health, working people and children, I am sure you know that these groups are disproportionately affected by faulty products—breast implants, asbestos, and flammable pajamas to name just a few. S. 565 limits the ability of these people to collect fair compensation for their injuries or losses because it would eliminate joint and several liability for non-economic damages. Under current law, a plaintiff is paid only once, and the cost is covered by the wrongdoers who contributed to the victim's loss. Under S. 565, non-economic damages, such as a woman's loss of fertility or a worker's loss of a limb, would not be fully compensated if one of the wrongdoers is unavailable or insolvent. The victim would be forced to carry the burden.

S. 565 also imposes a cap on punitive damages (\$250,000 or 3 times economic damages) which undermines the important deterrent effect that these damages have on corporate wrongdoers. Under our current system punitive damages are often the only means available to deter irresponsible behavior such as that exhibited by Dow Corning when it knowingly sold hundreds of thousands of faulty and dangerous breast implants to women. Under S. 565, large corporations, such as Dow Corning, may find it more cost effective to continue their harmful behavior and risk paying punitive damages.

Please stand up for consumers in Maryland by opposing S. 565 and voting against cloture. We are counting on your admirable leadership and your great fighting spirit to halt the current attack on average consumers, women, families and children.

Please let me know how you intend to vote.

Sincerely,

SHELLI CRAVER,
Director, Maryland Citizen Action.

MARYLAND STATE TEACHERS
ASSOCIATION—NEA,*Baltimore, MD, March 29, 1995.*

Hon. PAUL S. SARBANES,
U.S. Senate, Senate Office Building, Wash-
ington, DC.

DEAR SENATOR SARBANES: The Maryland State Teachers Association has very strong reservations about the so-called "Common Sense Legal Reforms Act," which the Senate appears to be rushing forward without full debate or careful analysis. We urge you to vote against this bill as anti-consumer legislation.

We see this bill as restricting the ability of injured consumers and workers to obtain full and fair compensation for such injuries. While all of us have a stake in making sure that frivolous law suits become less common than they appear to be, we also all have a stake in making sure that individuals maintain rights to protest and recover damages from product manufactures which have been shown to be dangerous.

Therefore, I urge your opposition to this and similar legislation.

Yours truly,

KARL K. PENCE,
President.

MARYLAND PUBLIC INTEREST
RESEARCH GROUP,*Baltimore, MD, April 24, 1995.*

PROTECT VICTIMS OF DANGEROUS PRODUCTS—
OPPOSE CLOTURE AND VOTE "NO" ON S. 565

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MIKULSKI: We are writing on behalf of MaryPIRG's members, and on behalf of all residents of Maryland to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights

of victims of dangerous and defective products. As you know, MaryPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DANIEL PONTIOUS,
Executive Director.

APRIL 24, 1995.

Hon. BARBARA A. MIKULSKI,
Hon. PAUL S. SARBANES,
*U.S. Senate,
Washington, DC.*

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Maryland.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Maryland exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a

senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Jennifer L. Marshall, Coalition for Accountability and Justice; Anne D. LoPiano, Law Foundation of Prince George's County, MD Inc.; Nancy Davis, Maryland Sierra Club; Ken Reichard, United Food and Commercial Workers, Local 400; Cynthia K. Bailey, LCSWC, Sexual Assault/Domestic Violence Center, Inc.; Dru Schmidt-Perkins, Clean Water Action; Dr. Leonardo Ortega, Health Education Resource Organization—HERO; Michele Douglas, Planned Parenthood of Maryland, Inc.; Dan Pontious, Maryland PIRG; Bob Turner, Teamsters Joint Council No. 62; Paul Safchuck, White Lung Association & National Asbestos Victims; Woody McNemar, International Brotherhood of Electrical Workers, Local 24; Kathleen Cahill, Maryland Employment Lawyers Association; Margaret Morgan-Hubbard, Environmental Action Foundation.

JOBS WITH JUSTICE,

Cambridge, MA, April 21, 1995.

Senator EDWARD KENNEDY,
*Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR KENNEDY: We, the undersigned supporters of Jobs With Justice, a workers' rights coalition, are extremely concerned about the negative effects on the rights of workers and consumers which will result from proposals before the Senate to change the civil justice system. We urge you to oppose these proposals, particularly the "Product Liability Fairness Act." (S. 565) co-sponsored by Senators Rockefeller and Gorton, and to oppose cloture, for the following reasons:

Elimination of Joint and Several Liability for Non-Economic Damages—The Rockefeller/Gorton bill would shift costs from parties that caused injuries to injured workers and consumers. By eliminating joint and several liability for non-economic damages, injured workers and consumers whose com-

pensation includes losses related to lifelong excruciating pain, loss of fertility, loss of mobility, and disfigurement may be left to bear the cost of those injuries. Joint and several liability requires that those judged responsible for an injury be responsible for paying the costs of that injury. Elimination of it for non-economic damages unfairly hurts workers and consumers, especially those who don't earn high incomes or are older since their damages often are mostly non-economic.

Caps On Punitive Damages—Rockefeller/Gorton would limit punitive damages to \$250,000 or three times economic damages, whichever is greater, and would make it much harder to impose them. Punitive damages, though rarely awarded, are a powerful tool in preventing repetition of preventable injuries. Limiting them would lessen the motivation of corporations to make safe products. As a result, more workers and consumers will be injured.

Statute of Repose—This would make it impossible for a worker injured by defective machinery and equipment to receive compensation from the manufacturer if the machinery and equipment had been on the market for twenty years.

For the above reasons, we urge you to protect workers and consumers by opposing the Rockefeller/Gorton bill and similar legislation and to oppose cloture.

Sincerely,

Juana Hernandez, Staff, Immigrant Workers Resource Ctr.; Melanie Kasperian, Vice President, Mass Teachers Association; Edward Kelly, Executive Director, Citizen Action of Massachusetts; Miles Calvey, Business Manager, I.B.E.W. Local 2222; Phil Mamber, President, United Electrical Workers, District 2; John Williams, Executive Director, Mass. Toxics Campaign; John Murphy, Secretary Treasurer, Teamsters Local 122; Richard Reardon, Business Agent, Teamsters Local 25; John O'Connor, Executive Director, Jobs & Environment Campaign; Rand Wilson, Director, Massachusetts Jobs with Justice.

CITIZEN ACTION,

Cambridge, MA, April 20, 1995.

Senator JOHN KERRY,
*Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR KERRY: On behalf of the members of Citizen Action of Massachusetts, I strongly urge you to oppose S. 565, and similar product liability bills, and to vote against cloture on them.

There is no "litigation explosion." Defective products cases represent less than one-hundredth of one percent of the total caseload in state courts, according to the National Center for State Courts. Since 1990, total state tort filings have decreased. Nor have punitive damage awards been widespread. Between 1965 and 1990, punitive damages were awarded in less than 15 products liability cases each year, one quarter of which involved asbestos.

S. 565, and similar bills make it more difficult for consumers who obtain an award of damages caused by irresponsible corporate behavior from actually collecting those damages where more than one corporation is responsible for their injuries. In addition S. 565 and similar bills seek to drastically limit the ability of citizen juries to award punitive damages: the kind of damages which deter the production and marketing of unsafe products. At time of decreasing regulatory oversight, the possibility of punitive damages represents a vital pro-consumer bulwark against unsafe and defective products. Punitive damages, because they can be high,

make corporations take notice and treat product safety seriously.

S. 565 and similar bills are irresponsible and anti-consumer. I strongly urge you to oppose them and to vote against cloture.

Sincerely,

EDWARD F. KELLY,
Executive Director.

MASSACHUSETTS PUBLIC INTEREST
RESEARCH GROUP,

Boston, MA, 24 April 1995.

Hon. JOHN KERRY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KERRY: We are writing on behalf of MASSPIRG's members, and on behalf of all residents of Massachusetts to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, MASSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DEIRDRE CUMMINGS,
Consumer Program Director.

MICHIGAN CONSUMER FEDERATION,
April 18, 1995.

Hon. CARL LEVIN,
U.S. Senator, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEVIN: I appreciated meeting you at the "Teddy Bear Clinic" where you so ably pointed out the threat to public safety posed by the Republican's "regulatory moratorium." Your leadership for consumer safety has always been appreciated.

We need your leadership in another consumer safety area—products liability. With federal cutbacks in regulatory programs, we look to the legal system as one of the few effective means of improving product safety. Time and time again, it has been private lawsuits—or the perceived threat of lawsuits—which has forced corporations to either remove defective products from the marketplace or improve them.

I know you are a fan of "cost-benefit" analyses. So are manufacturers. In a well-known memo, Ford Motor Company calculated that it would cost more to prevent Pintos from exploding than it would pay out in legal expenses. Consequently, many Pinto owners were incinerated. Why would we want to cap the only means of making "cost-benefit" assessments favor consumer safety?

The Michigan Consumer Federation is a member of the Consumer Federation of America. Annually, CFA bestows its highest honor for consumer advocacy—the Philip A. Hart award. We are proud that the nation's largest and most respected consumer organization recognized a Michigan giant and former United States Senator for its most prestigious award. That places a great deal of responsibility for those of us in Michigan.

S. 565 isn't about fairness. It's about corporations wanting to "get away with murder." Let's not tilt the playing field in their favor. Vote for a strong system of individual legal rights for victims of corporate wrongdoing. It helps make products safer for all of us.

Sincerely,

RICK GAMBER,
Executive Vice President.

CITIZEN ACTION,
East Lansing, MI, April 24, 1995.
Senator SPENCER ABRAHAM,
Dirksen Senate Office Building, Washington,
DC.

DEAR SENATOR ABRAHAM: On behalf of the 300,000 members of Michigan Citizen Action, I want to express our strong opposition to the so-called "Product Liability Fairness Act." I urge you to vote against efforts to move this anti-consumer, anti-worker legislation.

There are three major provisions in S. 565 which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills set arbitrary limits on punitive damage awards of \$250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, S. 565 eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Third, S. 565 prevents workers and consumers—but not businesses—from recovering for losses caused by defective machines or products over 20 years old.

I urge you to act to prevent passage of this legislation which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing. This bill is not in the best interest of Michigan residents. Vote "NO" on cloture and "NO" on the bill.

Yours Truly,

LINDA A. TEETER,
Program Director.

PUBLIC INTEREST RESEARCH
GROUP IN MICHIGAN,
Ann Arbor, MI, April 25, 1995.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: We are writing on behalf of PIRGIM's members, and on behalf

of all residents of Michigan to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PIRGIM is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the right of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from the dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

TIMEEN WEGMEYER,
Campaign Director.

MINNESOTA COACT,
St. Paul, MN, April 24, 1995.

Senator PAUL WELLSTONE,
Hart Office Building,
Washington, DC.

DEAR SENATOR WELLSTONE: On behalf of Minnesota COACT's 40,000 statewide members, I am writing to urge you to vote "no" on S. 565 and to vote against cloture. As a national leader in the fight for health care reform, you probably recognize that this legislation will seriously undermine the ability of consumers to be protected from and compensated for medical malpractice negligence.

By capping the punitive damages at \$250,000 or three times the economic loss (whichever is greater), S. 565 restricts a person's ability to obtain full and fair compensation and dramatically reduces the ability to deter future wrongdoing.

Furthermore, S. 565 eliminated joint and several liability for punitive damages and non-economic loss but not for economic damages. This distinction will aggravate the disparity in awards between high-income earners and low-income earners.

Medical malpractice causes 80,000 deaths and up to 300,000 serious injuries each year according to a recent Harvard Medical Practice Study. For the health and safety of consumers throughout Minnesota, please vote "no" on S. 565 and vote against cloture on the Senate floor.

Sincerely,

JON YOUNGDAHL,
Executive Director.

MISSOURI CITIZEN ACTION,
April 24, 1995.

Senator JOHN ASHCROFT,
Senate Office Building,
Washington, DC.

DEAR SENATOR ASHCROFT, Missouri Citizen Action strongly urges you to vote "no" on Senate Bill 565. In addition, we urge you to vote against cloture when the bill is debated on the Senate floor. As Missouri's largest consumer coalition, we can tell you that this bill could have a major negative impact on the rights, and lives, of the tens of thousands of Missouri consumers and families which we represent.

Caps on punitive damages, such as those in S.B. 565, gut the ability of our civil justice system to threaten real punishment of those whose negligence or greed may tempt them to put a product on the market which could injure us or our family members. Without the threat of real punitive damages, these potential corporate wrongdoers will see damage awards as just another predictable cost of doing business, to be factored into the price of a defective product.

The elimination of joint and several liability for non-economic damages will, likewise, have a negative effect on average Missourians. This provision of S.B. 565 strikes especially at women, children, and seniors.

Clearly this legislation is not in the interest of working Missourians. It is merely an attempt to shield wrongdoers from the consequences of their actions. In that you have consistently voiced a strong opinion in favor of "getting tough" on criminals who prey on our communities, we believe that it would be inconsistent on your part to now vote to protect those whose potential to harm innocent victims in the pursuit of profit. Once again, we urge you to vote "no" on S.B. 565, and to vote against cloture.

Sincerely,

PATRICK HARVEY,
Executive Director.

CITIZEN ACTION,
Lincoln, NE, March 28, 1995.

Senator BOB KERRY,
Hart Office Building, Washington, DC.

DEAR SENATOR: As director of Nebraska Citizen Action, with over 8,000 active members, I want to express our strong opposition to the so-called "Common Sense Legal Reforms Act." The Senate is rushing this bill forward without full debate or time for careful analysis. I urge you to vote against efforts to move this anti-consumer legislation forward, including procedural moves to cut off debate.

This and similar bills pending in the Senate would restrict the ability of injured consumers and workers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent future injuries.

There are two major provisions which are common to all the bills which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills would set arbitrary limits on punitive damage awards of \$250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, all bills would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be

compensated and should not be treated as less important than the loss of high salaries or investment income. It defies all principals of fairness to base how we determine compensation for damages, only on a persons yearly salary.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing.

Sincerely,

WALT BLEICH,
Director.

COALITION FOR ACCOUNTABILITY &
JUSTICE,

April 24, 1995.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, DC.

DEAR SENATOR EXON: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Nebraska.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that has served consumers and the residents of Nebraska exceedingly well. As you noted during our meeting, your efforts at medical malpractice reform is but one example.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

One must also keep in mind that S. 565 must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. S. 565 does nothing to bring the rights and remedies available to

Nebraskans up to the proposed federal standards, and yet it limits our ability to shape state law in a way that would address the unique needs and concerns of Nebraska citizens.

We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

John Hansen, President, Nebraska Farmers Union; Carol McShane, Nebraska Women's Political Network; Jared Teichmeier, President, United Rubber Workers of America Local 286; Linda Burkey, Executive Director, Nebraska Head Injury Association; Walt Bleich, Executive Director, Nebraska Citizen Action; Cristina Sherman, State Coordinator, National Organization for Women; Marv Morrison, Secretary-Treasurer, Communications Workers of America Local 7470; Marty Strange, Program Director, Center for Rural Affairs.

NEW HAMPSHIRE CITIZEN ACTION,
Concord, NH, April 20, 1995.

Senator JUDD GREGG,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GREGG: I am writing to express my concerns about S. 565—the Rockefeller-Gorton bill. The expressed goal of this bill is to reduce the supposed explosion of product liability lawsuits. It does this by effectively limiting the awards a plaintiff could receive: capping punitive damages and eliminating joint and several liability.

I have three problems with this bill. First, I do not think that it will accomplish its goals. I am aware of no evidence that capping awards will in fact reduce the number of suits filed. Capping awards could in fact increase the total dollar amount of liability awards if it removes the incentive for a producer to correct a dangerous flaw in its product, such that more injuries occur and more suits are filed.

Second, I was under the impression that the Republican Party was a supporter of the rights of victims as opposed to criminals. Punitive damages are one way of compensating victims injured through criminal negligence. Protecting the assets of the perpetrator is wrong.

Third is the issue of states' rights. You and your Republican colleagues have gone on and on about returning decision making power to the states. Yet in this bill, by preempting state statutes, you would gather in to the federal government powers that have belonged to the states for over two hundred years. That, sir, is as big a flip-flop as Dick Swett ever made!

I urge you not to support this bill, and not to support any vote for cloture on debate of this bill. Thank you.

Sincerely,

ROBERT D. YAGER, M.D.,

P.S.: I have been sued and lost a case involving punitive damages. Despite that personal experience, I still think this is a bad bill.

NEW JERSEY CITIZEN ACTION,
Hackensack, NJ, April 18, 1995.

Hon. BILL BRADLEY,
Senate Office Building, Washington, DC.

DEAR SENATOR BRADLEY: New Jersey Citizen Action in requesting that you vote "NO" on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill is passed, it will have a devastating effect on the 115,000 families that are members of N.J.C.A.

By capping punitive damages at \$250,000 or three times the economic loss (which ever is greater) the legislation removes "the punishment" that is supposed to be reflected in the damages. It becomes cheaper to pay the damages than to rectify the situation.

Eliminating joint and several liability for non-economic damages discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering—it could also be loss of reproductive capacity, loss of sight or disfigurement.

Obviously this bill is not in the best interests of New Jersey residents. Once again we ask you to vote "NO" on Senate Bill 565 and vote against cloture.

Very truly yours,

PHYLLIS SALOWE-KAYE,
Executive Director.

NEW JERSEY PUBLIC INTEREST
RESEARCH GROUP,
Trenton, NJ, April 24, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: We are writing on behalf of NJPIRG's members, and on behalf of all residents of New Jersey to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, NJPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANDY IGREJAS,
Consumer Advocate.

NEW JERSEY TENANTS ORGANIZATION,
Hackensack, NJ, April 20, 1995.
Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The New Jersey Tenants Organization (NJTO) opposes any changes in joint and several liability and the imposition of punitive damage caps. This is not reform; it is war on consumers.

Please oppose the tort reform legislation now before the Senate and vote "NO."

Thank you for your anticipated stand in favor of the consumers of the State of New Jersey.

Yours truly,

BONNIE SHAPIRO,
Administrative Director.

CITIZEN ACTION OF NEW YORK,
Albany, NY, April 24, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR MOYNIHAN: We are writing to urge that you protect victims of dangerous products by voting to be sure that S. 565 never comes to the Senate floor and continuing to oppose S. 565 and any other measures that would strip victims of dangerous products, incompetent doctors or other negligent parties of their fundamental rights to justice and fair compensation.

Those who would vote for S. 565 forget the famous exploding Pinto, a traveling bomb that Ford's bean counters let stay on the road rather than spend a few dollars to fix the gas tank. They would forget the damage to women from the Dalkon shield and breast implants, products that the manufacturers knew might cause harm. They would forget those children who were horribly burned by flammable pajamas. And they would forget the thousands of workers who were exposed to asbestos decades after the manufacturers knew that the material caused cancer.

There are very few cases a year, 15, in which punitive damages are awarded. But the threat of these damages is too often the only barrier to more companies making the cold calculation that making a safe product isn't worth the cost. Artificial caps on punitive damages will result in a slap on the wrist to negligent corporations and expose American consumers to dangerous products.

The provision in S. 565 that would not allow workers or consumers to sue over damages caused by older products, but allows companies to sue, reveals the vicious anti-consumer bias of this bill. If the bill were honestly concerned about the legal system why would it allow businesses to sue but not consumers or workers? The exemption for businesses shows that the authors primary motive is to protect corporations from being punished for the harm their negligence causes to consumers and employees.

We also urge your opposition to changes in joint and several liability. This provision only increases the likelihood that a victim will not be fairly compensated for the injuries and suffering caused by negligence. Those who are the most vulnerable, women, children and the elderly, will lose the most if joint and several liability is eliminated.

Finally, we remain concerned that the Senate will consider establishing a cap on pain and suffering in medical malpractice cases. Such an action would be particularly ironic coming just after well publicized incidents of medical malpractice. The facts remain that, as the Office of Technology Assessment found in a recent report, caps on malpractice awards will have no impact on the nation's health care costs but they will save money for doctors at the expense of victims of gross malpractice.

