

1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the names of the Senator from Alabama [Mr. SHELBY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Dakota [Mr. JOHNSON], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the names of the Senator from Alabama [Mr. SHELBY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Dakota [Mr. JOHNSON], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1297

At the request of Mr. COVERDELL, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 1297, a bill to redesignate Washington National Airport as "Ronald Reagan Washington National Airport."

S. 1299

At the request of Mr. HUTCHINSON, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Missouri [Mr. BOND], the Senator from Alabama [Mr. SHELBY], the Senator from Alabama [Mr. SESSIONS], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 1299, a bill to limit the authority of the Administrator of the Environmental Protection Agency and the Food and Drug Administration to ban metered-dose inhalers.

S. 1306

At the request of Mr. INHOFE, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 1306, a bill to prohibit the conveyance of real property at Long Beach Naval Station, California, to China Ocean Shipping Company.

#### AMENDMENTS SUBMITTED

#### THE ECONOMIC GROWTH DIVIDEND PROTECTION ACT OF 1997

##### ABRAHAM AMENDMENT NO. 1524

(Ordered referred jointly to the Committee on the Budget and to the Committee on Governmental Affairs.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to the bill (S. 800) to create a tax cut reserve fund to protect revenues generated by economic growth; as follows:

On page 2, strike lines 6 through 13 and insert the following:

"(1) ESTIMATE.—OMB shall, for any amount by which revenues for a budget year and any outyears through fiscal year 2002 exceed the revenue target absent growth, estimate the excess (less any unexpected excess receipts (including attributable interest) of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, the Federal Hospital Insurance Trust Fund established by section 1817 of the Social Security Act, and the Highway Trust Fund) and include such estimate as a separate entry in the report prepared pursuant to subsection (d) at the same time as the OMB sequestration preview report is issued.

On page 3, strike lines 18 and 19 and insert the following: "be considered to be in order for purposes of the Congressional Budget Act of 1974."

#### THE PRODUCT LIABILITY REFORM ACT OF 1997 BIOMATERIALS ACCESS ASSURANCE ACT OF 1997

##### ROCKEFELLER AMENDMENT NO. 1525

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill (S. 648) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

Strike all after the enacting clause, and insert the following:

##### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Product Liability Reform Act of 1997".

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

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

##### TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Definitions.

Sec. 102. Applicability; preemption.

Sec. 103. Liability rules applicable to product sellers, renters, and lessors.

Sec. 104. Defense based on claimant's use of alcohol or drugs.

Sec. 105. Misuse or alteration.

Sec. 106. Statute of limitations.

Sec. 107. Statute of repose for durable goods used in a workplace.

Sec. 108. Transitional provision relating to extension of period for bringing certain actions.

Sec. 109. Alternative dispute resolution procedures.

Sec. 110. Offers of judgment.

Sec. 111. Uniform standards for award of punitive damages.

Sec. 112. Liability for certain claims relating to death.

Sec. 113. Workers' compensation subrogation.

##### TITLE II—BIOMATERIALS ACCESS ASSURANCE

##### [TO BE SUPPLIED]

##### TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 301. Federal cause of action precluded.

Sec. 302. Effective date.

##### SEC. 2. PURPOSES.

Based upon the powers contained in clause 3 of section 8 of article I of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability that provide a fair

balance among the interests of product users, manufacturers, and product sellers;

(2) providing for reasonable standards concerning, and limits on, punitive damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in product liability actions;

(4) reducing the unacceptable costs and delays in product liability actions caused by excessive litigation that harm both plaintiffs and defendants;

(5) establishing greater fairness, rationality, and predictability in product liability actions; and

(6) providing fair and expeditious judicial procedures that are necessary to complement and effectuate the legal principles established by this Act.

##### TITLE I—PRODUCT LIABILITY REFORM

##### SEC. 101. DEFINITIONS.

In this title:

(1) ALCOHOLIC BEVERAGE.—The term "alcoholic beverage" includes any beverage in liquid form that contains not less than 1/2 of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term "claimant" means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

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

(5) COMMERCIAL LOSS.—The term "commercial loss" means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous State commercial or contract law.