We urge your continued vigilance on behalf of victims of negligence by voting against cloture for S. 565 and working vigorously to oppose any other measures that would gut the civil justice system.

Sincerely,

RICHARD KIRSCH,
Executive Director.

EMPIRE STATE CONSUMER ASSOCIATION,
Rochester, NY, April 19, 1995.

Hon. ALFONSE M. D'AMATO,
Hart Building, U.S. Senate, Washington, DC.

DEAR SENATOR D'AMATO: I want to express our strong opposition to S. 565, the "Product Liability Fairness Act of 1995." This bill would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of \$250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, "The Health Care Liability and Quality Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely yours,

JUDY BRAIMAN.

CITIZEN ACTION,
Raleigh, NC, March 14, 1995.

Hon. D.M. LAUCH FAIRCLOTH,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR FAIRCLOTH: On behalf of North Carolina Citizen Action, I would like to express our strong opposition to the so-called "Product Liability Fairness Act", S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a "moderate" light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of \$250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat of that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their

egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 24 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting "NO" on cloture.

Sincerely,

LORI EVERHART,
State Director.

COALITION FOR ACCOUNTABILITY
AND JUSTICE,
April 4, 1995.

Hon. KENT CONRAD,
Hon. BYRON DORGAN,
U.S. Senate, Washington, DC.

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system, and to vote "no" on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By limiting pain and suffering damages in some cases, the bill will severely restrict awards to certain groups—including seniors, women, and children—and favor the rich who, in the case of death or serious injury, have high lost wages, over the rights of low- and middle-income wage earners. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of North Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases. Passage of either of these measures, or a combination of the two, would cause griev-

ous harm to the people who have elected you—and depend on you—to represent their interest in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Gerrard Friesz, North Dakota Public Employees Association.
Pam Solwey, North Dakota DES Action.
Sherry Shadley, North Dakota Clean Water Action.
Chuck Stebbins, Dakota Center for Independent Living.
Pauline Nygaard, North Dakota Breast Implant Coalition.
Don Morrison, North Dakota Progressive Coalition.
Lani Weatherly, Laborers International Union, Local 580.
Jude M. Reilly, Boilermakers Local 647.
Gary L. Nelson, Ironworkers Local 793.
John Risch, United Transportation Union.
Dexter Perkins, Sierra Club, Agassiz Basin Group.
Gary McKenzie, Plumbers and Pipefitters Local 338.
Rev. Jack Seville, United Church of Christ (organization for identification only).
Dean Cypher, Teamsters Local 116.
Al Thomas, Teamsters Local 123.
Norman Stuhlmiller, (former chairperson, Legislative Committee, North Dakota AARP).
Logan Dockter, Plumbers and Pipefitters Local 795.
Jeff Husebye, Doug Swanson, Workers Against Inhumane Treatment.

CITIZEN ACTION,

April 24, 1995.

Members of the U.S. Senate, Washington, DC:

DEAR SENATORS: I am writing on behalf of Ohio Citizen Action, Ohio's largest consumer and environmental organization, to urge Members of the Senate to oppose S. 565 and to vote against cloture. There are a number of reasons for our opposition to this bill, but we will briefly mention only two.

First, the cap on punitive damages would unquestionably undermine the potential for such assessments to truly punish wrongdoers. While punitive damage assessments are rare in product liability cases, they often are the only means for citizens to stop the reckless behavior of a wrongdoer. With the arbitrary cap, not only would future punitive damage assessments not adequately punish the wrongdoer, but companies could calculate whether it would be more cost-effective to produce a safe product or risk punitive damages.

Second, the statute of repose would deny workers and consumers their right to seek compensation if they are injured by a product that is more than twenty years old. It is, by no means, uncommon for workplace equipment to exceed this limit. At the same time, however, businesses are exempt from this restriction. The company can still sue for commercial losses.

S. 565 would be a giant step backwards in a legal system that now works reasonably well to protect average Americans. We urge you to oppose S. 565 and to vote against cloture.

Thank you for your consideration.

Sincerely,

SHARI WEIR,
Consumer Issues Director.

OHIO PUBLIC INTEREST RESEARCH
GROUP,

Columbus, OH, April 25, 1995.

Hon. MIKE DEWINE,
U.S. Senate, Washington, DC.

DEAR SENATOR DEWINE: We are writing on behalf of Ohio PIRG's members, and on behalf of all residents of Ohio to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Ohio PIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

AMY SIMPSON,
Campaign Director.

OREGON STATE PUBLIC INTEREST RESEARCH GROUP,

Portland, OR, April 25, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Washington, DC.

DEAR SENATOR HATFIELD: We are writing on behalf of OSPIRG's members, and on behalf of all residents of Oregon to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, OSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. It caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MAUREEN KIRK,
Executive Director.

VICTIMS AGAINST LETHAL VALVES,
Pittsburg, PA, April 19, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: As founder and leader of V.A.L.V. (Victims Against Lethal Valves) I am writing to you for all implanted victims of the Bjorg/Shiley ConvexoConcave heart valve to urge you to vote against bill S. 565.

We oppose this legislation as it definitely limits the rights of consumers in our civil justice system. We believe bill S. 565 is an anti-consumer legislative move that will only enhance the rights of big business, i.e., manufacturers. We believe that this bill will only encourage manufacturers to have a stronger attitude of uncaring towards the products they produce and place in the marketplace for the consumer. Today, with workers' relaxed attitudes and work ethics it would hardly be a feasible idea to give the manufacturers a freer hand in the quality control of products. This is a time when we need stronger controls over big business, not the consumer. The consumer is being hurt enough as it is with the dangerous quality of products that is being turned out to them now.

Injuries that are the result of a manufacturer's flaw should be compensated to the injured. When products are marketed as being wonderful and safe in fancy, expensive advertisements to draw in the consumer to purchase, the manufacturer should be responsible for any consequence after the sale of their product if it has been flawed from the manufacturing process.

V.A.L.V. members throughout the state of Pennsylvania strongly urge you to vote against bill S. 565 as well as similar legislation and to vote against cloture.

We thank you for considering our fears.

Respectfully yours,

ELAINE S. LEVENSON,
Founder.

CITIZEN ACTION/
PENNSYLVANIA CHAPTER,
April 21, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC

DEAR SENATOR SPECTER: On behalf of our 40,000 members in Pennsylvania, we are writing to express our strong opposition to S. 565, the so-called "Product Liability Fairness Act" sponsored by Senators Rockefeller and Gorton. We urge you to oppose any effort to move this anti-consumer, anti-worker legislation forward, including procedural moves to cut off debate.

S. 565 would drastically limit the ability of injured consumers and workers to obtain full and fair compensation, and would restrict the ability of citizen juries to impose adequate deterrents to prevent future injuries.

Specifically, S. 565 would place caps on punitive damage awards of \$250,000 or three times economic damages. Such awards, while rare, are designed to punish corporations that intentionally or recklessly disregard the safety of consumers, and to deter other corporations from such behavior. Placing arbitrary limits on punitive damages will only serve to encourage such behavior, placing consumers at greater risk.

S. 565 would also eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of child-bearing capacity, loss of sight or limb, or disfigurement. This provision places a greater value on lost income, thereby discriminating against women, children, and senior citizens.

Finally, this bill would prevent workers and consumers—but not businesses—from recovering damages for losses caused by defective machines or products that are more than 20 years old.

We strongly urge you to protect the legal rights of consumers and workers throughout Pennsylvania by voting against passage of S. 565 and voting against cloture. Thank you for your consideration.

Sincerely,

LAUREN TOWNSEND,
Philadelphia Area Director.

JENNIFER O'DONNELL,
Pittsburgh Area Director.

PENNSYLVANIA PUBLIC INTEREST RESEARCH GROUP,
Philadelphia, PA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote No on S. 565.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: We are writing on behalf of PennPIRG's members, and on behalf of all residents of Pennsylvania to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PennPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill, H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers.

We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

STEPHANIE HAYNES,
Campaign Director.

DES ACTION,

Nescopeck, PA, April 24, 1995.

DEAR SENATOR RICK SANTORUM: On behalf of 480,000 DES exposed in Pa. we deplore you to oppose S.B. 565.

We still deserve to have a trial by jury and also awarded as they see fit. That means no PS!

Common Sense Legal Reform was written to protect major corporations and forgetting the real victims. Such as 10 million DES exposed.

Our spouses deserve to receive compensation for * * * several liability.

DES Action Pa. would urge you to prevent passage of any legislation, which would greatly restrict the ability of injured consumers to be compensated fully and * * * injured to act to prevent further wrongdoing.

Sincerely,

MARY JEAN GRECO GOLOMB.

PENNSYLVANIA AFL-CIO,
Harrisburg, PA, April 6, 1995.

Re S. 565—Product Liability.

Hon. RICH SANTORUM,
U.S. Senate, Dirksen Bldg., Washington, DC.

DEAR SENATOR SANTORUM: We are writing to urge your strong opposition to S. 565, reforms to the Product Liability Law. S. 565 will have its most dramatic effect on working men and women who are injured by defective machinery. It is our understanding that 60% of the Product Liability claims arise from workplace injuries.

First and foremost, we are concerned that weakening the Product Liability Law will undermine safety in the workplace. As a practical matter, it is the threat of a lawsuit that encourages manufacturers to design and produce safe machinery. OSHA, which could play some role, has been ineffective in regulating in this area and is likely to continue to be ineffective. We must look to the Product Liability Law as the single most important force for safety machinery in the workplace.

The specific changes proposed by S. 565 will not only undermine safety, but unfairly deny injured workers compensation for loss of body part or body function.

Several issues are of priority concern for Pennsylvania workers:

(1) *Twenty-year Statute of Repose:*

The statute of repose would deny the right to file a claim if a worker is injured by machinery more than 20 years old. Pennsylvania, as you know, is a mature industrial state. Many of our workers are working with machinery that is older than 20 years.

To cut off their rights by a fixed time limitation is artificial and will deny those injured any remedy. The age of the machine should be taken into account in determining the defect, but the proposed change is inflexible and unfair. Finally, it will create a market for used machinery rather than encourage new manufacturing of safer equipment.

(2) The overriding of both the Federal Employers' Liability Act and the Longshoremen's and Harbor Workers Compensation Act will hurt those covered by these laws in Pennsylvania—specifically our Longshoremen and Railroad and Airline workers.

(3) The elimination of joint and several liability could end up leaving injured workers with no responsible party to pay for a judgment and award.

(4) The cap on punitive damages again is arbitrary and will undermine the incentive to produce safe machinery. The cap of \$250,000 is artificially low and fails to consider the reality that few punitive damages are awarded under current Pennsylvania law.

The real purpose of punitive damages is to control outrageous conduct on the part of manufacturers.

These are just some of our major concerns with S. 565.

We urge you to strongly oppose this legislation and vote in support of encouraging the manufacture of safe products. Each year, 150,000 Pennsylvanians experience serious workplace injuries and close to 5,000 occupationally caused deaths occur. Many of these injuries and diseases are caused by defective products. S. 565 will only add to the pain and suffering of those who go to work each day with an expectation of returning home safe.

Thank you.

Sincerely,

WILLIAM M. GEORGE,
President.
RICHARD W.
BLOOMINGDALE,
Secretary-Treasurer.

COALITION FOR ACCOUNTABILITY
& JUSTICE
April 24, 1995.

Hon. LARRY PRESSLER,
Hon. THOMAS DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of South Dakota.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight and civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of South Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or \$250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil jus-

tice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Mike Coffey, AFSCME; Bob Burns, South Dakota State University; Jeanne Koster, South Dakota Peace and Justice Center; Jack E. Dudley, South Dakota AFL-CIO; Roann Redlin, South Dakota Coalition Against Domestic Violence; Phyllis Bitterman, United Paperworkers International Union; Karen Fogas, East River Group Sierra Club; David Feller, IBEW, Local 426; Charon Asetoyer, Native American Women's Health and Education Center; Jim Larson, UFCW Local 304A; Roann Redlin, South Dakota Advocacy Network; Sam Clauson, Black Hills Group Sierra Club; Mary Kirkus, South Dakota DES Action; Charon Asetoyer, Native American Women's Reproductive Rights Coalition; Darrell Drapeau, Yankton Sioux Tribe; Rick Davids, United Transportation Union.

CITIZEN ACTION,
Nashville, TN, April 20, 1995.

Hon. FRED THOMPSON,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR THOMPSON: Greetings from Nashville. I am director of Tennessee Citizen Action, a grassroots consumer group with over 5,000 members across the state. I am writing to express Citizen Action's strong concerns about S. 565, the product liability bill to be considered next week on the Senate floor.

It is our view that this legislation would have serious implications for the health and safety of your constituents. S. 565 would impose federal requirements, for the first time in over two hundred years, on an area which has been under state authority. In doing so, we believe that it would limit both the ability of injured consumers to obtain fair compensation and the ability of citizen juries to hold guilty parties accountable for their actions. As a result, the incentives which have convinced many companies to improve the safety of their products will be lessened.

While there are a number of troubling provisions in S. 565, I would like to raise two key issues. First, the bill would destroy the ability of citizen juries to impose penalties on wrongdoers in order to prevent future injuries. Punitive damages are rarely used. In fact, over the last 25 years, punitive damages have been awarded in less than 15 cases each year (less than 11 cases excluding asbestos cases). But punitive damages have proven to be critical in persuading manufacturers to improve the safety of their products or remove unsafe products from the marketplace. By placing arbitrary caps on awards, S. 565 would make it virtually impossible for citizen juries to act to protect society from fu-

ture harm. At a time when Congress is considering limits on federal regulation, it makes little sense to further erode the ability of people to use the courts as a way to improve the safety of the marketplace.

Second, S. 565 would establish a discriminatory legal system in which the level of compensation is based not on the level of the injury, but on the economic status of the injured consumer. By eliminating joint and several liability for non-economic damages, the bill states that it is not important to compensate individuals for having to live with excruciating pain, disfigurement, blindness, or loss of the ability to bear children.

Given these and other provisions, Tennessee Citizen Action believes that the passage of S. 565 would be detrimental to consumers and the nation. We appreciate your consideration of our views and look forward to learning your position on these important issues.

Sincerely,

C. BRIAN MCGUIRE,
State Director.
TEXAS CITIZEN ACTION,
Austin, TX, April 23, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: We are writing you to ask for your vote against cloture on S.565 the "Unfair Product Liability Act" introduced by Senator Rockefeller. We are extremely concerned about the impact this will have on the safety standards of everyday products for consumers and innocent citizens. We believe there are several provisions of the bill which will eliminate the consumers ability to hold wrongdoers accountable for their actions, and limit innocent victims recourse to fully recover for damages they have accrued.

Capping punitive damages will do nothing to increase safety standards for innocent consumers. By limiting punitive damage awards to \$250,000 or three times economic damages you are creating a nuisance expense for multi-billion dollar companies such as Ford Motor Company or Dow Chemical. This is creating a predictability in the market place for the minute number of companies who act negligently allowing them to calculate their risk for producing a less than safe product and further lets them rest assured they will never be held liable past a certain dollar amount.

S.565 prevents consumers from holding manufacturers of products which cause significant harm or injury accountable if the product is older than 20 years. Many products are intended to last longer than 20 years. This law however, would eliminate all consumer rights to be made whole if a 20 year old product caused significant harm or damages. This is an example of corporate wrongdoers being protected at the expense of consumers protection.

The elimination of "Joint and Several Liability" is a slap in the face to innocent individuals, families, and communities. Allowing guilty defendants off the hook without having to make innocent victims 100% whole is a disgrace. We will without a doubt see victims paying for portions of their damages even when they were completely without fault. This will not only affect individuals but likewise families, communities, cities, and states. We will see wrongdoers getting off free of charge while cities, towns, and families pick up the tab for the irresponsible behavior of others.

Texas Citizen Action has a membership of well over 150,000 citizens. These people have joined our organization because they believe in the positions we take on consumer protection issues. The passage of S.565 will be a major step backwards for individuals and communities and their rights to hold others

accountable for wrongs they may commit. We ask you to vote against cloture on S.565 for the citizens of Texas.

Sincerely,

DANIEL LAMBE,
Program Director.

DEFENDERS OF THE RIGHTS OF TEXANS,
Austin, TX, April 24, 1995.

Re S. 565.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Washington, DC.

DEAR SENATOR HUTCHISON: Defenders of the Rights of Texans (DRT) is asking you to vote against cloture on S. 565, Sen. Rockefeller's "Unfair Product Liability Act." This bill will adversely impact the safety standards of products which we consumers utilize on a daily basis. We strongly feel that victims of unsafe products must retain the ability to hold accountable those who produce products which kill and maim. Limiting damages does not protect consumers, it protects manufacturers of products that injure consumers. That should not happen!

The effect of eliminating some of the current protections in the law will be to make the victim pay twice, even when they contributed nothing to the accident or injury. If Congress eliminates "Joint and Several Liability", you will make it difficult for your constituents to recover fully from their misfortune. The only pain and suffering you will be eliminating is that of the offending party. We support victims' rights, not the rights of those corporations or individuals who do not want to take responsibility when their products harm the American public.

We oppose capping punitive damages because we know that it takes significant awards to get the attention of manufacturers who continue to foist its products on an unsuspecting public years after the corporation knows the product to be unsafe. Why Congress would consider rewarding such unacceptable behavior is beyond our organization's comprehension.

Defenders of the Rights of Texans is a coalition of individuals and organizations—consumer, environmental, worker, academic, clergy, student, and victims—who oppose sacrificing our rights on the altar of corporate greed. We ask you to represent our interests by voting against cloture on S. 565.

Sincerely,

BOB COMEAUX,
San Antonio, TX.

VIRGINIA NATIONAL ORGANIZATION
FOR WOMEN,
April 15, 1995.

Hon. CHARLES ROBB,
U.S. Senate, Washington, DC.

DEAR SENATOR ROBB, Virginia N.O.W., represents some 20,000 Virginia women. We are writing to urge you to vote no on cloture and no on S. 565 and any other measure that restricts individual legal rights.

S. 565, the "Product Liability Fairness Act", is in fact, unfair. By limiting non-economic damages, it give wealthy individuals and corporations greater rights than middle-income citizens and families. Additionally, S. 565 transfers authority for the civil justice system from the states to the federal government. States know better how to serve its individual citizens and the issues that impact the citizens than the Washington bureaucracy. Whatever happened to the idea of states' rights and limiting the power of the federal government? S. 565 caps pain and suffering awards on medical malpractice suits. Why single out a particular type of lawsuit to cap awards?

Virginia N.O.W. has supported many women who have filed lawsuits, for both international and negligent injuries. During

the 1995 legislative session we along with other citizens groups such as the VTLA, NAACP, ACLU, LofWV, worked hard to obtain a compromise on the Virginia Human Rights Act. A bill which passed the legislative session only to be vetoed by the Governor. The bill reverses the Lockhart decision, which basically prevents a small business employee from filing a lawsuit based on race, color, sex or national origin. Additionally, VA N.O.W. supports lawsuits for sexual harassment, defective products, product liability, employment discrimination and of course intentional injury. Economic justice as well as civil justice must be preserved. S. 565 seeks to destroy both, please vote "no" on S. 565.

People all across America are closely watching the new Republican majority in Congress in an effort to determine whether it truly represents the people or big business. Surely, the outcome and deliberations of S. 565 will provide an answer.

Sincerely,

DULANEY S. NICKERSON.

CITIZEN ACTION,
Charlottesville, VA, April 17, 1995.
Hon. CHARLES S. ROBB,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR ROBB: I am writing on behalf of Virginia Citizen Action and its over 50,000 members to ask you to oppose S. 565, the "Product Liability Fairness Act." We would ask you that you do whatever is necessary to defeat this bill, including voting against any effort invoke cloture on debate.

Senator, this bill would make America a much more dangerous place for all of us. By capping punitive damages, this bill will send a signal to corporate wrongdoers that they can escape any real punishment for making and selling products that will kill or injure innocent people. S. 565 would eliminate the deterrent effect of punitive damages and remove one of the real protections Americans have had for over 200 years.

This bill is anything but fair. By eliminating joint and several liability for non-economic damages, it discriminates against women, children and seniors. Non-economic damages are not just pain and suffering. What about a women's loss of the ability to bear children or a child's disfigurement for life!

Senator, S. 565 is not "moderate" and it is not "fair". We hope that you will work to defeat this bill and protect every Virginian and every American from those special interests who want to escape responsibility for their actions at the expense of the health and safety of the American people.

Sincerely,

MARC WETHERHORN,
State Director.

VIRGINIA CITIZENS CONSUMER COUNCIL,
Yorktown, VA, April 25, 1995.

Re S. 565.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROBB: The Virginia Citizens Consumer Council strongly urges you to oppose S. 565, the "Product Liability Fairness Act of 1995. This bill will do irreparable harm to Virginia consumers by restricting the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries. Corporate wrongdoers must be held accountable when consumers are harmed by the products they buy as a matter of simple justice and to foster confidence in the American marketplace.

Two major provisions of this legislation will have a negative impact on consumers and workers. First, this bill sets arbitrary limits on punitive damage awards of \$250,000 or three times the economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Virginians' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income. For similar reasons, VCCC urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

VCCC urges you to act to prevent passage of this legislation, which will greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing. Virginia consumers count on you to act in our best interest by voting NO on this anti-consumer, auto-worker bill. Please let me know the outcome of the Senate votes on S. 565 and S. 454 and how you cast your votes. Thank you.

Sincerely,

JEAN ANN FOX,
President.

WASHINGTON CITIZEN ACTION,
STATE HEADQUARTERS,
Seattle, WA, April 19, 1995.

Hon. SLADE GORTON:

On behalf of our 42,000 members statewide and our 20 affiliate community, church, labor, and senior organizations, Washington Citizen Action urges you to oppose Senate Bill 565 and to vote against cloture. This bill is one of the most anti-consumer pieces of legislation to make it to the Senate floor in decades. Please do all that you can to stop S. 565 from passing.

The arbitrary caps on punitive damages would eliminate the incentive to produce safe products and would allow negligent corporations to operate with little to no accountability. S. 565 will undoubtedly result in a multitude of injuries, disfigurements, and deaths. In addition, these limits will take away all recourse society has to punish wrongdoers that knowingly and repeatedly maim and kill people with deadly products and negligent actions.

By eliminating joint and several liability for non-economic damages, S. 565 would weaken the ability of ordinary Americans to receive fair compensation when they are injured by unsafe products and practices. The bill is unfair to women, children, seniors, working families, small businesses, and lower to middle income Americans. Victims and their families will be rendered unable to receive adequate compensation for their injuries while the guilty parties are let off the hook. This is not our idea of American justice.

In America, the courts have proven to be the major protection citizens have against negligent corporations and unsafe products. We cannot afford to let our civil justice system be dismantled by the provisions of S. 565. Vote NO on S. 565! Vote NO on cloture!

Sincerely,

DAVID WEST,
Executive Director.

WEST VIRGINIA-CITIZEN ACTION GROUP,
Charleston, WV, April 24, 1995.
 Re Proposed legislation concerning Civil
 Justice System (S. 565).

Hon. JOHN D. ROCKEFELLER, IV,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER. On behalf of the twenty thousand members of the West Virginia-Citizen Action Group (WV-CAG), I am writing this brief letter to encourage you to rethink your support for S. 565. However well-intentioned this legislation may be, I honestly believe that the potential—and unintended—consequences are so great as to offset any perceived benefits.

I realize, of course, that the House-passed "Common Sense Legal Reform Act" is more draconian than S. 565. This does not ameliorate the many deficiencies contained in the Senate bill, including the two most egregious (as follows):

By capping punitive damage caps at \$250,000 or three times the economic loss (whichever is greater), the proposed legislation removes the "punishment" that is supposed to be reflected in damages. As a result, it will become cheaper in many instances to pay the damages than to rectify the problem.

By eliminating joint and several liability for non-economic damages, the proposed legislation unfairly discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering; it can also be loss of reproductive capacity, loss of right or disfigurement.

After studying this, and related tort reform proposals for many years, we are convinced that such efforts are contrary to public policy and will jeopardize the hand-earned rights of injured West Virginians. Accordingly, I would like to urge you to reconsider your position and fight, as you have done so often in the past, for the rights of West Virginia consumers.

Thank you very much for your time and consideration. I hope to see and/or talk with you again soon. If you need any further information, please feel free to contact me.

Sincerely,

STATE SENATOR DAVID GRUBB,
Executive Director.

—
 WISCONSIN CONSUMERS LEAGUE,
Milwaukee, WI.

Re SB 565 and 454.

Senator HERBERT KOHL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KOHL: We write to urge your opposition to the so-called "Common Sense Legal Reforms Act" submitted as part of the Contract with America. This package of bills would substantially modify existing product liability and medical malpractice laws. It is largely unsupported by the vast majority of the rigorous evidence which has been developed on these topics. Rather, it is seemingly being swept along on a wave of anecdote, innuendo and, in some cases, outright untruths.

There can be little doubt that product liability and medical malpractice laws have evolved to reflect emerging technologies. They have had the desired effects of modifying behavior to the optimum end of preventing injury to consumers and workers. The claims regarding the alleged stultifying effects of these bodies of common law are generally unsupported by credible, systematic evidence. For example, the work of Professor Galanter, at the UW Law School, compellingly refutes allegations regarding any alleged 'litigation explosion'. The punitive damages which S. 565 would limit are only relatively rarely awarded. Such 'sledge-hammer' approaches to "reforming" such legal standards, while politically satisfying, are

only coincidentally related to thoughtful policy-making.

It is, in our view, remarkably arrogant for legislators to substitute their prospective judgments regarding equitable outcomes for specific factual cases yet to arise for the judgment of juries, which, by definition, can examine each case on its own unique, and prospectively unknowable, facts. How can anyone think they can be more fair regarding situations yet to occur than can juries with the benefit of hindsight?

We repeat our opposition to these unnecessarily broad attempts to weaken the preventative impacts of the common law.

Very truly yours,

JAMES L. BROWN,
President.

—
 WISCONSIN CITIZEN ACTION,
Milwaukee, WI, April 21, 1995.

Hon. RUSS FEINGOLD,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of our 103,000 members and our coalition of 110 labor, senior, religious, environmental, women's, farm and community organizations, we are writing to urge you to oppose S. 565 and to vote against cloture. We very much appreciated your help last year in the defeat of S. 687, this bill's predecessor. We're confident we can count on you again.

This bill is very similar to the product liability "reform" Bob Kasten used to push when he represented Wisconsin in the United States Senate. We like to think that one of the reasons why Wisconsin voters chose not to re-elect Bob Kasten to the Senate is because they repudiated his consistently anti-consumer positions. S. 565 is similarly out of step with the interests of Wisconsin consumers.

The provisions in this bill cannot claim to be "moderate." A punitive damage cap of \$250,000 or three times the economic loss to a victim of an injurious product is no more than a slap on the wrist to the corporations responsible for the deaths and injuries caused by products like the Ford Pinto, the Dalkon Shield, silicone-gel breast implants and flammable baby pajamas. The manufacturer of the "Slip 'N' Slide" water slide, which caused a 35-year old Wisconsin mechanic to break his neck, become temporarily quadriplegic and suffer permanent spasms, would have had its punishment reduced to one-thirtieth of what a jury thought appropriate. The U.S. Senate would be changing the punishment so that it cannot possibly fit the crime in an era of public sentiment to get tough on wrongdoers.

We have no idea how many similar horror stories like those are waiting to happen. Corporate wrongdoers would face a dollar and cent deterrent too cheap to stay their pursuit of profit without regard for consumer health and safety. The temptation for corporations to proceed with dangerous products, even if they are eventually found guilty in a lawsuit, would get that much easier. S. 565 will weaken the ability of our civil justice system to act as both deterrent and remedy.

The elimination of joint and several liability for noneconomic damages discriminates against the most vulnerable populations in our society—women, children and seniors. These are the members of our society who are usually forced to claim noneconomic losses, and these constituencies would now be forced to shoulder the burden of being only partially compensated. Noneconomic damages include the loss of reproductive capacity, loss of sight and permanent disfigurement, not just "pain and suffering." It is simply unfair that a party found to be negligent should not be required to make these

vulnerable people whole after they have been injured.

The U.S. Consumer Product Safety Commission once estimated that some 33,000,000 people are injured by defective or dangerous products every year. 29,000 of them die. Only 1.6% of the injured parties sue. S. 565 solves no problem in our civil justice system, but it will create a very real human toll if it is allowed to pass. We respectfully urge you to vote against the bill and to vote against cloture.

Thanks once again for your outstanding leadership in defeating the anti-consumer product liability "reform" bill in last year's Congress. We appreciate all your help in continuing that effort by defeating this bill again, albeit in a tougher political climate. Thank you for attention in this matter.

Sincerely,

LARRY MARX,
Executive Director.

—
 CENTER FOR PUBLIC
 REPRESENTATION, INC.,
Madison, WI, April 21, 1995.

Re Senate bill 565.

Senator HERB KOHL,
Washington, DC.

DEAR SENATOR KOHL: As you know S. 565, the misleadingly-named "Common Sense Product Liability and Legal Reform Act of 1995" will soon be considered by the Senate. As one of the major consumer advocacy groups in Wisconsin, we urge you to oppose this anti-consumer measure.

While certain aspects of our tort system are certainly in need of reform, this bill totally misses the mark. Instead of protecting consumers from some of the excesses of our legal system, it would protect manufacturers of defective products from assuming full responsibility for their actions. Seizing upon such highly publicized and distorted cases like the "burning McDonald's coffee" proponents of this measure (as well as similar proposals in numerous state legislatures including Wisconsin) would eviscerate the ability of our legal system to effectively enforce rules on product safety and punish those who violate them.

The proposed restrictions on punitive damages are completely counter-intuitive. By encouraging corporations to produce safe products, punitive damages (which, insurance industry rhetoric notwithstanding, are rarely awarded by juries or upheld on appeal) actually help corporations *save* money. Safe products mean fewer, not more lawsuits. Safe products mean fewer, not more medical insurance claims filed by consumers. Safe products mean fewer government recalls. And safe products mean an improved quality of life for all consumers.

The elimination of joint and several liability for non-economic damages is also misplaced. On first blush, this common law concept may seem unfair; why should one corporation that is only slightly liable have to pick up the tab for a more culpable corporation that happens to be insolvent? But when you look closer, joint and several liability *is* the fairest resolution to a difficult dilemma. It looks at all of the parties involved in a products liability lawsuit and decides that the costs should be spread so as to fully compensate the victim who, after all, is the only innocent party. And since non-economic damages are frequently awarded to the most vulnerable members of society; the poor, young children, senior citizens, this provision would affect such groups disproportionately.

The elimination of liability for products more than twenty years old is also unfair to consumers. Again, this provision would disproportionately harm the most vulnerable consumers, since they rely more heavily on

older, used products. The anti-consumer nature of this bill is especially apparent in this provision, since it exempts companies who suffer commercial losses.

Another particularly disturbing provision in S. 565 from the Wisconsin perspective is its preemption of state consumer protection laws. As you know, Wisconsin is a national leader in the area of consumer protection. Its well-deserved reputation in this area has been built up over many decades. S. 565 would tarnish that image and bring Wisconsin down to the lowest common denominator in protecting its citizens from consumer abuse.

There are other consumer-unfriendly aspects to S. 565, including its exemption from liability for the sellers of products and the special treatment provided for suppliers of materials for medical devices. Moreover, the bill exempts corporations from many of the restrictions on damages which it imposes on individual consumers.

Consumer groups in Wisconsin and around the country have fought long and hard over the past few decades to insure that consumers have access to safe and effective products. S. 565 would annul much of this hard work in one fell swoop. On behalf of all of Wisconsin's consumers, we urge you to oppose it.

Thank you.

Yours truly,

STEPHEN E. MEILI,
Director, Consumer Law Clinic.

Mr. HOLLINGS. There it is. I did not want to really fill up the RECORD, but every responsible, credible consumer entity in any of the 50 States is opposed to this initiative, and the other side knows it. But they come around and talk balance and they talk consumers and they say you cannot produce products.

I ask unanimous consent to insert in the RECORD these two advertisements by the pharmaceutical companies, February 23, 1995, and April 5, 1995, in the Washington Post.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 23, 1995]
DRUG COMPANIES TARGET MAJOR DISEASES
WITH RECORD R&D INVESTMENT

Pharmaceutical companies will spend nearly \$15 billion on drug research and development in 1995. New medicines in development for leading diseases include: 86 for heart disease and stroke, 124 for cancer, 107 for AIDS and AIDS-related diseases, 19 for Alzheimer's, 46 for mental diseases, and 79 for infectious diseases.

[From the Washington Post, Apr. 5, 1995]

WHO LEADS THE WORLD IN DISCOVERING
MAJOR NEW DRUGS?

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home, the drug industry has been making 9 out of every 10 new drug discoveries. So when a breakthrough medicine is created for AIDS, heart disease, Alzheimer's, stroke, cancer or any other disease, chances are it will come from America's drug research companies.

Mr. HOLLINGS. Just the one in February, one statement:

Pharmaceutical companies will spend nearly \$15 billion on drug research and development in 1995.

According to the Senator from Washington, they cannot spend. They just cannot work anymore with this law. And right here in April:

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home the drug industry is making nine out of every ten new drug discoveries. Breakthrough medicines that are going to be created for AIDS, heart disease, Alzheimer's, stroke, cancer, or any other disease will come from the American drug companies.

But according to the Senator from Washington, they cannot bring out products. Come on. They have tried every trick in the book.

What we really have afoot, Mr. President, when they cite the Constitution is just that—an assault against the constitutional right of trial by jury guaranteed by the seventh amendment. People who say they do not trust politicians anymore are waiting for the politicians to behave as though they trust the people. You and I trust them to elect us, but when they get us 12 men and women on a jury sworn to listen to the facts and make their finding, according to their sworn oath, "They do not know what they are doing; they have gone ape; they are just runaway juries," and everything else of that kind.

But we up here, the bureaucracy in Washington, we should decide rather than letting the juries decide back home.

We have a right, Mr. President, that has worked over the many, many years. You have safe drug products. Thank heavens, we have product liability and we have taken off Dalkon shield and all the rest of these other things—cancer causing products. We have safer automobiles.

Why do you think Chrysler the other day said they were going to recall I think some 350,000 or several million cars? I had the summation. Seventy-one million automobiles in the last 10 years, American and foreign manufacture, have been recalled. They do not recall them because of the goodness of their heart. They recall them on account of product liability. What we have in hand here they want to destroy. We have always had in this land "salus populi suprema lex." Safety of the people is the supreme law.

Now they come with this measure, the profits of the manufacturers is the supreme law, and whine that they are for the consumers and they cannot put out products.

How does this come about? I have been in this for 40 years and I have watched it develop: Pollster politics. They tell you when you come to this national office up here that you have to get a poll and get to four or five hot-button items and then you have to identify with them. You are for jobs, everybody is for jobs; you are against crime; you are against taxes. They just go down the list.

Then they tell you, and in fact GOPAC puts on a school over there for

the young Congressmen that are elected, they say, "You have only got a 20-second time bite to give your message, so you need words that count, words that excite, inflame."

And do you know what they call us up here now? I quote the Speaker. He terms the U.S. Government that pledged to preserve, protect, and defend, he calls it the corrupt liberal welfare State.

And when you can come in this anti-Government drive with the Contract With America and you see it in the morning paper and if you read it closely, it is gone: "Get rid of the Government. The Government is not the solution, the Government is the problem. The Government is the enemy."

That has been the drumbeat. If you can wrap it together in tort reform, you can get against the lawyers and against the Government both and you can really have a winner.

Well, for 15 years we have defended against this assault. President Ford helped us 15 years ago. He appointed a commission. And when President Ford appointed that commission, they had a 4-year study that came out and found that the States for 200 years have been handling this properly, basic tort law.

Incidentally, of all the civil findings, only 9 percent are tort. And of all the tort, only 4 percent of the 9 percent, or 0.38, thirty-eight one-hundredths of 1 percent of what we are supposed to be dealing with. It is not a problem at all.

They said the States were handling it. And now we know by record in the hearing that the States have reformed, they have acted. The legislators are not asleep, the Governors are not asleep, the attorneys general are not asleep back in the States. They can handle this problem. That is the plea of the contract in reality. Get all of these things, housing grants, block grants to the States, welfare block grants, whatever it is. Give it back to the States.

Not on this one. You are in the hands of the Philistines, that manufacturing crowd out there—the Conference Board, the NFIB, the Chamber of Commerce.

I have been elected six times and they do not come running.

That crowd that we have, they come running. Yes, the Chamber wants to know where you stand, the NFIB, the Conference Board, everything else. They talk about trial lawyers giving you money. They give money but the others, the manufacturing and insurance crowd, they give more money and they have the votes.

And the people who really oppose this bill do not have a PAC. Have you ever seen a PAC for the American Bar Association? Have you ever seen a PAC for the Consumer Association, Public Citizen, Association for State Supreme Court Justices, Association of State Legislators, law school deans—they have all appeared in the polls—the State attorneys general? They do not have PAC's.

But there they come with all this. And we have been working with them, but we have the contract now. And we have had many of these Senators that finally changed their votes who said, "You know, I got in trouble. I committed a year ago."

That is how it happens, if people want to know. When all the powerful organizations come to you in a campaign and you are for reform—"Yeah, I'm for reform. I'm for reform." They have been reminded in the last several days in this debate here how they gave their commitment.

So I went to them, I said, "How do you change your vote?" They said, "Well, I got in trouble a year ago or 2 years ago when I was running." And that explains it. But it does not change the lack of merit in this particular initiative and the danger of it all.

So what we have is "Kill all the lawyers." You could see it in the amendments. That is what they have.

Our friend Dan Quayle started that before the American Bar Association some 4 years ago and we still have it going. If you can vote against the lawyers and say they are running away and getting all the money and everything else like that, you have mob action on foot and you can get it moving.

Well, Mr. President, it is bad law. What happens is they do not give you a Federal cause of action. If they had come in—and I have been insisting for the 15-year period, if you want to make a finding under the interstate commerce clause that they plea, that we are going to make a congressional finding that there is a national problem and give a Federal cause of action, that is one thing. No, that is not what they want. They say they are trying to get simplicity, eliminate complexity, get uniformity. But then they put guidelines down for the 50 States to interpret and then can go into the Federal court and, by the way, exempt the manufacturer. Any of these things that I have talked of, any of these initiatives, any of these amendments, just exempt the crowd that wrote the bill.

Now I can tell you here and now if that is not hypocrisy, I do not know what the heck is. And yet they are saying they are proud now and they want to thank everybody, tell them about their balance and everything else like that.

This is one of the most dangerous initiatives. It has been held up for 15 years by all of these organizations. It is a nonproblem. They know it. It is a solution looking for a problem, in all reality.

And we are headed, yes, with the English rule, we are headed with two levels of society. "Get rid of the jurors and people with common sense back home. We know it all up here."

They started over 130 years ago diminishing that guaranteed right of trial by jury. So today, less than 2 percent of civil cases go to a jury trial in England. And you are told that the issues are too complex, you do not have

sense enough to understand and what have you. And that is the initiative that starts today on the floor of the U.S. Senate.

They know in their hearts it is bad law. They have tried everything from the Girl Scouts, and had to withdraw that; they tried the Little League and had to withdraw that. They put George McGovern on TV and had to pull him off. They tried everything—the McDonald's case, then when that was explained to them, you do not hear them talk about the McDonald's case. Always these little anecdotal things that they bring up.

But they got one winner: "Let's get rid of the lawyers." We can get a majority vote on that. We can get a majority vote on that. And so it is.

In essence, what you are really doing is getting rid of the jurors. The trial by jury, they are eroding it, nibbling at it bit by bit is the intent and purpose, just like they had in England where you do not even get a review of facts or anything else. You cannot even ask the jurors any questions; you cannot find the background.

I could go down the list, but my time is now limited and I am practically out of time.