(6) COMPENSATORY DAMAGES.—The term "compensatory damages" means damages awarded for economic and noneconomic loss.

(7) DRAM-SHOP.—The term "dram-shop" means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(8) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which—

(A)(i) has a normal life expectancy of 3 or more years; or

(ii) is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986; and

(B) is—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(9) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss,

loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(10) HARM.—The term “harm”—

(A) means any physical injury, illness, disease, death, or damage to property caused by a product; and

(B) does not include commercial loss.

(11) INSURER.—The term “insurer” means the employer of a claimant if the employer is self-insured or if the employer is not self-insured, the workers’ compensation insurer of the employer.

(12) 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—

(i) designs or formulates the product (or component part of the product); or

(ii) 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—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

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

(13) NONECONOMIC LOSS.—The term “noneconomic loss” means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(14) PERSON.—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(15) 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; or

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

(16) PRODUCT LIABILITY ACTION.—The term “product liability action” means a civil action brought on any theory for harm caused by a product.

(17) PRODUCT SELLER.—

(A) IN GENERAL.—The term “product seller” means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is in-

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.

(18) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded against any person or entity to punish or deter that person or entity, or others, from engaging in similar behavior in the future.

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

(20) TOBACCO PRODUCT.—The term “tobacco product” means—

(A) a cigarette, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(B) a little cigar, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(C) a cigar, as defined in section 5702(a) of the Internal Revenue Code of 1986;

(D) pipe tobacco;

(E) loose rolling tobacco and papers used to contain that tobacco;

(F) a product referred to as smokeless tobacco, as defined in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408); and

(G) any other form of tobacco intended for human consumption.

## SEC. 102. APPLICABILITY; PREEMPTION.

(a) PREEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (2) and title II, this title governs any product liability action brought in any Federal or State court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT; NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION; DRAM-SHOP.—

(i) 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 Federal or State law.

(ii) NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION.—A civil action brought under a theory of negligence per se concerning the use of a firearm or ammunition shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(iii) DRAM-SHOP.—A civil action brought under a theory of dram-shop or third-party liability arising out of the sale or provision of an alcoholic beverage to an intoxicated individual or an individual who has not at-

tained the age of 21 shall not be subject to the provisions of this title, but shall be subject to any applicable Federal or State law.

(C) ACTIONS INVOLVING HARM CAUSED BY A TOBACCO PRODUCT.—A civil action brought for harm caused by a tobacco product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(D) ACTIONS INVOLVING HARM CAUSED BY A BREAST IMPLANT.—

(i) IMPLANT DEFINED.—As used in this subparagraph, the term “implant” has the same meaning as in section \_\_\_\_.

(ii) EXCLUSION.—A civil action brought for harm caused by a breast implant shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes a State law only to the extent that the State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall 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))).

## SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(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 the harm to the claimant;

(B)(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 the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the 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 the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

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

(2) **LIABILITY.**—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(17)(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 that product.

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

(a) **GENERAL RULE.**—In any product liability action that is subject to this title, it shall be a complete defense to a claim made by a claimant, if that claimant—

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

(2) as a result of the influence of the alcohol or drug, was more than 50 percent responsible for that harm.

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

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

(2) the term "drug" means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that was not legally prescribed for use by the claimant or that was taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

#### **SEC. 105. MISUSE OR ALTERATION.**

(a) **GENERAL RULE.**—

(1) **IN GENERAL.**—In any product liability action that is subject to this title, the damages for which a defendant is otherwise lia-

ble under Federal or State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the claimant's harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, a defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable Federal or 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 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) **WORKPLACE INJURY.**—Notwithstanding subsection (a), and except as otherwise provided in section 113, the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

#### **SEC. 106. STATUTE OF LIMITATIONS.**

(a) **IN GENERAL.**—Except as provided in subsection (b) and subject to section 107, 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.