I simply say that it is a sad day in the history of government because it brings to culmination the so-called contract of reform which goes totally in contradiction to the entire theme of the contract back home. The people know—you are going to hear it now in the budget. The people back home need a tax cut because they know how to spend the money better than the Government up here. All of these pleas and everything. The people back home know this, they know that, they know everything except the facts of the case that they are sworn to uphold.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLINGS. I yield the floor.

Mr. GORTON. Mr. President, again, for the information of Members, we will now have the vote on my motion to table the Dorgan amendment.

There are then two other amendments, all amounting to the same thing, that will come before final passage. I hope that those two amendments will be adopted by voice vote. I will then ask for a rollcall on final passage of the bill.

The PRESIDING OFFICER. Under the previous order, the question occurs on agreeing to the motion to table amendment No. 629 offered by the Senator from North Dakota [Mr. DORGAN]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 160 Leg.]		
YEAS—54		
Abraham	Frist	Lugar
Ashcroft	Glenn	Mack
Bennett	Gorton	McCain
Bond	Gramm	McConnell
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Robb
Coverdell	Hutchison	Rockefeller
Craig	Inhofe	Santorum
DeWine	Jeffords	Smith
Dodd	Johnston	Snowe
Dole	Kassebaum	Stevens
Domenici	Kempthorne	Thomas
Exon	Kyl	Thompson
Faircloth	Lott	Thurmond
NAYS—44		
Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Packwood
Bradley	Heflin	Pryor
Breaux	Hollings	Reid
Bryan	Inouye	Roth
Bumpers	Kennedy	Sarbanes
Byrd	Kerrey	Shelby
Cohen	Kerry	Simon
Conrad	Kohl	Simpson
D'Amato	Lautenberg	Specter
Daschle	Leahy	Wellstone
Dorgan	Levin	
NOT VOTING—2		
Lieberman	Warner	

So the motion to lay on the table the amendment (No. 629) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TOXIC HARM

Ms. MIKULSKI. Are asbestos-related injuries and deaths covered by the toxic harm exception to the statute of repose in S. 565?

Mr. ROCKEFELLER. Yes, asbestos-related injuries and deaths are covered by the toxic harm exception to the statute of repose.

AMENDMENT NO. 790

Mr. HATCH. Mr. President, I wish to discuss language in the Gorton-Rockefeller-Dole substitute amendment concerning punitive damages. The substitute language includes a formula for calculating the amount of punitive damages allowed to be awarded to a claimant against a defendant. This formula originated with Senator SNOWE and was added to the Dole-Exon-Hatch amendment last week, with my support. It remains part of the underlying substitute amendment. The formula to which I refer provides generally that the amount awarded to the claimant for punitive damages in a products liability action shall not exceed the greater of two times the sum of the amount awarded for economic loss and

noneconomic loss, or \$250,000. In the case of a small business, a special rule provides that the amount of punitive damages shall not exceed the lesser of two times the sum of the amount awarded to the claimant for economic loss and noneconomic loss, or \$250,000.

It is my understanding that the formula for calculating the amount of punitive damages is intended to take into account the separate provision in the bill that makes a defendant only severally liable for noneconomic losses. Thus, when doubling the amount of noneconomic losses in computing the upper limit of punitive damages which may be awarded against a defendant, it is appropriate only to consider the share of noneconomic loss attributable to that defendant. It would be unfair and inconsistent with other provisions in this act to expand the base multiplier in the punitive damages section of this bill to include noneconomic losses not attributable to a defendant.

Mr. HELMS. Mr. President, the pending Product Liability Fairness Act, even though it has been watered down considerably by our Democrat colleagues, is nonetheless needed to remedy the morass of product liability laws plaguing our judicial system today. We have a duty to ensure that Americans are fairly compensated when they are injured by faulty products. But today's legal system has been maneuvered into a position of encouraging many people to file frivolous suits demanding unreasonably high damage awards.

I am extremely disappointed that the medical malpractice provisions, approved by the Senate on May 2, were deleted because of threats by the Democrats that they would block passage of the entire bill.

Americans are suing each other too often, for too much money and for too little reason. Last year, more than 70,000 product liability lawsuits clogged U.S. courts. And by 1992, lawyer fees accounted for 61 percent of the total amount spent on product liability claims.

In so many cases, those who are injured least tend to receive the largest settlements, while many of the most severely injured spend years in the legal system, sometimes never receiving the compensation they deserve.

Mr. President, the pending legislation will be a first step toward remedying these problems with the current system by:

First, giving manufacturers and consumers certainty as to the rules of the game when it comes to product liability lawsuits;

Second, allowing consumers with valid claims to receive fair awards, and receive these awards faster;

Third, reducing costs of litigation and insurance premiums, which in turn, will lead to lower prices for consumer products;

Fourth, giving consumers with valid claims more time to file complaints against negligent manufacturers; and

Fifth, eliminating unwarranted lawsuits which threaten to bankrupt small businesses—the segment of our economy that provides most of the jobs in this country.

Mr. President, rather than expound on the problems with the current system, I will share with my colleagues a letter from the plant manager of Butler Manufacturing, a small business in Laurinburg, NC. His letter is similar to many I have received from 99 other small businessmen from my State. It reads:

DEAR SENATOR HELMS: As you know, Butler Manufacturing has a plant in Laurinburg, North Carolina which employs two hundred workers. We urge your support of S. 565, the Product Liability Fairness Act, which offers some of the reforms needed in the product liability area.

Our company spends hundreds of thousands of dollars each year for product liability insurance and legal fees and our employees devote hundreds of hours of their time to help our attorneys defend unwarranted product liability claims.

Many times we settle a claim which we honestly believe has little merit because it is less expensive to settle than to litigate or to expose the Company's assets to punitive damages.

Our Company competes in the international market place. To be competitive we cannot bear the cost of product liability insurance, huge punitive damage expense, and large costs to defend unwarranted claims which our competitors do not bear.

We believe persons injured by faulty products through no fault of their own ought to be compensated for their out-of-pocket losses. However, current court-made rules allow much greater compensation than is justified and also make it difficult for companies to properly defend themselves.

Mr. President, this explains why small businesses—not the Fortune 500 companies—are the ones most threatened if nothing is done to reform the current legal system.

According to the National Federation of Independent Businesses, the cost and availability of liability insurance rank No. 5 out of a list of 75 problems facing small businesses today. They are constantly in danger of being pulled into unwarranted lawsuits, where the fear of punitive damages forces them to settle in cases in which they should never have been involved.

About half of all small business owners earn about \$50,000 a year. However, a Rand Institute study shows that it costs the same small businessman an average of \$100,000 to defend against a lawsuit—regardless of the suit's merit. Thus, defending even a single unwarranted lawsuit costs twice as much as the average small business owner earns in a year.

Perhaps the most critical problem for small businesses is something lawyers know as joint and several liability, which permits plaintiffs to recover the full amount of damages from any one of the defendants—regardless of the amount of fault of the individual defendant. So, even if a small businessman is responsible for only 10 percent of the damage caused the plaintiff, under the current system, that busi-

nessman can still be held liable for 100 percent of the damages. The pending bill fixes this problem by holding a defendant liable for the percentage of noneconomic damages for which he or she is responsible.

Mr. President, I have many friends who are trial lawyers. They have made some compelling arguments in favor of the current system; however, in this matter, we have had to agree to disagree.

For example, trial lawyers argue that: First, limits on punitive damage awards are unnecessary because courts don't frequently award punitive damages; and Second, when they are awarded, punitive damages generally do not amount to very large sums.

As every first year law student knows—or should know—there are three kinds of damages awarded in civil lawsuits.

The first—economic damages—reimburses an injured person for lost wages, medical care, and out-of-pocket costs incurred as a result of the injury.

Second—noneconomic damages—are awarded for things such as pain and suffering, and

Finally, there are punitive damages. The purpose of punitive damages is not to compensate the injured person, but rather to punish the defendant for his or her negligent behavior. Most of the disagreement in the pending bill surrounds punitive damages.

Mr. President, are punitive damages rarely awarded as trial lawyers claim? No. Injured parties routinely request punitive damages in product liability and other tort claims. They do so because they know that's where the big bucks are. Not only are punitive damages routinely requested, the amount of punitive damages awarded is increasing. In Cook County, IL, the average punitive damage award was \$6.7 million. In 1984, the average punitive award in San Francisco was \$743,000.

In North Carolina punitive damages have been awarded only once. Despite this fact, any time a product manufactured in North Carolina ends up in another State, the North Carolina manufacturer can still be hauled into an out-of-State court and sued for outrageous punitive damage amounts.

Mr. President, trial lawyers also assert that product liability reforms are unnecessary because so very few lawsuits filed today are product liability cases. They claim that contract disputes and domestic relations cases make up more of the current case load in today's courts.

That product liability cases make up a small piece of all tort cases ignores one important and critical point: It only takes one product liability lawsuit to bankrupt a small manufacturing firm. Even if the manufacturer is not found negligent, it still costs that small business a small fortune to defend the lawsuit.

Lastly, lawyers argue that product liability reform will not lower liability

insurance premiums that manufacturers pay. I disagree. Over the past 40 years, liability insurance costs have increased 4 times the rate of growth of the national economy.

Moreover, for every extra dollar a company pays in product liability insurance, that's a dollar less in an employee's pocket, or a dollar less used to develop new products.

In closing, let me return to the letter from the plant manager in Laurinburg, NC. This is a small business pleading for fairness and for an opportunity to compete fairly for business. If this plant, and the other 99 small businesses who've written me, are to prosper, they cannot afford to defend unwarranted claims every time they turn around.

We cannot continue to tie the hands of small businesses by forcing them to defend case after case in a legal system that is unfair, inconsistent, and unpredictable. The pending bill does nothing to impede an injured person's right to recover reasonable damages for his or her injuries. Nor does the bill favor any particular industry. It simply weeds out frivolous and unwise lawsuits, making it easier and for injured individuals to obtain the recovery they deserve.

PRODUCT LIABILITY—STATES' RIGHTS AND ONE-WAY PREEMPTION

Mr. FEINGOLD. Mr. President, I rise to briefly discuss one of the more interesting—and most distressing—components of S. 565, the so-called Product Liability Fairness Act. That, Mr. President, is the conscious and flagrant expropriation of the rights of the State and local governments to fashion their own civil justice systems.

Over and over in the early months of the 104th Congress we have heard the distinguished majority leader announce his intent to "dust off the 10th amendment". That amendment, part of the Bill of Rights and sometimes thought of as the forgotten child of the Bill of Rights, states that:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Well, here is a power that has been reserved by the States for over 200 years. And I cannot help but note the hypocrisy present here. We have heard the thunderous voices of States rights advocates, railing against Washington bureaucrats and proclaiming that this new Congress is committed to the proposition of shifting control of policies from Washington back to the States.

But then many of the same advocates of States rights also support legislation such as this that is designed to seize control over a policy area that has been the domain of the States since our Nation's founding and turn it over to 535 Members of the Congress.

Make no mistake about it: Under this legislation, we are going to tell the States—even in instances where there is no Federal jurisdiction over a tort case—the parameters within which

they are to conduct their judicial proceedings.

That means that if a consumer in Sheboygan sues a manufacturer in Green Bay, they will have to litigate under Federal standards, such as a Federal cap on punitive damages, even though this is a completely intrastate judicial question.

There is also a provision that states that a decision of a U.S. circuit court of appeals interpreting the provisions of this legislation shall be controlling precedent to be followed by each and every Federal and State court within that circuit unless overruled or modified by the Supreme Court.

This provision was denounced by Stanley Feldman, chief justice of the Arizona State Supreme Court in his testimony to the Senate Commerce Committee on April 3 on behalf of the conference of chief justices. Chief Justice Feldman said that:

... This provision will be the first time in the history of America that any Federal court has been given the authority to decide a question of State law, a subject which raises the chills on the back of every member of the conference of chief justices.

What happened to the commitment of those on the other side of the aisle to return power back to the State governments? What happened to all of those criticisms we heard of health care reform and other initiatives last year where the other side derided the one-size-fits-all approach to solving problems?

When I made my opening statements on this bill I mentioned a statement made by the Speaker of the House in his address to the Nation on April 7 about the intent of the congressional Republicans in the 104th Congress. The Speaker stated that:

We must restore freedom by ending bureaucratic micromanagement here in Washington . . . This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters; we've got to return power back to you—to your families, your neighborhoods, your local and State governments.

Mr. President, I don't say this very often, but when the Speaker of the House says: "This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters," I tend to agree with him.

That is precisely why I opposed last year's crime bill. Enforcement of our criminal laws is best left in the hands of our local police and sheriffs' departments, because what works and is needed in the inner city of Milwaukee is not necessarily what works and is needed in the rural confines of Rusk County. It is problematic enough for a Senator from Wisconsin to understand these regional distinctions, but to suggest that 524 Members of Congress from 49 other States will know how to address the idiosyncrasies of fighting crime in Onalaska, WI, seems a bit far-fetched to me.

This same principle holds true for our tort systems. Maybe one of our

rural farming States has purposely fashioned their legal system so as to protect farmers from defective machinery that is commonplace in that State. Maybe another State that attracts large numbers of retired persons has used the availability of punitive damages to deter certain products from being sold that are unsafe and would disproportionately affect the elderly.

The other side talks a good game when it is expressed over and over again that State legislatures and governments are best equipped to solve problems that are local in nature. But whether it is crime legislation, or civil justice reform, or even term limits, there is a clear assumption that local or private decisions are best made by those in Washington, DC.

I served in the Wisconsin State Senate for over 10 years and I know how the various State legislatures around the country would react to this bill. In fact, the national conference of State legislatures strongly opposes the Product Liability Fairness Act. In a letter sent to all Members of this body, the conference states:

State civil justice systems are expressions of local values and needs, as the Founders intended when they established our system of Constitutional federalism. National product liability standards put at risk this fundamental expression of self-government and federalism.

Moreover, the confusion resulting from superimposing a one-size-fits-all Federal standard for product liability over existing State tort law presents a risk to the efficient administration of justice in State courts.

Mr. President, I think it is abundantly clear that the notion of States' rights is about to go right out the window as we usurp over 200 years of State control over their tort systems. Another organization comprised of those who are involved in local judicial systems is the conference of State chief justices. Let me quote from a statement submitted by the chief justices expressing their opposition to Federal product liability legislation. They say:

The negative consequences of S. 565 for federalism are incalculable. With the proposed legislation reaching so far into substantive civil law, States will be forced to provide the judicial structure, but will not be permitted to decide the social and economic questions in the law that their courts administer. Enactment of S. 565 would alter, in one stroke, the fundamental principles of federalism inherent in this country's tort law. . . .

S. 565 is a radical departure from our current legal regime and is neither justified by experience nor wise as a matter of policy.

So I think it is clear what a dramatic and radical arrogation of power this legislation represents. But even if you accept this notion that we should have Federal standards with regard to product liability actions—and I don't—but even if you do believe such standards are necessary, this legislation is light-years away from bringing any sense of uniformity to our civil justice system.

The supporters of this legislation have made it clear that they believe Federal uniform standards for our product liability laws are warranted,

presumably to address the supposed uncertainty and unpredictability of our legal system.

Those of us on the other side disagree. We believe the system was designed to protect innocent consumers who have been injured by defective products, and more importantly, we are reluctant to usurp the authority of the States over an area that for 200 years has been the domain of the State legislatures.

As I stated earlier, many of us are also bewildered as to why some would make changes to the legal system that are opposed by the National Conference of State Legislatures, the Conference of Chief Justices, the American Bar Association and law professors throughout the country.

But I think it is important to point out the great fallacy in the notion that this bill provides uniform Federal standards. It clearly does not. What it does provide, is a line in the sand. This bill says that State laws and State reforms that are designed to protect consumers, children, working people, and the elderly are no longer applicable.

It says that those States do not know how to protect consumers—we here in Washington, DC know best how to do that. If you are on that side of the line in the sand, well sorry but you are out of luck because apparently it is the Congress that knows best how to protect farmers in Iowa, factory workers in Michigan, and children in California.

But if you are on the other side of that line, if there are State laws or State reforms that are designed to protect the interests of the business and manufacturing communities, well those are OK. This bill says that those State legislatures know exactly what they are doing and we should not preempt any of their efforts.

These are uniform Federal standards? Let me raise a couple of examples to illustrate just how unfair and unbalanced the bill is in this regard. The punitive damage cap is an obvious example. The underlying bill calls for a cap on punitive damages equal to the greater of two times compensatory damages of \$250,000. In addition, under certain circumstances a judge may award supplementary punitive damages above the amount the jury has rewarded.

I think the layperson would look at this provision and assume that this cap—a Federal cap of \$250,000 or two times compensatory damages—would apply across the board. In other words, whether you were injured by a defective product in Wisconsin, New York, or Mississippi and filed suit in any of those State courts, a jury would be able to award punitive damages of up to \$250,000 or two times compensatory damages.

Unfortunately, especially for those who support uniformity, that is not what this legislation would do. Under the now-amended bill, the punitive damage cap would not preempt, supersede, or alter any State law to the ex-

tent that such law would further limit the availability or amount of punitive damages. Those State laws would not be preempted.

In other words, if a State allowed unlimited punitive damages, or even had a cap but that cap was higher than this new Federal cap, that State law would be preempted by this legislation.

But if a State prohibited punitive damage awards, or had a cap lower than the cap in the underlying bill, that State law is hailed as responsible and fair and allowed to continue under this legislation.

I wonder if any of my colleagues are familiar with the "Slip 'n Slide" case we had in Wisconsin just a few short years ago. The Slip 'n Slide is a sort of water slide that is spread out over the ground. You are supposed to get a good running start, jump head first on the wet plastic and then slide along the rest of the wet plastic. It was a product that was manufactured for families and obviously, targeted especially for children.

The plaintiff in this case, a 35-year-old father of two, dove onto this water slide, struck his chin on the ground and broke his neck. He was rendered an incomplete quadriplegic. The plaintiff was unable to return to his \$12,000 a year job and had no means to pay the \$46,000 in medical bills he was saddled with.

During the trial, the plaintiff alleged that the product was unreasonably dangerous for its intended purpose. This was compounded by the fact that the water slide's warnings were inadequate because they were not prominently displayed among the product's list of instructions and warnings.

Testimony was presented showing that other users had experienced similar injuries and one individual had even died from such an accident. It was also made clear that the manufacturer continued to market the product even after it was made aware that numerous neck injuries such as this were occurring.

Let me say that again; the facts showed that the manufacturer knew the product was causing neck injuries and yet still continued to market the product.

The jury in this case, in a Wisconsin State court, found that the manufacturer was 100 percent at fault and awarded over \$12 million to the plaintiff, including \$10 million in punitive damages. This judgment was later reduced so that the plaintiff and his family in the end received about \$5 million.

We know what the other side's response to this is; "\$10 million? That jury must be out of control."

Some of us, however, have faith in the ability of the American people to serve on juries and administer justice in a fair and equitable manner.

You can bet, Mr. President, that the manufacturer of the Slip 'n Slide is thrilled about this legislation. Those on the other side want to insulate such companies from juries and the threat

of extensive punitive damages. Why? Because such a large punitive damage award might force the manufacturer to take a product off the market that has been considerably profitable for that manufacturer.

But I would contend, Mr. President, that our civil justice system is designed to do just that—to sanction parties that knowingly market a defective product and to protect the consumers that are victimized by these products.

That Wisconsin jury awarded a large punitive damage award for two reasons: One, to get a dangerous product off the market that is often used by young children and that was causing numerous neck injuries and paralysis; and second, to punish the manufacturer for continuing to market the product with knowledge of its very serious defects and to deter other manufacturers from engaging in similar conduct.

I would say that in this case, the jury—in a State court—knew exactly what it was doing and justice was served.

Mr. President, the Wisconsin jury in this case awarded \$10 million in punitive damages in the slip 'n slide case. I have no doubt that most of the proponents of this bill believe that this is a classic case of a jury run amok.

Here is what I find interesting though. That jury found the manufacturer in this case 100 percent at fault. Suppose this was a criminal defendant on trial for assault with a deadly weapon. After all, the manufacturer in this case was marketing a product that they knew was causing neck injuries and paralysis.

The fact is, if this had been a criminal defendant I have no doubt that there would have been a bidding war on the other side to see who could propose the stiffest criminal sentence for this defendant.

We can only speculate about what the fate of the Slip 'n Slide would have been had this accident and litigation occurred in a State that currently prohibits punitive damage awards. Most likely, more neck injuries and maybe some fatalities would have occurred until a suit had been filed in a court where punitive damages were permitted.

Had the underlying bill been in effect 4 years ago, that Wisconsin jury would have had to award an amount consistent with the arbitrary cap. One can only wonder if the manufacturer would have pulled this dangerous product because of a \$250,000 slap on the wrist.

Let me say this one more time: The jury in this case—a State jury—found the manufacturer to be 100 percent at fault. The jury found that the manufacturer continued to market the product—a product targeted mostly at children—even after the manufacturer discovered that the product was causing numerous neck injuries and paralysis.

The jury elected to award substantial punitive damages to punish the manufacturer for this reprehensible behavior

and to deter other manufacturers from engaging in similar conduct.

I say to my colleagues that this is exactly what our civil justice system, grounded in the principle of trial by jury, was designed to do and I am confounded as to why the supporters of this bill are unwilling to trust those Americans that meet their civil duties by serving on juries.

How troubling that at a time when Americans are so distrustful of their Government that we in Government are not willing to trust Americans to administer civil justice.

Mr. President, I am somewhat mystified as to how supporters of this bill can suggest that this bill is proconsumer when they want to place this kind of a straightjacket on juries. In addition, I find it absolutely ludicrous that the supporters of this bill would suggest that we are providing uniformity when we are going to have completely different punitive damage standards throughout the 50 States.

Let me provide another example of how this bill would pre-empt State laws to the extent that those laws are proconsumer.

S. 565 creates a new Federal standard for the number of years a manufacturer or product seller can be held liable for a harm caused by a particular product. Known as a statute of repose, that period is 20 years under this bill. Why 20 years? Good question.

The product liability legislation considered in the last Congress, written by the same two principal authors, contained a 25-year statute of repose—5 years longer. Why? Well a footnote in the committee report from last year justified 25 years by pointing out that according to testimony received by the Commerce Committee, and I quote,

Thirty percent of the lawsuits brought against machine tool manufacturers involve machines that over 25 years old.

Therefore, presumably, the authors of this bill selected 25 years as the life expectancy of all products manufactured in the United States.

But now we have a new bill that the supporters have tried to characterize as much more moderate and much narrower than either the House-passed legal reform legislation or the product liability bill considered by the Senate just last year. But remarkably, the 25-year statute of repose has been dropped to 20 years.

Why? Once again, good question. This year's committee report conspicuously leave out that footnote about the machine tool testimony, and makes absolutely no mention whatsoever as to why 20 years was selected.

Instead, the committee report promotes the consistency of this statute of repose with the General Aircraft Revitalization Act of 1994, passed by this body last year. Mr. President, I voted for that legislation. But that legislation provided an 18 year statute of repose for a very narrow segment of our manufacturing base.

This body came to the conclusion, the overwhelming conclusion as I recall that vote, that 18 years was a reasonable length of time for liability claims associated with the general aviation aircraft.

This statute of repose, however, is entirely different. His 20-year period would apply to all durable products across the board with a few limited exceptions. Machine tools, farm equipment, football helmets—you name it. This Congress is going to decide that the life expectancy of virtually every product in America is 20 years.

But this takes us back to the issue of selective preemption of State authority over liability laws. Section 108(B)(2) reads;

... If pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

In other words, if a state legislature has decided against having a statute of repose, or has decided on a statute that is longer than 20 years, this new Federal law will override the judgment of that State legislature. Again, so much for uniform Federal standards.

Ironically, this year's committee report also justifies a Federal statute of repose on the basis that Japan is poised to enact a short 10-year statute of repose. So now apparently the Japanese Government knows better than the State of Wisconsin how to properly administer civil justice in cases involving Wisconsin litigants. I wonder how the Framers of the Constitution would feel about that assertion.

Before I conclude my remarks, Mr. President, I would like to remind my colleagues of the giant precedent we are about to set, or the radical departure from our current system as the Chief Justices put it. This legislation would make dramatic alterations to some of the oldest and most fundamental underlying principles of our judicial system.

Product liability is just a first step—the majority has made their intention clear to pursue legislation that would overhaul our entire civil justice system.

As we make these sort of tremendously consequential decisions, there are a variety of groups and individuals we can seek advice from. Those of us that oppose this legislation have chosen to listen to the experts on this issue—whether it is Chief Justices, the American Bar Association or the National Conference of State Legislatures.

But those who support this legislation do not want to listen to State legislators, judges or even the consumer organizations that this bill purports to protect. Instead, the other side has chosen to listen to the advice of corporate America on how to best to shield those who manufacture and sell defective products from any sort of li-

ability. That is unfortunate for all of us.

Thank you, Mr. President, and I yield the floor.

Mr. DOMENICI. Mr. President, I am pleased to support the efforts of my colleagues today to reform our system of products liability litigation. The Senator from Washington [Mr. GORTON], the Senator from Utah [Mr. HATCH], and the Senator from West Virginia [Mr. ROCKEFELLER] deserve a lot of credit for putting together a bipartisan approach to solving the problems associated with products liability.

I have watched this debate over the past 2 weeks with great interest. I was pleased to see that there was some interest in expanding this bill in order to achieve general across-the-board legal reform, and I supported many of the thoughtful amendments which were brought to the floor. I would have preferred to include the rule 11 amendment offered by the distinguished Senator From Colorado [Mr. BROWN] and the amendment on joint and several liability offered by the distinguished Senator from Michigan [Mr. ABRAHAM] in any bill we might eventually pass. But I realize that in the interest of compromise, changes had to be made in order to get something passed, and unfortunately that compromise will not include comprehensive legal reform.

I am no stranger to legal reform. I have been trying to fix our broken securities class action system for several years, and many of the problems associated with securities litigation are inherent to our general tort system. I also have introduced legislation in past years to fix some of the problems associated with medical malpractice.

I am disappointed that we will not address medical malpractice litigation reform in this bill. The distinguished Senator from Kentucky [Mr. MCCONNELL] and the chairperson of the Labor Committee, the gentlewoman from Kansas [Mrs. KASSEBAUM], did a fine job putting together a comprehensive and fair overhaul of our medical malpractice system. There were several provisions in the medical malpractice amendment which I included in my health care reform bill last Congress, and I believe that the amendment would have gone a long way toward reducing health care costs for all American citizens. For that reason, I hope that we will take up medical malpractice reform later on in this Congress.

Particularly, I would like to address collateral source reform, which would prevent duplicative payments by insurance companies for the same injuries. I heard just last week from an individual who works for a company that sells insurance in my home State of New Mexico. He told me about a case that he just handled where a claimant was paid five different ways for the same injury. He told me that four ways was common, but that this was his first five-way case. He told me that if we want to achieve significant reform, preventing

this sort of duplicative payment and the litigation that goes along with it will substantially strengthen our system. I hope we will continue to pursue collateral source reform later this year.

I also had hoped that we would be able to include general rule 11 reform in this bill and the Senator from Colorado, Senator BROWN, should be commended for bringing his important amendment to the floor. Prior to 1993, courts were required to sanction attorneys who filed a frivolous complaint, and rule 11 served as a healthy deterrent to strike suits. However, rule 11 was weakened in 1993 and judges were given the discretion to impose sanctions even when they found that a complaint truly was frivolous. Senator BROWN's amendment would return us to the pre-1993 standard and adopt a preference for the sanction to be payment of the attorneys fees and costs of the opposing party.

It also would limit fishing expedition lawsuits by requiring attorneys to make an adequate inquiry into the facts prior to the filing of a complaint. Attorneys should be required to stop, think and investigate the facts before filing lawsuits which could have a potentially devastating effect, and Senator BROWN's amendment would have done just that. I believe that this issue also should be re-visited later in the year.

As for products liability, there can be no doubt that the current system in place in this country extracts tremendous costs from the business community and from consumers. The great expense associated with products liability lawsuits drives up the cost of producing and selling goods, and these costs are passed on to the American consumer. We have heard several Senators talk about how half of the cost of a \$200 football helmet is associated with products liability litigation, and how \$8 out of the cost of a \$12 vaccine goes to products liability costs. We can no longer afford to require our consumers to pay this tort tax.

Because of the high costs associated with products liability litigation, American companies often find it difficult to obtain liability insurance. The insurance industry has estimated that the current cost to business and consumers of the U.S. tort system is over \$100 billion. Insurance costs in the United States are 15 to 20 times greater than those of our competitors in Europe and Japan. Much of this money ends up in the pockets of lawyers, who exploit the system and reap huge fee awards while plaintiffs go undercompensated and our businesses suffer.

For companies involved in the manufacture of certain products, like machine tools, medical devices, and vaccines, this means that beneficial products go undeveloped, or after they are developed, they do not make it to the marketplace out of fear of being sued. This hampers our competitiveness

abroad, and limits the products available to consumers. Harvard Business School Prof. Michael Porter has written about how products liability affects American competitiveness. He wrote:

In the United States * * * product liability is so extreme and uncertain as to retard innovation. The legal and regulatory climate places firms in constant jeopardy of costly, and, as importantly, lengthy product liability suits. The existing approach goes beyond any reasonable need to protect consumers, as other nations have demonstrated through more pragmatic approaches.

In the case of manufacturers of vaccines and other medical devices, the cost of our unreasonable and certainly unpragmatic products liability litigation system often means that potentially life-saving innovations never make it to the American public. Products liability adds \$3,000 to the cost of a pacemaker, and \$170 to the cost of a motorized wheelchair. It also has caused the DuPont Co. to cease manufacturing the polyester yarn used in heart surgery out of fears of products liability litigation. Five cents worth of yarn cost them \$5 million to defend a case, and DuPont decided that they simply could not afford further litigation costs. Now, foreign companies manufacture the yarn and will not sell it in the United States out of fear of also being sued.

In cases where a truly defective product has injured an individual, the litigation process is too slow, too costly, and too unpredictable. This bill, because it creates a Federal system of products liability law, will return some certainty to a system that now often undercompensates those really injured by defective products and overcompensates those with frivolous claims.

Those injured by defective products often must wait 4 to 5 years to receive compensation. This leads victims to settle more quickly in order to receive relief within a reasonable time. Companies must expend huge amounts of money in legal fees to settle or litigate these long, complicated cases. These again are resources that could be better spent developing new products or improving the designs of existing ones.

Another major problem with our tort system is with punitive damages. As their name implies, punitive damages are designed to punish companies and deter future wrongful conduct. They are assessed in these cases in addition to the actual damages suffered by injured victims.

Unfortunately, these damages have little effect except to line the pockets of lawyers. They serve relatively little deterrent purpose and led former Supreme Court Justice Lewis Powell to describe them as inviting "punishment so arbitrary as to be virtually random." Because juries can impose virtually limitless punitive damages, in Justice Powell's words, they act as "legislator and judge, without the training, experience, or guidance of either." Justice Powell is absolutely correct, and I applaud the drafters of this

bill for dealing with the problems associated with these types of damages.

Reform of punitive damages will return some common sense to the system. Under the current system, punitive damages do little to deter wrongful conduct and merely serve to line the pockets of contingency fee lawyers. Huge punitive damage awards also threaten to wipe out small businesses and charitable organizations. By limiting the amount of punitive damages available in these cases and raising the legal threshold for an award of punitive damages, this bill will relieve some of the pressure on even the most innocent defendant to settle or face an award which could potentially bankrupt the company. It also will provide some uniformity and certainty in States which still allow punitives. Finally, for those States which do not allow punitive damages, I think the bill makes it clear that they may continue to do so.

The drafters of this bill also have taken the wise step to reform joint liability, without limiting the ability of plaintiffs to recover their economic damages. The bill abolishes joint liability for noneconomic damages, like pain and suffering, but allows States to retain it for economic damages like hospital bills. This will reduce the pressure on defendants who are only nominally responsible for the injury to settle the case or risk huge liability out of proportion to their degree of fault, while ensuring that injured victims get compensated for their out-of-pocket loss.

I would have liked to see this extended across the board to all civil cases and I voted for the Abraham amendment, but at least in the area of products liability, this provision strikes a fair balance between the rights of injured plaintiffs and those of those defendants brought into cases merely because of their deep pocket.

The bill also limits liability in cases where the victim altered or misused the allegedly defective product in an unforeseeable way. It simply is unfair to hold manufacturers liable in cases where consumers use products in ways for which they were not intended. It also is unfair to hold defendants liable in cases where the plaintiff's use of alcohol or drugs significantly contributed to their injury. I am happy to see that this bill provides an absolute defense in such cases.

Mr. President, as I said earlier, I am no stranger to legal reform. Many of those who are responsible for this important and well-crafted legislation are cosponsors of the securities reform bill Senator DODD and I hope to bring to the floor soon after this bill. I hope that we can follow our colleagues in the House and enact comprehensive but fair legal reform in the 104th Congress. I appreciate all of the hard work that went into this bill and hope that we will pass it.

Mr. GLENN. Mr. President, product liability reform is long overdue and I am pleased that the Senate is acting

favorably on this bill. I have cosponsored product liability reform legislation in three previous Congresses.

I believe that this legislation is good for both consumers and businesses. Our product liability system is out of control and reform is desperately needed. Under our current system manufacturers of products are subject to a patchwork of varying State laws whose beneficiaries are most often lawyers instead of litigants.

The Congress is currently debating the proper role of the Federal Government across a broad range of issue areas. Many believe that functions now conducted at the Federal level should be moved to the States. On this issue I believe that we need a more uniform system of product liability and therefore Federal standards are necessary.

The current system is unfair to consumers. Much too much of the money paid by manufacturers goes to attorneys' fees instead of the injured party. The high cost of product liability insurance means higher costs for consumers. Because of the unpredictability of the current system, many severely injured consumers receive less than they deserve while mildly injured consumers often recover more. Furthermore, because of unpredictability, cases which are substantially similar receive very different results. Product liability cases often require a great deal of time and many claimants are forced to settle because of economic necessity.

The current system is unfair to manufacturers. The cost of litigation is a substantial expense to companies. Companies spend more on legal costs and less on other important areas such as research and development. In some cases manufacturers decide not to invest in or develop new products because of product liability concerns. Ultimately this burden on product liability makes our companies less competitive in world markets than foreign companies.

During the debate on this legislation, I have been particularly concerned that as we reform our product liability laws we do not affect the rights of individuals to bring suits when they have been harmed. On the contrary, it is my intent to bring rationality to a system that has become more like a lottery. For me, legal reform does not mean putting a padlock on the court house door.

There are several very important improvements that this legislation will provide. A statute of repose of 20 years is established for durable goods in the workplace. After 20 years no suit may be brought unless there is an expressed warranty.

Joint liability is abolished for non-economic damages in product liability cases. Defendants are liable only in direct proportion to their responsibility for harm. Therefore, fault will be the controlling factor in the award of damages, not the size of a defendant's wallet.

Another important area is punitive damages. I am supportive of raising the standard of proof to clear and convincing evidence. I am very concerned, however, about the establishment of caps on punitive damages and that the bill not impose a one size fits all prescription. In fact this is the issue that kept me from cosponsoring this legislation during this Congress. The bill originally provided for a proportional cap based on economic damages. During the amending process, that cap was improved by including all compensatory damages. Even with that improvement, however, the bill remained too restrictive. I support the further inclusion of the judge additur provision allowing an increase in punitive damage awards in especially egregious cases.

However, I believe that an additional provision in the additur section is without merit. That provision would allow a defendant another trial on damages should additur occur. This goes against the fundamental principles behind product liability reform—fairness, simplification and streamlining the system. Instead, this provision could provide a never ending litigation cycle which will insure full employment for all lawyers. And it increases the burden on an already overburdened legal system. This one provision is so egregious, that it prompted my vote against cloture on the Gorton-Rockefeller compromise which I found otherwise acceptable. I am pleased that Senators ROCKEFELLER and GORTON intend to address this language in conference.

Unfortunately, the product liability legislation this year turned into a Christmas tree attracting numerous unrelated items that had never been in the bill before. The expansion of the legislation to include medical malpractice and general civil liability litigation, as Senator ROCKEFELLER has accurately pointed out, caused the tree to topple over. Those matters should and will be addressed more completely in separate legislation.

During the debate, the Senate considered several amendments addressing medical malpractice. I believe action is needed to ensure timely and appropriate awards for patients who are harmed by negligent medical care, while at the same time protecting health care providers from unwarranted lawsuits and the need to practice costly defensive medicine.

I supported a medical malpractice amendment offered by Senator KENNEDY which was based on provisions contained in comprehensive health care reform legislation in the last Congress. This approach requires States to establish alternative dispute resolution mechanisms so that cases can get an early hearing, and it limits attorney's contingency fees to one-third of the first \$150,000 awarded and 25 percent thereafter. I regret that this amendment, which would have modified Senator MCCONNELL's medical malpractice amendment, was defeated.

I oppose Senator MCCONNELL's medical malpractice amendment, for both substantive and procedural reasons. I was concerned that the amendment did not allow States to adopt their own medical malpractice laws if they were more beneficial to consumers, and I opposed its caps on punitive damages.

I am hopeful that the Senate will return to the important issue of medical malpractice reform when the Labor and Human Resources Committee reports the bill it has approved and during debate on health care reform measures.

With the addition of medical malpractice and general civil liability, efforts to pass product liability bill reform were diminished. All of these extraneous items have threatened passage of a good product liability bill and the White House has also made it clear that they would veto such Christmas tree legislation.

In an effort to pare the bill back to its core principles, I opposed motions to cut off debate on the bill. I believe that through this process, the bill now provides effective product liability reform and its chances of enactment are improved. I applaud the efforts of Senators ROCKEFELLER and GORTON in the enormous amount of work undertaken to pass this legislation.

Mr. ROTH. Mr. President, the Senate's debate on product liability reform has revealed that many citizens and many members of the business community strongly favor legislation that would alter significant aspects of tort law. Products liability law traditionally has been a matter of State law, and the primary venue for products cases traditionally has been the State courts, which are our Nation's courts of general jurisdiction. Proponents of the products liability legislation have asked us, then, to change the laws of each State by creating Federal standards that would apply in all products cases, whether they are brought in Federal or State courts.

I oppose Federal products liability legislation because it will preempt whole areas of State law that have been developed incrementally over many, many years. The legislation does not deal with Federal question jurisdiction or any Federal cause of action. Instead, it pertains to an area of law that has long been the primary responsibility of State courts. If it is to occur, the reinvention of tort law should occur through the State courts and legislatures, which are best situated to determine and control the impact of reform within their own communities.

We are not dealing in an area where the States have proven incapable of enacting change. The vast majority of States have already adopted some type of tort reform, and many States are considering further changes. These reform measures have varied widely. Some have involved more dramatic changes than the Senate has debated; some have involved more modest

changes; and some have involved referendums on important State constitutional provisions. In my own State of Delaware, the State legislature has before it several different tort reform proposals.

The impact of the reforms passed so far at the State level is unclear, but at least by one measure, the State reforms appear to be having a positive effect. In a recent survey involving 1993 data, American businesses for the first time in many years reported that they spent less on insurance and other risk-related expenses than they did the year before. Much of the savings came from changes enacted by States to their workers compensation laws, which have enabled employers to contain their workers compensation costs in various ways. The survey reported that the cost businesses paid for liability risks, which includes products liability, had leveled out. This is encouraging news.

The patchwork course of tort reform at the State level has not happened with the alacrity or the uniformity that many reform proponents would like to see. But the State efforts demonstrate why Federal legislation in this area is so profoundly misguided. In the best tradition of our Federal form of Government, the States have balanced, and in many instances are still considering how to balance, the competing interests in the tort reform debate for their own communities. We stand poised to upend that State-based process in favor of legislation that purports to create uniform Federal standards. In doing so, we are involving the Federal Government intimately in an area where it does not belong.

The Supreme Court's recent ruling in *United States versus Lopez*, the case which struck down as unconstitutional the Federal Gun Free School Zones Act, raises a serious question as to whether the Federal Government is permitted to take over the law of products liability.