(b) **EXCEPTIONS.**—

(1) **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.

(2) **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.

#### **SEC. 107. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A WORKPLACE.**

(a) **IN GENERAL.**—

(1) **APPLICABLE PERIOD.**—Except as provided in subsections (b) and (c), no product liability action that is subject to this title concerning a durable good described in paragraph (2) may be filed after the 18-year period beginning at the time of delivery of the product to the first purchaser or lessee.

(2) **DURABLE GOODS DESCRIBED.**—A durable good described in this section is a durable good that is—

(A) used in a workplace; and

(B) alleged to have caused harm (other than toxic harm) that is covered under an applicable State workers' compensation law.

(b) **APPLICABILITY OF STATUTE OF LIMITATIONS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this section, a product liability action that is subject to this title and that concerns a durable good described in subsection (a)(2) may be filed during the applicable period prescribed in section 106 (including any applicable period prescribed under the exceptions under subsection (b) of

that section) if the condition under paragraph (2) is met.

(2) **CONDITION.**—Paragraph (1) shall apply with respect to a claimant in an action described in that paragraph if that claimant discovers the harm that is the subject of the action during the 18-year period beginning on the date of the delivery of the product to the first purchaser or lessee.

(c) **GENERAL EXCEPTIONS.**—

(1) **IN GENERAL.**—A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this section.

(2) **CERTAIN EXPRESS WARRANTIES.**—Subsection (a) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 18 years, except that such subsection shall apply at the expiration of that warranty.

(3) **AVIATION LIMITATIONS PERIOD.**—Subsection (a) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

#### **SEC. 108. TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.**

If any provision of section 106 or 107 shortens the period during which a product liability action could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding sections 106 and 107, bring the product liability action not later than 1 year after the date of enactment of this Act, except that nothing in this section shall affect the application of section 107(b).

#### **SEC. 109. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.**

(a) **NOTIFICATION REQUIREMENT.**—In any case in which an applicable State law provides for an alternative dispute resolution procedure, each defendant in a product liability action that is subject to this title shall, not later than 10 days before the applicable date specified for service of an offer under subsection (b), notify the claimant to inform the claimant of the applicability of that State law.

(b) **SERVICE OF OFFER.**—A claimant or a defendant in a product liability action that is subject to this title may 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 that action is maintained, not later than 60 days after the later of—

(1) service of the initial complaint; or

(2) the expiration of the applicable period for a responsive pleading.

(c) **WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.**—Except as provided in subsection (d), not later than 20 days after the service of an offer to proceed under subsection (b), an offeree shall file a written notice of acceptance or rejection of the offer.

(d) **EXTENSION.**—

(1) **IN GENERAL.**—The court may, upon motion by an offeree made prior to the expiration of the 20-day period specified in subsection (c), 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 (c).

(2) **PERMITTED DISCOVERY.**—Discovery may be permitted during the period described in paragraph (1).

#### **SEC. 110. OFFERS OF JUDGMENT.**

(a) **OFFERS OF JUDGMENT BY CLAIMANTS.**—Any claimant in a product liability action that is subject to this title may, at any time after filing the complaint for that action,

serve an offer of judgment to be entered against a defendant for a specified dollar amount as complete satisfaction of the claim.

(b) OFFERS OF JUDGMENT BY DEFENDANTS.—A defendant in an action referred to in subsection (a) may, during the period described in that subsection, serve an offer of judgment to be entered against that defendant for a specified dollar amount as complete satisfaction of a claim referred to in that subsection.

(c) RESPONSE PERIOD.—Subject to subsection (d), the period for response to an offer of judgment under this section shall be the later of—

(1) the date that is 30 days after the date of the receipt of the offer; or

(2) the date of expiration of any otherwise applicable period for response.

(d) EXTENSION OF RESPONSE PERIOD.—

(1) IN GENERAL.—The court may extend the period for response to an offer of judgment under subsection (c) on a motion made by an offeree.