I oppose the products liability legislation not because of any specific provisions being debated, but because the federalization of this area of the law is a bad idea. Federalizing products liability law embarks us, I fear, on a course where over the years Congress will succumb to a creeping temptation to federalize other areas of State law solely, as in this case, on the grounds of convenience. I am wary of where that course leads.

(At the request of Mr. ROCKEFELLER, the following statement was ordered to be printed in the RECORD.)

• Mr. LIEBERMAN. Mr. President, due to the death of a close family member, I am regrettably unable to be present on the Senate floor today to join my colleagues in passing product liability legislation. It is day long awaited by those of us who have been working on behalf of reform for years only to be denied, not only passage of a bill, but full and open debate. I was proud to be

a cosponsor of past product liability bills, including this year's bill, S. 565.

Credit for this remarkable turn of events is due to Senators ROCKEFELLER and GORTON, who have labored long and hard on the Senate floor over the last 2 weeks and, quite literally, for years to produce a fair bill. It is their perseverance and fair treatment of all that is responsible for our success today. Their staffs have done extraordinary work on their behalf and deserve all of our thanks—Tamera Stanton, Ellen Doneski, Lance Bultena, Trent Erickson, and others.

Were I present today, I would have voted to table Harkin amendment No. 749, to table Dorgan amendment No. 629 and, of course, I would have enthusiastically voted "yes" for final passage.

Mr. President, I would ask unanimous consent that I be added as a cosponsor of the bill as passed by the Senate today. This is an important first step toward comprehensive reform of our legal system. It is incremental reform, but its significance should be understated. It establishes some important principles for further reform: parties responsible for harm must be held fully accountable and parties who have caused no harm should not be bullied into settlements by a system that does more to compensate lawyers than to achieve justice for injured people. •

Mr. PRESSLER. Mr. President, as we conclude the debate over S. 565, the Product Liability Fairness Act, we have come full circle.

COMMITTEE ACTION

On March 15 I joined with Senators GORTON and ROCKEFELLER in introducing legislation designed to reform that portion of America's tort system dealing with products liability. Two days of hearings were conducted on the bill and on April 6 the Senate Committee on Commerce, Science, and Transportation, of which I am chairman, met in executive session to consider the legislation.

During the committee process there was talk of expanding the bill to encompass a broader array of tort reform. As chairman, I resisted efforts to expand the legislation into any areas that did not fall within the jurisdiction of the Commerce Committee. Do not get me wrong. I support more broad-based tort reform. My voting record over the past 2 weeks proves that fact. However, during committee consideration I believed it was important not to add provisions that fall under the province of other Senate committees. As a result, on April 6 the Commerce Committee voted 13 to 6 to send a products liability reform bill to the full Senate.

SENATE CONSIDERATION

On April 24 the full Senate took up the measure. Over the past 2½ weeks the legislation has consumed some 90 hours of Senate debate. It has been a constructive process. No one can say this body did not fully explore the issues involved. No one can say we

blocked any attempts to make changes to the legislation. Indeed, it was those—like myself—who favored a broader bill that found themselves blocked.

Since April 24, we have debated and voted upon over 30 amendments. Roughly a dozen of those dealt with reforming the medical malpractice system. Senator MCCONNELL introduced a broad reform amendment similar to legislation that had been fully debated by the Committee on Labor and Human Resources. That major amendment, together with a number of smaller malpractice reform measures passed the Senate and became part of the bill. I was proud to support these efforts and voted for many of the malpractice initiatives.

Next the Senate turned its attention toward broadening reforms concerning punitive damages. By considering some half dozen punitive damages amendments and adopting several—including major provisions offered by Senators DOLE and HATCH, by Senator SNOWE and by Senator DEWINE—a majority of the Senate worked its will to expand the reform of punitive damage awards from product liability cases to include all civil cases. Again I supported these efforts and worked for their passage.

Finally, the Senate turned to a consideration of joint and several liability. S. 565 as reported contained a provision abolishing joint liability for non-economic damages. As to these damages, defendants would be liable only in direct proportion to their responsibility for the claimant's harm. They would not be responsible for the harm caused by another defendant who later was found unable to pay the compensation awarded. In other words, with regard to noneconomic damages, a defendant's liability would be several and not joint. Senator ABRAHAM offered an amendment on the floor to extend this concept to all civil cases. Unfortunately, that amendment was tabled.

Mr. President, these actions brought us to Thursday of last week. They also put a majority of the Senate on record in favor of broad-based legal reform. Most importantly, our efforts produced a fair, reasonable, and balanced bill.

Sadly, our efforts were not enough. Last Thursday the Senate failed in two votes to end debate, allow a vote on final passage of the bill, and move to a conference with the House of Representatives to work out the difference between our bill and the much more sweeping legislation passed by the House earlier this year.

As a result, Senate leadership crafted an alternative bill. That measure, introduced Friday as a substitute to the pending legislation, returned the reform initiative to its Commerce Committee roots. That proposal, along with the amendment we are debating today, is very similar to S. 565 as reported by the Commerce Committee.

How did this happen? Quite simply the opponents of broad-based tort reform were highly effective in their

campaign against the legislation. Like much of the debate over the issue of civil justice reform, the rhetoric tended to get very emotional and often strayed off course.

THE TRUTH ABOUT THE BILL

Mr. President, the truth is this legislation would not change any of what is right with our current legal system. The courthouse doors would remain open. Consumers would still have a full range of rights. Persons wrongfully injured still would be compensated. Tort cases could be used to provide a strong check on corporate behavior. Contingent fees would continue to allow ordinary citizens with limited means the ability to bring suit. What would change is that frivolous lawsuits would be curtailed—pure and simple.

In an earlier statement I outlined how the bill's provisions concerning punitive damages, the statutes of limitations and repose, joint and several liability, defenses for alcohol and drug abuse, and biomaterial suppliers would benefit small business, consumers, and those injured by products. Therefore, I will not take the Senate's time to reexamine those issues today. It is not necessary. Under the latest alternative we have before us today, the things I said in that statement continue to apply.

I would add only a few comments concerning the views of the American people—specifically the citizens of my home State of South Dakota—with regard to our legal system. A recent poll conducted in my State found that 83 percent of survey respondents say that "the present liability system has problems and should be improved," while only 10 percent say that "the present liability lawsuit system is working well and should not be changed."

In addition, this is not a partisan issue: 78 percent of Democrats, 83 percent of Independents, and 88 percent of Republicans in South Dakota responding to the survey say there are problems that need to be improved. Of those who had served on a civil trial jury, 79 percent say the system has problems and needs improvement.

Mr. President, the pending measure is not as broad as I would like. I truly wish we could have done more to address the problems of the tort system generally and not limit ourselves simply to product liability cases. However, I am gratified the model used by the Senate for product liability reform continues to be the bill reported to this body by the Commerce Committee. It represents an excellent move forward and I strongly urge all of my colleagues to vote for this legislation.

Mr. BINGAMAN. Mr. President, I rise today in opposition to H.R. 956, the Product Liability Act of 1995.

I have closely followed the debate on this legislation over the past 2 weeks and I have come to the conclusion that despite the efforts of many of this Chamber, including my good friend from West Virginia, to craft a balanced bill, the bill we are voting on today falls short of that goal.

Mr. President, the issues we have debated over the course of the past 2 weeks are complex and far reaching. Contrary to what some would have the American public believe, the solutions to the problems facing our legal system cannot be explained away in 30-second sound bites or by anecdotal evidence. Each day throughout this country, judges and juries struggle to determine what is meant by justice, and, I believe in the vast majority of cases, these people, our neighbors, friends, coworkers and family, do a remarkable job of determining what is fair and what is just.

I have supported reforms to our legal system in the past and was prepared to support a reasonable reform measure at the end of this debate. I am a co-sponsor of S. 240, the Securities Litigation Reform Act of 1995, authored by my colleagues from New Mexico and Connecticut. I have supported my own State's efforts at reform in the area of product liability and medical malpractice, and I worked with my colleagues on the Labor and Human Resources Committee last year to fashion reasonable medical malpractice reform during the health care reform debate. Last week, I voted for an amendment by my colleague from Massachusetts, Senator KENNEDY, that was a reasonable approach to medical malpractice reform and would have protected the rights of States such as New Mexico to enact their own reform.

Indeed, a proposal that would have significantly improved this legislation was considered by Senator BREAUX. This amendment would have created a truly uniform statute of repose and addressed the concerns about the elimination of joint and several liability in a reasoned and balanced matter. The amendment also would have allowed a jury to determine whether or not punitive damages are warranted in a particular case and would have allowed the judge to determine the amount of punitive damages that should be awarded. Unfortunately, Senator BREAUX did not have the opportunity to offer his amendment and the Senate did not have the opportunity to debate it as a result of cloture being invoked yesterday.

I have come to the conclusion that the bill that we vote on today tilts the scales too heavily against protection of the rights of injured victims and against just punishment of dangerous practices. Also, Mr. President, I am concerned about the provision limiting the award of punitive damages in cases filed against a small business. I take a back seat to no one in my concern for small businesses and have worked throughout my career in the Senate to promote the growth and prosperity of small businesses especially in my home State. However, the provision contained in this bill is not well considered; I am afraid that it would lead to more litigation, not less, and arbitrarily eliminate the opportunity for injured plaintiffs to recover fair and just

compensation for damages inflicted as a result of conscious and flagrant indifference to their safety. That is what we are talking about Mr. President, not simply a mistake, but a conscious and flagrant indifference to the safety of consumers.

Mr. President, I would say to my friend from West Virginia, Senator ROCKEFELLER, and my friend from Washington, Senator GORTON, that I commend them for their efforts during this debate to bring reason to our deliberations. I know that they have worked diligently and in good faith to develop meaningful and balanced legislation in this area. Unfortunately, I do not believe that the bill before us reaches those objectives and for that reason I intend to vote against this bill and urge my colleagues to join me.

Mr. KERRY. Mr. President, when we talk about reforming product liability law, we are talking about taking away the rights of U.S. citizens. This is serious business—among the most serious things we can do in the Senate, and it is from this perspective that we must approach this debate.

Cloture has been invoked and we are about to vote on final passage. But before we haphazardly strip citizens of their rights, we need to take a long, hard look at what this means to people—how it affects families and children and average, hard-working people who have suffered.

Let us take a representative case. It is a wrongful death case.

A woman drives a Pinto to the supermarket. Someone bumps into the rear of the car, and the car explodes—it explodes. She is tragically burned alive—a wife, a mother, a human being burned alive because of what, after years of legal hassling and thousands of dollars in legal fees, lawyers hours, and a legal battle that has become part of tort history, Ford had calculated that it was cheaper to settle than to protect the lives of every Pinto owner with a recall.

It made good business sense to take the risk of people dying.

Mr. President, that kind of business sense is exactly what I am here to fight against.

I am here to fight for the husband of that woman in the Pinto. I ask my colleagues—would you settle for \$250,000 in exchange for losing your spouse and destroying your life?

Is that fair? Is that just?

Mr. President, if this bill were to become law, you would not even get the \$250,000 because there is not a lawyer in the country who would take the case.

No law firm could afford to go up against the Ford Motor Co., with its host of attorneys and huge legal budget, and an infinite ability to push motions and appeals to the limit and slow down the process to their advantage. It just would not happen.

Mr. President, I cannot sanction stripping this legal right from even one American. I cannot do it. And anyone who can, should look into the eyes of

that husband. They should look into the face of the thousands and thousands of victims across this country who seek simple justice and fairness and ask only to be given a chance to fight the big guys.

It is a matter of fairness. It assures that those who do not have the resources to fight the richest and most prominent American corporations when they are wrong will have a chance for simple justice.

I am here to fight for average hard-working Americans and to put a face to this legislation—to talk about how this bill will affect real Americans. Real Americans, like the 5-year-old boy in New Bedford, MA, who died in a house fire after the flammable material on a couch ignited, or the 8-month-old baby who suffered second- and third-degree burns on his arms, legs, and back in a house fire that started when the bedding in his crib was ignited by a portable electric heater.

Or, the eight working-class families in Woburn who sued two of our Nation's biggest corporations because they suspected the companies had polluted the East Woburn water supply with highly toxic industrial solvents, causing death and injury to their children.

The Woburn case took 9 years, and the attorney that pleaded the case spent \$1 million of his own money on it. The jury ultimately found one of the companies negligent, and the scientific research done during the 9-year trial demonstrated the link between the industrial solvents in the water supply and human disease. The company is now helping to clean up the polluted aquifer. The attorney has said that if this bill were law today, he would never have considered the case.

If we pass the Dole substitute to H.R. 956, I fear we will be doing great harm. Our votes will have a serious impact on real Americans.

Mr. President, our laws play a critical role in fostering a competitive economic environment by establishing groundrules for fair competition and by helping to reduce the costs of doing business. But I believe Congress has a special responsibility to ensure the laws we write are reasonable and fair; we must weigh the impact of laws will have on both consumers and business.

In the 10 years I have considered product liability reform at the Federal level, I have heard proponents of reform argue that consumers lose under the present system. They have argued that injured consumers receive inadequate compensation, and that injured consumers wait unreasonable amounts of time in litigation—on the average of 3 years—before they receive compensation. They have also argued that injured consumers face closed courthouse doors because the statutes of limitation have expired on their cases.

Proponents of reform have stressed that companies in the United States also lose under the current system. They have pointed to insurance rates

that disable American manufacturers by forcing them to pay 10 to 50 times more for product liability insurance than their foreign competitors. They have claimed there is an explosion in products liability litigation, with uncontrollable punitive damages awards. They have argued that the present system of lottery liability, where liability differs from State to State, does not enhance the safety of U.S. products.

Each time the Senate has considered products liability legislation, I have measured the legislation against four tests: Is it fair to injured consumers; will it help lower insurance rates for American business; will it help reduce the number of tort cases and lower the cost of litigation, the transaction costs, for American business; and will it create uniformity in the laws covering products liability or generate more confusion in the legal system?

In my examination of whether S. 565, the products Liability Fairness Act, and the Dole substitute satisfy these tests, I have concluded that this legislation fails on each account. It does not address the real concerns of business, nor is it fair to consumers.

IS THE LEGISLATION FAIR TO CONSUMERS?

Consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. But, according to the most authoritative study on punitive damages, conducted in 1993 by professors at Boston's Suffolk University Law School and Northeastern University, there were only 355 awards in products suits from 1965 to 1990, and half of these awards were reduced or overturned. In my own State of Massachusetts, there were absolutely no punitive damages awarded in products cases.

Contrary to ensuring that injured consumers will receive adequate compensation in relation to their actual damages, this legislation imposes a cap on punitive damages. This is perhaps the most damaging aspect of this legislation to consumer interests. Although the cap has been amended to equal the sum of economic and noneconomic damages, a cap is still a cap.

In our civil justice system compensatory damages—economic and noneconomic for pain and suffering—compensate victims; in addition, punitive damages may be awarded by juries to punish the wrongdoer.

As such, punitive damages are often the only way individual Americans can force reckless defendants to change their conduct. However, despite the effectiveness of punitive damages as deterrents, they are exceedingly rare.

And the new standards imposed for punitives in this bill will make them more rare than the Alabama sturgeon.

Under most State laws, the defendant can be found liable for punitive damages if they engaged in reckless or willful and wanton or grossly negligent type of behavior.

But under this bill, Mr. President, such behavior is not enough. A plaintiff must show that a company engaged in

conduct manifesting a "conscious, flagrant, indifference to safety". I have no idea what that means, Mr. President. but it certainly appears to be a tougher standard to meet.

Moreover, it is unclear how the cap on punitives in this bill would affect the 39 States that presently either do not permit punitive damage awards or have enacted measures that significantly reduce the size and frequency of such awards.

Far from ensuring injured consumers will enjoy expeditious resolution of their case, this legislation could prolong litigation by allowing either party to request a separate hearing in order for punitive damages to be awarded. Far from ensuring courthouse doors remain open to injured consumers, this bill imposes a 2-year statute of limitation and shortens the statute of repose by 5 years from last year's bill.

If this bill truly protects consumers interests, why is it opposed by every major consumer group in America?

If this legislation had been in effect, many cases would simply not have been possible. Let me give just one more example here:

In 1988, Playtex removed from the market its super-absorbent tampons linked to Toxic Shock Syndrome only after a \$10 million punitive damages award following the death of a woman who used the tampons.

The Tenth Circuit Court of Appeals found "Playtex deliberately disregarded studies and medical reports linking high-absorbency tampons fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their high-absorbency tampons."

Playtex subsequently strengthened its warnings and began a public awareness campaign about the dangers of toxic shock. It is doubtful whether a cap of \$250,000 on punitive damages would have caused Playtex to alter its behavior.

If the cap on punitive damages contained in this legislation is enacted, wrongdoers may find it more cost effective to continue their bad behavior and risk paying punitive damages. I do not believe we should pass a bill that reduces the incentive for companies to produce the safest products.

WILL THIS LEGISLATION LOWER INSURANCE COSTS FOR BUSINESSES?

In testimony before the Commerce Committee several years ago, the American Insurance Association stated:

The bill is likely to have little or no beneficial impact on the frequency or severity of product liability claims * * * And it is not likely to reduce claims or improve the insurance market.

So, this legislation will not provide businesses with cheaper insurance rates. Insurance premiums for most industries account for less than 1 percent of a business' gross receipts. Such a small percentage hardly threatens the

viability of business and should not result in increased costs to consumers.

Over the last decade, product liability insurance cost 26 cents per \$100 of retail product sales, which would account for \$26 on the price of a \$10,000 automobile. Since 1987, according to a study by the Consumer Federal of America, product liability insurance premiums have actually dropped by 47 percent, from \$4 billion to \$2.7 billion, a fact that was confirmed by a 1992 Commerce Department study.

Let us take a look at Florida. In Florida's 1986 tort reform law, the State eliminated joint and several liability, limited noneconomic damages to \$450,000, limited punitive damages, and required the insurance industry to make rate filings indicating the effect of the changes in its tort laws on product liability insurance rates.

Yet, Aetna's subsequent rate filing listed the effect of each change on its rates as zero. If such dramatic changes in Florida's tort reform law resulted in no lowering of liability insurance costs for a major carrier like Aetna, where is the evidence to suggest this bill will produce different results?

WILL THE LEGISLATION LOWER THE COST OF PRODUCTS LIABILITY LITIGATION FOR BUSINESSES?

Proponents of this legislation speak in terms of an explosion in product liability litigation. However, the evidence belies this characterization. In fact, the number of nonasbestos products liability suits in Federal courts has declined almost 40 percent since 1985. In State courts, where most products liability claims are filed, lawsuits have remained constant since 1990, according to testimony presented to the committee on April 3, by the National Center for State Courts.

The 1992 annual report of the National Center for State Courts found that tort cases are approximately 9 percent of the 10 million civil filings in State courts and products cases are 4 percent of these—40,000.

Only one-third of 1 percent of all tort filings in State courts are product filings.

Of all tort filings in 1991, 58 percent were related to automobile liability; 33 percent were miscellaneous; 5 percent were malpractice; and 4 percent were products. Since 1990, the national total of State tort filings has fallen by 2 percent.

In 1990, the Rand Corp. found that most injured Americans never file a lawsuit for their injuries: only 10 percent of injury victims ever use the tort system to seek compensation for their injuries.

This report also found that only 7 percent of all compensation for accident victims is paid through the tort system. The report observed:

Americans' behavior does not accord with the more extreme characterizations of litigiousness that have been put forward by some.

If there has been a litigation explosion, it is not in the area of products li-

ability. Once again, this legislation misses the target in addressing the real litigation problems facing business.

WILL THIS LEGISLATION BRING UNIFORMITY TO PRODUCT LIABILITY LAW?

Tort law has traditionally been a State responsibility, and the imposition of Federal products standards upon State tort law would, according to the National Conference of State Legislatures, "create confusion in State courts."

Testimony by the Conference of Chief Justices was even more emphatic:

If the primary goal of this legislation is to provide consistency and uniformity in tort litigation, we are concerned that its effect will be the opposite.

Preempting each State's existing tort law in favor of a broad Federal product liability law will create additional complexities and unpredictability for tort litigation in both State and Federal courts, while depriving victims of defective products of carefully reasoned principles and procedures already developed at the State level.

This bill will not end the search of the sponsors for a single settled law because it does not create Federal question jurisdiction. The legislation would preempt all related State law and substitute Federal standards, but it would impose the Federal standards in a single overlay upon the 56 existing State court systems as well as the Federal courts.

The result will be both State and Federal courts applying a mix of State and Federal law in the same case; State supreme courts will no longer be the final arbiters of their tort law. The U.S. Supreme Court, which many experts argue is already overburdened, will become the final arbiter of this new legal thicket.

So, here we have what is indeed an irony: Those who ordinarily preach the virtue of reserving power to the States are instead advancing legislation to usurp the legitimate authority of States.

At a time when many in Congress are intent upon returning responsibility for many Federal programs to the States, this legislation would preempt State law.

Mr. President, the sponsors of this legislation have worked extremely hard, and I particularly wish to commend my friend from West Virginia for his tireless efforts on behalf of this legislation. I also commend the ranking Democrat on the Commerce Committee, Senator HOLLINGS, for his stalwart defense of consumer interests.

For all of this effort, I regret that I cannot support this bill. I cannot support it for two very simple reasons. The legislation is patently unfair to consumers, and it will not resolve the products liability problems businesses tell me they face.

It will remove from ordinary Americans the power they retain in the jury box to force accountability for dangerous, careless, or reckless behavior. In the jury box, each American can bring about positive change. If we undermine the ability of our citizens to

force changes in bad behavior, we will have compromised our Nation's core values.

While many Americans increasingly sense an erosion of personal responsibility, our civil justice system remains one institution that holds individuals and organizations accountable for their behavior. Make no mistake, by restricting the civil justice system, this bill will take rights away from Americans.

All of the available evidence on this legislation shows it will not make businesses more competitive by reducing insurance rates or the costs of corporate litigation, and it will not create national uniformity in products liability law.

A great deal of hype has been generated about this issue, and after 15 years, it appears to have taken on a life of its own. But all the lobbying and advertising cannot convince me that this legislation will accomplish its stated goals.

The Dole substitute to H.R. 956 fails to strike a reasonable balance between promoting the competitive interests of business and protecting the rights of consumers. It will create a nightmarish new legal thicket that should be avoided rather than embraced. It is unfortunate that after all the effort we could not have achieved a reasonable balance.

After we have argued all the complicated points of law, after we have poured over horror story after horror story, the issues boil down to one simple point: This bill is not fair, and it should be rejected.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent that a letter I received from the National Federation of State High School Associations be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF STATE
HIGH SCHOOL ASSOCIATIONS,
Kansas City, MO, May 9, 1995.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: On behalf of the National Federation of State High School Associations, I want to commend you for your leadership on legislation to address the long overdue reform of our civil justice system. We applaud your efforts to rein in the exploding costs of litigation that, if unchecked, threaten to bankrupt non-profit organizations such as ours and our member affiliates. The National Federation is comprised of 51 state high school associations, with the primary purpose of promulgating sports and non-sports playing rules, including those specific to safety issues, for more than 20,000 schools and approximately 10,000,000 students each year. Additionally, our member associations establish and enforce the eligibility rules under which all boys and girls compete in high school athletics.

The legislation pending before the United States Senate, The Product Liability Fairness Act of 1995 (H.R. 956), sets limits on all product liability cases. Furthermore, the bill as currently amended, would eliminate joint

liability for non-economic damages. Instead, only several liability would be allowed which means that each defendant would be liable only for his, her, or its portion by reason of its proportion of the fault causing the injury. Economic damages, i.e. lost wages, medical costs, etc. would remain joint and several at the discretion of each state.

We strongly agree with your comment on the floor this past week stating "it is unfair and unproductive to make defendants pay for damages of a nature that are literally beyond their control or beyond their fault." This fundamental concept should apply to the civil justice system as well.

Let me cite two examples of costly litigation we recently incurred which epitomize the unfairness and counterproductive nature of current civil law. Both occurred in school swimming pools.

First, in Indiana a high school boy was "leap frogging" off the starting platform, prior to the start of practice, despite repeated warnings from his coach. On one such leap, his foot got caught under the platform; he fell head first into the water and struck his head on the pool bottom. Tragically, he suffered a neck injury that ultimately resulted in quadriplegia. While this unimaginably horrible accident was not related to any swimming competition, the National Federation was sued simply because it writes the rules for interscholastic swimming, including rules related to standards for equipment and facilities such as the depth of swimming pools.

Yet another incident occurred in Michigan during a water polo practice. This incident involved a high school boy who jumped off the platform over a lane designation rope and struck his head on the pool bottom. This seemingly harmless leap resulted in a lifetime of paralysis from the neck down. While the National Federation does not even write water polo rules, nor rules for the practice sessions for any sport, we were included in the law suit and incurred exorbitant legal fees for a defense that should not have been necessary.

These are but two examples of what has become a nightmare of litigation for the National Federation and its member affiliates. Without radical reforms to our system of civil justice, organizations such as ours whose sole mission is to build a consensus for safe sports competition will be unfairly jeopardized and possibly destroyed.

Unfortunately, lawyers often join sanctioning bodies such as ours in law suits as a trial strategy rather than because of a reasonable belief that the injury was caused in any way by the action of the sanctioning body. Current law discourages sanctioning bodies from setting minimum safety standards because of their fear of being joined in subsequent litigation. This is bad public policy.

Therefore, in addition to holding firm in your effort to reform the civil justice system, we urge you to include an exemption in the law for sanctioning bodies such as ours who are joined in law suits solely because they recommend minimum standards for facilities and equipment for the purpose of reducing risk inherent in participation in almost any given sport. This exemption would be consistent with your stated belief that it is unfair and unproductive to make defendants liable for incidents that are "literally beyond their control or beyond their fault."

Again, thank you for your leadership on this vital issue. The members of the National Federation of State High School Associations and I look forward to assisting you in achieving these needed reforms.

Sincerely,

ROBERT F. KANABY,
Executive Director.

Mr. BYRD. Mr. President, the Senate has been considering legislation related to product liability for almost 2 weeks. During that time I have heard from a number of West Virginians who have been harmed or injured by defective products, as well as from businesses that have been seriously impacted by lawsuits brought against them—at times somewhat unfairly. I have listened to the debate and considered how the Senate can best balance these competing interests, and have concluded that the substitute amendment offered by Senators GORTON and ROCKEFELLER does not adequately protect the rights of injured parties and consumers in two critical areas.

The first involves the issue of several or proportional liability, versus joint and several liability. Under the concept of proportional liability, a defendant is only responsible for a percentage of liability directly contributing to the injury or harm caused by the defective product. On the other hand, joint and several liability provides that each defendant who contributes to causing a plaintiff's injury may be held liable for the total amount of damages. Joint and several liability, by enabling a plaintiff to recover all of his or her damages from a single defendant with the greatest financial assets or resources—the so-called "deep pocket"—makes it more likely that the plaintiff will obtain full recovery in the event that one defendant does not have the assets to pay part of the judgment.

The proposed legislation completely eliminates joint and several liability for noneconomic damages, such as pain and suffering, while retaining it for economic damages. This means that victims would fully recover their economic damages in the form of lost income or medical expenses, but victims with higher lost incomes, such as business executives, would receive greater compensation. Victims would fully recover their economic damages, even if only one defendant among several defendants is still solvent, because the "deep pocket" would provide full compensation for economic damages; however, due to the elimination of joint and several liability for noneconomic damages the parties would only receive partial compensation for pain and suffering.

This provision could significantly reduce compensation in cases where the individual could still earn a livelihood, and thus not have large economic damages, yet that same individual could still have significant noneconomic damages. In this context, noneconomic damages could include not just pain and suffering, but also any diminishment of the quality of life, such as infertility or the loss of a limb.

The result of completely eliminating joint and several liability for noneconomic damages, then, would be that the innocent victim might not receive a majority of the compensation due if the other wrongful defendants were insolvent. I have concluded that this pro-

vision in the legislation shifts the balance too far in the direction of defendants at the expense of the victims of wrong doing in the form of defective products.

The other key provision of the legislation is the section dealing with punitive damages. Punitive damages are intended to punish willful or wanton misconduct on the part of a manufacturer or business. Furthermore, by punishing misconduct, punitive damages are intended to deter such behavior in the future.

Punitive damages therefore must take into consideration the financial assets of the defendant or guilty party. A punitive damage judgment of \$250,000 may be both harsh punishment and a significant deterrent to a small business, but it is insignificant to a large corporation. Any cap on punitive damages can only serve to benefit, if not condone, egregious and wanton behavior by large corporations.

The legislation limits punitive damages to the greater of \$250,000 or two times the total economic and noneconomic damages. The bill also stipulates that a judge may add to these punitive damages, and exceed the cap, at his discretion. I am concerned that this "judge additur" provision does not fully resolve the problem of capping punitive damages for large corporations. First, many judges may be reluctant to overrule a jury's decision, and add to the punitive judgment. Second, the effect could be arbitrary, as some judges may opt to add to punitive judgments, while others may not. Third, the burden of proof would be on judges to demonstrate why a larger punitive judgment that would exceed the cap is necessary, which could discourage judges from adding to punitive judgments. Fourth, it strikes at the heart of our tradition of jury judgments in such product liability and civil litigation.

I recognize that the current product liability system, which involves different laws in each of the 50 States, imposes a considerable hardship on some manufacturers, particularly in the case of small business. I endorse the goal of establishing some type of national uniformity in this area. However, I regret that I cannot support the legislation that is now before the Senate. While national uniformity is a laudable goal, any national standard must also fully protect the rights of consumers and victims of harm caused by defective products.

While I may disagree on several of the provisions included in this measure, I would be remiss if I did not acknowledge and salute the hard work and leadership of Senator ROCKEFELLER. He believes in this legislation. He has put his heart into working on it, and I believe that he is correct in that there are inequities in the present system which need to be addressed. My opposition notwithstanding, I want to commend both Senator ROCKEFELLER and Senator GORTON for their tireless

efforts on behalf of product liability reform.

Mr. LEVIN. Mr. President, I believe that there is a strong argument to be made for uniformity in product liability law since so many products are sold across State lines.

But there is no uniformity in this bill. This bill contains limits and restrictions on compensation for injuries caused by defective products, but those limits and restrictions are not uniform. On the contrary, the bill contains a one-way preemption provision, which allows States to adopt virtually any law that differs from the so-called national standard, as long as that law is more restrictive than that standard. A patchwork of State laws is still permitted, provided that the divergences are in the direction of greater restrictions on the injured party.

As I pointed out earlier in this debate, every single provision of this bill is written to prohibit State laws that are more favorable to plaintiffs. But the only provision of the bill that would prohibit State laws that are more favorable to defendants is the statute of limitations. We are not adopting true national standards at all.

This bill is not balanced, it is not uniform, and I cannot support it.

I ask unanimous consent that a table demonstrating the one-way nature of the preemption in this bill be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed.
Alcohol or drug abuse defense	Do	Do.
Misuse or alteration of product defense	Do	Do.
Punitive damage limitations	Do	Do.
Statute of limitations	Do	Prohibited.
Statute of repose	Do	Allowed.
Joint and several liability (non-economic damages)	Do	Do.
Biomaterials provisions	Do	Do.

Ms. MIKULSKI. Mr. President, I voted for cloture on the product liability bill because I believe it is important to the economy, job creation, international investment, and our ability to do research, especially on issues of women's health.

Mr. President, much has been said about caps. I do not like caps—caps on job creation or caps on innovative research. I do not like caps on technological advancement or caps on our ability to go global. I am opposed to caps on profits, caps on wages, or caps on opportunity.

My job as a U.S. Senator is to save jobs, save lives and save communities. I support efforts to reduce frivolous law suits and improve the efficiency of our legal system.

I have heard of cost estimates for cases that are in the millions. That's outrageous. We should make every effort to establish consistency and uni-

formity, but not at the price of people's fundamental right to redress.

When it comes to public health and safety I want to ensure that those responsible are in fact held accountable for their actions. For that reason, I will not support any legislation which closes the courthouse door to citizens with legitimate cases.

This is the kind of balance I support and that I believe we, as Members of Congress, need to achieve with this legislation.

Mr. President, today's cloture vote was a difficult decision for me. Product liability involves very complex and complicated issues, including joint and several liability, noneconomic versus economic damages, statute of repose, punitive damages, and alternate dispute resolution. To help me better understand product liability and its impact on people's day to day lives, I met with people on both sides of this issue. I met with business organizations and consumer organizations. All the groups made legitimate arguments expressing worthwhile and important concerns.

Some businesses are concerned about how our current system ultimately impacts their decisions about innovation and competitiveness, small businesses are concerned about going out of business all together. We should take every step we can to cut unnecessary liability costs and encourage innovation. Innovation will ultimately lead to jobs today and jobs tomorrow. We must acknowledge that innovation, particularly in the health field, is critical for our Nation's economic stability and competitiveness, and it is critical to the health and safety of American citizens.

I was particularly moved by the National Family Planning and Reproductive Health Association's position that tort reform is needed to increase investment in women's health research and technologies. Mr. President, the product liability issue has been around for quite some time. There was no doubt that I could not sign on to previous product liability reform bills introduced in the early 1980's. But, I believe the current legislation is an attempt to achieve a reasonable balance at this point.

Is this bill perfect? Of course, it is not. In this case, it is hard to put forth a perfect bill. There is no doubt that we should review this issue in the coming years and make sure it is working. If it is not working, we in Congress have the option to review it and make changes. Looking at our current system, I believe there are areas that can be improved. For that reason, I am willing to support Federal product liability reform. Many of the reforms proposed by this legislation have already been done at the State level. So, in many ways we are acting consistently with respect to the States.

Mr. President, I want to make it clear. The House bill goes too far. It includes a number of bad provisions, including severe caps on pain and suffer-

ing. To move beyond the Senate bill would be a mistake. The scales on this issue are delicately balanced. If those scales are tipped, it is unlikely I will support this bill.

Mr. PELL. Mr. President, today the Senate has passed by a convincing margin the product liability bill. It was a difficult and contentious effort, much akin to the debate that this area has generated over the last decade. I was pleased that the Senate saw fit to pass this legislation and am hopeful that a productive and successful conference with the House will follow and eventually that the President will sign this legislation into law.

I have long supported product liability reform even when it began as a somewhat lonely effort over a decade ago. Finally, with a supportive Congress, it seems that we may be coming up with a bill that can actually become the law of the land. It must be noted that in order to preserve the best possible chance of reaching that result, other areas of legal reform, such as medical malpractice and broad tort reform, have been excluded. I joined in the effort to keep this bill clean from those additions but I want to state that I support reform in those areas as well and look forward to addressing them in the future. I simply felt that this legislation was an inappropriate forum for dealing with those issues. In the end, this bill represents a workable and reasonable balance for reforming the legal procedures and standards governing how one can seek redress for harm caused by faulty products.

I congratulate the hard work of my colleagues, in particular Senators ROCKEFELLER and GORTON, who artfully and doggedly crafted a compromise that was acceptable to the Senate. They have worked hard and long, indeed for years, on this legislation and they are to be commended for their accomplishment. I await the conference report on this legislation with anticipation and express my hope for speedy final consideration.

Mr. BRADLEY. Mr. President, I rise in opposition to the Product Liability Fairness Act of 1995. Let me first say, Mr. President, that I share the concerns of the people of New Jersey and this country that our society is too litigious. I share the concerns of my colleagues and the American people that the cost of this litigation explosion is injurious to the social and economic future of this country. However, after reviewing this bill and assessing the arguments, both pro and con, I do not think that this bill strikes the appropriate balance between the desires of manufacturers and product sellers to streamline the product liability process and the ability of ordinary Americans to bring lawsuits seeking relief from injuries resulting from defective and dangerous products.

Mr. President, I favor a cap on punitive damages for small businesses. I supported the amendment of my colleague from Ohio, Senator DEWINE,

which provides for a cap on punitive damages for small businesses with 25 or fewer employees and individuals with assets of less than \$500,000. Small businesses are the engine that drives the American economy and provide for at least half of this country's new employment opportunities. While a cap on punitive damage awards should be sufficient to punish and deter future action, it should also reflect the fact that a cap that may be sufficient to punish a large corporation may in fact push a small business into the abyss of bankruptcy.

However, Mr. President, I have grave concerns about the overall cap on punitive damages. The purpose of punitive awards is to punish the wrongdoer for egregious behavior and deter such behavior in the future. I believe that if we place a low cap on punitive damages, some corporations will not be discouraged from exposing consumers to dangerous products. Indeed, with predictable caps, Mr. President, wrongdoers may find it more cost effective to make dangerous decisions and risk paying punitive damages. Moreover, Mr. President, while this bill authorizes judges to increase an award of punitive damages beyond the limits of the cap, this safeguard is illusory because defendants have the right to receive a new trial—a right which they will surely exercise. Indeed, the provision in the bill will only lead to repetitive litigation, increase costs and prevent deserving consumers from obtaining their awards in a timely manner.

Mr. President, I do not need to repeat the horror stories about women who have tragically suffered and died from using dangerous products, children who have been burned by flammable clothing, or hard working Americans, who have senselessly been injured and killed as a result of defective automobiles. What needs to be repeated is that the one constant in all of these horror stories is that the manufacturer knew of the dangerous defect and failed to take adequate steps to protect the public. Mr. President, punitive damages are available to police conduct that is so egregious that the offender disregarded foreseeable dangerous consequences. Indeed, as this bill provides, punitive damages are only available where there is clear and convincing evidence of a conscious, flagrant indifference to the safety of others. Given the nature of the offense, Mr. President, I firmly believe that placing a cap on punitive damages will be counterproductive to society's efforts to police and deter such egregious conduct.

Mr. President, under the present caps, cigarette manufacturers and those who irresponsibly market alcohol to intoxicated persons or minors who then kill or injure innocent victims in traffic crashes would continue to manufacture and market these products of destruction with less fear of having to one day pay the price for the massive damage that their products inflict on society. Moreover, firearms and ammu-

nition are virtually the only unregulated consumer product in America. As such, the tort system is the only check on the safety of consumers. I am not willing, Mr. President, to place a cap on punitive damages when the result will be that such action will lessen the liability of the manufacturers who profit from these destructive products.

Mr. President, while I also think that there is a need for joint and several liability reform, I cannot endorse the blanket elimination of joint and several liability for noneconomic damages that is in the present bill. Instead, Mr. President, I favor the approach currently in operation in New Jersey, which provides for proportional liability if the defendant is responsible for 20 percent or less of the harm, several liability for noneconomic damages if a defendant is responsible for between 20 percent and 60 percent of the harm, and joint and several liability if the defendant is responsible for 60 percent or more of the harm.

Mr. President, this bill would preempt State product liability law "to the extent that state law applies to an issue covered under the Act." Proponents of product liability reform argue that Federal legislation is needed to establish uniformity. However, the bill does not require States to have uniform State laws. For example, those States that do not now allow punitive damages would not be required to award them, even though the bill provides for the award of such damages. The effect of this provision is that States can offer their individual citizens fewer rights, but not more.

Mr. President, this bill also excludes actions involving commercial loss. By excluding such actions, the bill places restrictions on the ability of individuals to seek redress from defective products, but does not place any restrictions on corporations to seek redress. For example, if a product explodes in a factory, the worker's recovery for injuries is limited by this bill; however, the factory owner may sue the product manufacturer or seller free from the restrictions of the bill for such speculative damages as the factory's loss of profits because of delays in production. Thus, the effect of this provision is to value material property over the health and safety of individual citizens.

Mr. President, we have been told that there is a litigation explosion with respect to product liability and that corporations and the business community are suffering under the weight of this explosion. However, Mr. President, excluding cases of asbestos, product liability claims in Federal courts have declined by approximately 36 percent between 1985 and 1991. Moreover, in State courts, product liability cases are approximately 4 percent of all tort filings, .0036 percent of all civil caseloads and .00097 percent of the total State court caseloads.

Mr. President, although there have been relatively few punitive damage

awards in product liability cases over the last 25 years, we have been told that the threat of punitive damages encourages many product manufacturers to settle cases that they would have no problem winning in an effort to avoid having claims for punitive damages go to juries unfamiliar with the precautions that are now taken to insure that products are safe. However, Mr. President, the numbers simply do not add up to the conclusion that the business community is being treated unfairly by juries. Indeed, almost 60 percent of the product liability cases brought in 1993, plaintiffs were the losing parties.

Mr. President, it has additionally been argued that these lawsuits increase the costs of producing products in this country and thus hurt American competitiveness. However, a 1987 Conference Board survey of risk managers of 232 corporations shows that product liability costs for most businesses are 1 percent or less of the final price of a product, and have very little impact on larger economic issues such as market share or jobs. In addition, the American Insurance Association, the largest trade association representing the insurance industry, has testified that this legislation will have virtually no effect on insurance costs.

Mr. President, to put it succinctly, I do not think that the bill will really do what its proponents say it will do. As mentioned earlier, the proponents of this bill argue that the business community is suffering under the weight of a litigation explosion. They contend that this bill will decrease both the incidence and cost of litigation. Mr. President, no one disagrees that we are an overly litigious society. However, I am not convinced that this bill can correct the problem of litigiousness in society. Indeed, Mr. President, the fact is that the punitive caps provision providing for the automatic right to a new trial by defendants will serve to only increase the delay and cost of litigation. This bill tilts the scales of justice too far to the disadvantage of individual consumers. Thus, I cannot support legislation which will endanger the health and safety of hard working Americans.

In conclusion, Mr. President, because of the above stated concerns, I must oppose the Product Liability Fairness Act of 1995.

VOTE ON AMENDMENT NO. 690, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 690, the Coverdell-Dole substitute, as amended.

So the amendment (No. 690), as amended, was agreed to.

VOTE ON AMENDMENT NO. 596, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 596, the Gorton substitute, as amended.

So the amendment (No. 596), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the

amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. GORTON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 37, as follows:

[Rollcall Vote No. 161 Leg.]

YEAS—61

Abraham	Frist	McCain
Ashcroft	Glenn	McConnell
Bennett	Gorton	Mikulski
Bond	Gramm	Moseley-Braun
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Pryor
Conrad	Hutchison	Robb
Coverdell	Inhofe	Rockefeller
Craig	Jeffords	Santorum
DeWine	Johnston	Smith
Dodd	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kohl	Thomas
Dorgan	Kyl	Thompson
Exon	Lott	Thurmond
Faircloth	Lugar	
Feinstein	Mack	

NAYS—37

Akaka	Feingold	Moynihan
Baucus	Ford	Murray
Biden	Graham	Packwood
Bingaman	Harkin	Reid
Boxer	Heflin	Roth
Bradley	Hollings	Sarbanes
Breaux	Inouye	Shelby
Bryan	Kennedy	Simon
Bumpers	Kerrey	Simpson
Byrd	Kerry	Specter
Cohen	Lautenberg	Wellstone
D'Amato	Leahy	
Daschle	Levin	

NOT VOTING—2

Lieberman	Warner
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So the bill (H.R. 956), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 956) entitled "An Act to establish legal standards and procedures for product liability litigation, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product Liability Fairness Act of 1995".

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term "actual malice" means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of 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.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term "commercial loss" means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(6) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(7) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(8) HARM.—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.

(9) INSURER.—The term "insurer" means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(10) MANUFACTURER.—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 designs or formulates the product (or component part of the product), or has engaged another person to design or formulate 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, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

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

(11) NONECONOMIC LOSS.—The term "noneconomic loss"—

(A) 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; and

(B) does not include economic loss.

(12) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(13) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(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) EXCLUSION.—The term "product" does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

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

(14) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(15) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" does not include—

(i) a seller or lessor of real property;

(ii) 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

(iii) 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 lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(16) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(17) TIME OF DELIVERY.—The term “time of delivery” means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

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

(2) supersede or alter 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;

(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; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a 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 for remediation 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 remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), 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 product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

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

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

(C) that—

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

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

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

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) 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 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product 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. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—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.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

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

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) 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.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) **WORKPLACE INJURY.**—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) **GENERAL RULE.**—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) **LIMITATION ON AMOUNT.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) \$250,000.

(2) **SPECIAL RULE.**—The amount of punitive damages that may be awarded in a product liability action that is subject to this title against an individual whose net worth does not exceed \$500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed the lesser of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) \$250,000.

(3) **EXCEPTION.**—

(A) **DETERMINATION BY COURT.**—Notwithstanding subparagraph (C), in a product liability action that is subject to this title, if the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages in excess of the amount determined in accordance with paragraph (1) to be awarded to the claimant (referred to in this paragraph as the "additur") in a separate proceeding in accordance with this paragraph.

(B) **FACTORS FOR CONSIDERATION.**—In any proceeding under subparagraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the misconduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) **REQUIREMENTS FOR AWARDED ADDITURS.**—If the court awards an additur under this paragraph, the court shall state its reasons for setting the amount of the additur in findings of fact and conclusions of law. If the additur is—

(i) accepted by the defendant, it shall be entered by the court as a final judgment;

(ii) accepted by the defendant under protest, the order may be reviewed on appeal; or

(iii) not accepted by the defense, the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only, and judgment shall enter upon the verdict of liability and damages after the issue of punitive damages is decided.

(4) **APPLICATION BY COURT.**—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(5) **REMITTITURS.**—Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(c) **BIFURCATION AT REQUEST OF ANY PARTY.**—

(1) **IN GENERAL.**—At the request of any party, the trier of fact in a product liability action that is subject to this title shall 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.

(2) **INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.**—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 108. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1996.

SEC. 109. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) **STATUTE OF LIMITATIONS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) **EXCEPTIONS.**—

(A) **PERSON WITH A LEGAL DISABILITY.**—A person with a legal disability (as determined

under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) **EFFECT OF STAY OR INJUNCTION.**—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) **STATUTE OF REPOSE.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) **STATE LAW.**—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) **EXCEPTIONS.**—

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

(B) Paragraph (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 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) **TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.**—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) **GENERAL RULE.**—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) **AMOUNT OF LIABILITY.**—

(1) **IN GENERAL.**—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

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

SEC. 111. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) **GENERAL RULE.**—

(1) **RIGHT OF SUBROGATION.**—

(A) **IN GENERAL.**—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject

of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

- (i) as part of a settlement;
- (ii) in satisfaction of judgment;
- (iii) as consideration for a covenant not to sue; or
- (iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

- (I) appear;
- (II) be represented;
- (III) introduce evidence;
- (IV) cross-examine adverse witnesses; and
- (V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C),

the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 112. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1995".

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequacy—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will

lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(i) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term “component part” means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term “harm” means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term “implant” means—

(A) a medical device 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 or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term “manufacturer” means any person who, with respect to an implant—

(A) 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 implant; and

(B) is required—

(i) to register with the Secretary 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

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term “medical device” means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term “raw material” means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term “seller” means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

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

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary 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

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) **LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.**—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(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) published by 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 and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii) (I) included in the submissions for purposes of premarket approval or review by the Secretary 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, 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 manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) **MOTION TO DISMISS.**—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action 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—

(1) the defendant is a biomaterials supplier; and

(2) (A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B) (i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

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

(b) **MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.**—The claimant shall be required to name the manufacturer of the implant as a party to the 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) **PROCEEDING ON MOTION TO DISMISS.**—The following rules shall apply to any pro-

ceeding on a motion to dismiss filed under this section:

(1) **AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.**—

(A) **IN GENERAL.**—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) **RESPONSE TO MOTION TO DISMISS.**—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) **EFFECT OF MOTION TO DISMISS ON DISCOVERY.**—

(A) **IN GENERAL.**—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) **DISCOVERY.**—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) **AFFIDAVITS RELATING STATUS OF DEFENDANT.**—

(A) **IN GENERAL.**—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) **RESPONSES TO MOTION TO DISMISS.**—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) **BASIS OF RULING ON MOTION TO DISMISS.**—

(A) **IN GENERAL.**—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) **MOTION FOR SUMMARY JUDGMENT.**—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning

material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) **SUMMARY JUDGMENT.**—

(1) **IN GENERAL.**—

(A) **BASIS FOR ENTRY OF JUDGMENT.**—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) **ISSUES OF MATERIAL FACT.**—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) **DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.**—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) **DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.**—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) **STAY PENDING PETITION FOR DECLARATION.**—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) **MANUFACTURER CONDUCT OF PROCEEDING.**—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) **ATTORNEY FEES.**—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) 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. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I would want to take this opportunity to first congratulate the majority of the Members of the Senate and Members on both sides of the aisle for by far the most significant step in legal reform which has been taken by the Senate in many, many years, perhaps in the memory of the most senior of the sitting Senators. This has been a project by members of the Commerce Committee which has lasted for a decade and a half. It also, I may say, after 2½ weeks of debate, has been one in which the views of the Members had an impact, had an impact in showing that a majority of the Senate, a bare majority, wants a broader legal reform package than is included in this bill, but that others worried about particular details were willing to work on those details, and to cast their votes accordingly. So I believe that the Senate has worked its will in a particularly fine fashion.

I want to pay particular tribute to my colleague, the Senator from West Virginia [Mr. ROCKEFELLER]. In many respects this has been a far more difficult task for him than it has been for me. I represent a broad coalition of views within my own political party with only a few having had differences. Senator ROCKEFELLER throughout this entire period of time has spoken for a significant number of Members of his colleagues but by no means a majority of them. But his dedication to the cause of this reform has been exemplary, and his persuasive ability with many of those colleagues has constantly left me in awe and with a great deal of inspiration. I believe that his persistence has paid off, and how wonderfully that it has done so.

I have gotten to know Tamera Stanton, his legislative director, and Ellen Doneski, his legislative assistant, very well during the course of this period of time and know how much they have contributed to his success, as has Trent Erickson, Lance Bultena, Jeanne Bumpus for me, and the majority leader's assistant, Kyle McSlarrow.

Other Senators have contributed significantly to this result, the chairman of the Commerce Committee, Senator PRESSLER, Senator COVERDELL, and Senators SNOWE and DEWINE who came up with the formula for punitive damages which appealed to the majority of Members of this body.

I only regret that Senator LIEBERMAN, the other principal cosponsor of this bill, through a family emergency is absent today. I know that he would like to have been in on the end of this. But his contributions are greatly appreciated. And he is one of the primary authors of the portion of this bill that deals with medical devices.

Now we go on to try to get a final proposal passed by the Congress and through the President of the United States.

The majority leader has been patient in allowing us 2½ weeks on this, and was an absolute key to its success as well.

With that, I think he wishes us to go on to another subject.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I too want to at this moment thank those who have been in the trenches over the years and, of course, most of all my distinguished colleague, the Senator from Alabama. It is always good to get in behind the chief justice because you know you are on the side of the law and of equity, and you know you are on the side of the judgment. Certainly it is, as we all revere him ethically, that you are on the side of ethics and equity.

I thank publicly Senator HEFLIN for his leadership, and particularly Winston Lett, a member of his staff. On my staff, Kevin Curtin, Jim Drewry, Moses Boyd, James Leventis, and Lloyd Ator. They have been working around the clock, Kevin and Moses and others have been working in sort of a minority position on this measure.

The record would show that my particular Commerce Committee has over the past several Congresses voted by a majority to report this bill. So we have had a sort of uphill fight. I still feel that, of course, we had the merit. I guess they feel they had the merit. But in any event, I think the 15-year hold-up was because of that on our side. I also would like to thank Senator BIDEN's staff, the Senator himself, Sean Moylan, Karen Robb. And then with respect to, of course, the medical malpractice part, we did not have hearings but Health and Human Resources did. The distinguished former chairman, Senator KENNEDY, was the leader on that.

We had, of course, the vigorous help of Senator BOXER and Senator WELLSTONE. So it has been thoroughly aired and properly heard. The Senate has voted. But let us see what the House crowd comes up with in the contract.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I would like to congratulate Senator HOLLINGS for his outstanding work in regard to it, although we did not come out victorious. He is a great comrade in arms and has had a vast amount of experience on this matter. I suppose that looking back over the years, 15 or more years, he has fought these battles and I have been with him throughout, and he has tremendous knowledge in this area.

Originally, this bill was designed not to go to Judiciary. It was designed to go to Commerce. At that time, Senator HOLLINGS was not chairman. But obviously, it is a bill that deals with the judicial system. From the very beginning it was designed to avoid a careful scrutiny in regards its judicial impact. For-

tunately, over the years, we had an individual who was an outstanding lawyer, and who had been an outstanding trial lawyer, Senator HOLLINGS in the State of South Carolina, and who has been there to deal with this matter.

I would also like to thank the staffs of Senator HOLLINGS and others who have been so important. They have really exhibited tremendous knowledge of the law. They have followed this legislation diligently and have done a tremendous job. Senator HOLLINGS has named them, and I will not repeat their names. But on my staff, Winston Lett and Jim Whiddon have worked tirelessly and diligently on this legislation, and I thank them for their great service in our legislative efforts.

I also want to congratulate Senator ROCKEFELLER and Senator GORTON for their advocacy in pushing forward on their bill. They just seem to have better allies than we did. I always at the end of a lawsuit, whether I won or lost, went over and congratulated my opposing counsel, and do so today. We will be having other battles as they come down the road, and sometimes we will be compatriots. We will be cosponsors and joint fighters in the same cause. Then, as it is with all Senators, we will be on opposite sides again in the future on some issue. But that is the way the Senate works; that is the way democracy works. During the debate on a great issue, you can disagree but you do not have to be disagreeable.

I think that Senator GORTON and Senator ROCKEFELLER never showed any disagreeable nature. I disagreed with them with respect to the cause they were advancing, but not in the manner they advanced it; they played fair and square. I want to thank them particularly for working out a settlement in regard to the unique and different situation as to Alabama's wrongful death statute.

We worked out a situation by which the amendment was adopted giving time to our State legislature or to our courts or to both to find a solution to be able to fit into this bill, if it is finally passed.

Then I want to say, while I will congratulate them, please do not take that as any indication that I have ceased to fight. I have not surrendered and will not give up in my efforts to maintain the traditional role of the 50 States in allowing them to fashion their own solutions to problems which may arise with regard to product liability laws. I believe the 10th amendment to the U.S. Constitution still has some meaning, and I will continue to assert the primacy of the States on these matters.

There are appeals. There are appeals to conference, there are appeals to the White House, there are appeals to the President to eliminate the unfairness of the bill or to see the death of this unfair bill. So we will continue to fight. The battle is not over. We have not surrendered, and we will continue to battle in the future because we feel we are battling for the injured parties,

the consumers of America, and that we have right on our side. And we ask the Lord to give us a little more guidance in regard to these appeals as we move forward.

So I thank everybody concerned who has put up with me, and we will continue to battle on this issue as well as other issues that come up that affect the rights of the people.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me thank all of my colleagues for the fact we finished this bill. It has been 2 weeks and 2 days, but there were a couple of interruptions—the death of former Senator Stennis and other matters. So it was not solid. We probably did it in about 8 or 9 days.

We have had a lot of good debate on both sides. I congratulate all the principal players, Senators HEFLIN and HOLLINGS, also Senator ROCKEFELLER and Senator GORTON, who were on the winning side of this issue. I think they did a remarkable job in keeping a very fragile, narrow coalition together. We broadened the bill with narrow margins. I think we knew at the time those provisions would not be in the bill or we could not obtain the 60 votes we needed for cloture, so adjustments were made. But at least we made a record on medical malpractice, on punitive damages, and on other issues that we believe are very important and we believe will be back before the Senate.

I also wish to thank Senator COVERDELL for his work with outside groups as sort of the coordinator, and my colleague, Senator LOTT of Mississippi, the majority whip, who did an excellent job, along with his staff and members of my staff and others because we had some very difficult votes.

I think we have had a dramatic step forward. The product liability bill has been introduced in every Congress for the last decade. In most cases, however, we could not even muster the votes to consider the legislation. We could not get the 60 votes to even talk about it because we had strong opposition and we had a lot of what we thought were distortions. The other side would say not.

So I think passage today is an important victory for common sense and the American people. It is also important to note that we have just passed a bill that was stronger than bills introduced in previous years, stronger because of the efforts of some of our Members in the Chamber that added small business protections.

I wish to pay tribute to our newest Members, who as a group provided energy, ideas, and determination in this debate. Senators SNOWE and DEWINE made a significant contribution that allowed us to obtain meaningful protection from abusive punitive damages while protecting small businesses.

Senators ABRAHAM and KYL responded to the call of the American people in last year's elections by their

efforts to expand these protections to include volunteer and charitable organizations and to add needed civil justice reforms. Together with Senators KASSEBAUM and MCCONNELL, who introduced medical malpractice reforms, they produced something never before seen on the Senate floor—clearer majorities for broader reform. For various reasons, we could not get the 60 votes to bring debate to a close on these broader reforms, but we have had the opportunity and I think it is certainly important.

Just 3 days ago, I received a letter from the head of the Boy Scouts of America, Mr. Jere Ratcliffe. In just the second line of his letter, Mr. Ratcliffe says something that ought to cause all of us to pause. I quote:

The civil justice system, as it now exists, has consequences which worked a chilling effect on our willingness and ability to continue to pursue activities that are beneficial to all of us. . . . This is particularly so in the case of volunteer service organizations.

That is what he believes. That is what many of us believe. So we have heard from the trial lawyers. They say everything is fine, but the volunteer organizations tell us a different story.

I would just say that we hope to bring up sometime later this year or, if not, next year the McConnell-Lieberman-Kassebaum health care liability bill—hopefully, later this year. The amendment was added by a 53 to 47 vote. In addition, some Senators support medical malpractice reform but voted against that amendment last week because they wanted to pursue only a product liability bill. So we are going to revisit that later in the year. We have a lot of work to do. I do not know how late it is going to be. But in any event, we will be taking a hard look at that legislation, hopefully this year; if not, early next year.

So, again, I thank the managers, Senator GORTON and Senator ROCKEFELLER. This is a bipartisan effort, as are most things in the Senate because without a bipartisan effort, you cannot get the 60 votes to shut off debate and pass the bill. That is the way it works. Some people may not totally understand it, may disagree with it, but that is the way it works. So now we move to another legislative matter, which I would ask the Chair to report.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The PRESIDING OFFICER. Under the previous order, the hour of noon having arrived, the Senate will now proceed to the consideration of S. 534, which the clerk will now report.

The legislative clerk read as follows:

A bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike

out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Interstate Transportation of Municipal Solid Waste Act of 1995".

TITLE I—INTERSTATE WASTE

SEC. 101. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

"(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) Except as provided in paragraph (4), immediately upon the date of enactment of this section if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal solid waste in any landfill or incinerator that is not covered by the exceptions provided in subsection (b) and that is subject to the jurisdiction of the Governor and the affected local government.

"(2) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(D) and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may limit the quantity of out-of-State municipal solid waste received for disposal at each landfill or incinerator covered by the exceptions provided in subsection (b) that is subject to the jurisdiction of the Governor, to an annual amount equal to or greater than the quantity of out-of-State municipal solid waste received for disposal at such landfill or incinerator during calendar year 1993.

"(3)(A) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(E), and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may prohibit or limit the amount of out-of-State municipal solid waste disposed of at any landfill or incinerator covered by the exceptions in subsection (b) that is subject to the jurisdiction of the Governor, generated in any State that is determined by the Administrator under paragraph (6)(E) as having exported, to landfills or incinerators not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste, more than—

"(i) 3,500,000 tons of municipal solid waste in calendar year 1996;

"(ii) 3,000,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

"(iii) 2,500,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

"(iv) 1,500,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

"(v) 1,000,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

"(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

"(I) In calendar year 1996, the greater of 1,400,000 tons or 90 percent of the amount exported to the State in calendar year 1993.

"(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

"(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.

"(IV) In calendar year 1999, the greater of 1,100,000 tons or 90 percent of the amount exported to the State in calendar year 1998.