(2) REQUIREMENTS FOR MOTION.—Any motion made by an offeree under paragraph (1) shall be accompanied by an affidavit that—

(A) sets forth the reasons why the extension requested in the motion is necessary; and

(B) includes a statement that the information that is likely to be discovered during the period of the extension referred to in subparagraph (A) is—

(i) material; and

(ii) not, after reasonable inquiry, otherwise available to that offeree.

(e) PENALTY TO DEFENDANTS FOR REJECTION OF OFFER.—

(1) MODIFICATION OF JUDGMENT.—The court may modify a judgment against a defendant under paragraph (2) if—

(A) a defendant, as an offeree, does not serve on the claimant a written notification of acceptance of an offer of judgment served by the claimant in accordance with this section—

(i) during the applicable period for response referred to in subsection (c); or

(ii) in any case in which the responsive pleading of the defendant contains a motion to dismiss, not later than 30 days after the date on which the court denies that motion to dismiss; and

(B) the unadjusted final judgment against the defendant includes damages (including any compensatory, punitive, exemplary, or other damages) in an amount greater than the amount specified by the claimant in the offer of judgment.

(2) AMOUNT OF MODIFICATION.—The court may make a modification under paragraph (1) to provide for an increase of the civil penalties assessed against that defendant in an amount not to exceed the lesser of—

(A) \$50,000; or

(B) the difference between—

(i) the amount of the unadjusted judgment; and

(ii) the amount of the offer of judgment made by the claimant.

(f) PENALTY TO CLAIMANTS FOR REJECTION OF OFFER.—

(1) MODIFICATION OF JUDGMENT.—The court may modify a judgment against a defendant in accordance with paragraph (2), if—

(A) a claimant, as an offeree, does not serve on the defendant a written notice of acceptance of an offer of judgment served by that defendant in accordance with this section during the applicable period for response referred to in subsection (c); and

(B) the unadjusted final judgment against that defendant includes damages (including any compensatory, punitive, exemplary, or other damages) in an amount less than the

amount specified by that defendant in the offer of judgment.

(2) AMOUNT OF MODIFICATION.—The court may make a modification under paragraph (1) to provide for a decrease of the civil penalties assessed against that defendant in an amount not to exceed the lesser of—

(A) \$50,000; or

(B)(i) the difference between—

(I) the amount of the unadjusted judgment; and

(II) the amount of the offer of judgment made by the defendant; reduced by

(ii) a reasonable attorney's fee.

(3) CLAIMANT NOT PREVAILING PARTY.—In any case in which the claimant is not the prevailing party, the refusal of the claimant to accept an offer of judgment shall not result in the payment of a penalty under this subsection.

(g) EVIDENCE OF OFFER.—An offer of judgment that is not accepted by the offeree by the applicable date for response specified in this section—

(1) shall be considered to have been withdrawn; and

(2) except in a proceeding to determine reasonable attorney's fees and costs, shall not be admissible as evidence in an action brought under this title.

#### SEC. 111. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—To the extent punitive damages are permitted by applicable State law, punitive damages may be awarded against a defendant in any 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 carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others.

(b) SPECIAL RULE.—

(1) IN GENERAL.—Subject to subsection (c), in any action described in subsection (a) against a person or entity described in paragraph (2), an award of punitive damages shall not exceed the lesser of—

(A) 2 times the amount of compensatory damages awarded; or

(B) \$250,000.

(2) PERSONS AND ENTITIES DESCRIBED.—

(A) IN GENERAL.—A person or entity described in this paragraph is—

(i) an individual whose net worth does not exceed \$500,000; or

(ii) an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has—

(I) annual revenues of less than or equal to \$5,000,000; and

(II) fewer than 25 full-time employees.

(B) ANNUAL REVENUES AND EMPLOYEES.—For the purpose of determining the applicability of this subsection to a corporation, the calculation of—

(i) the annual revenues of that corporation shall include the annual revenues of any parent corporation (or other subsidiary of the parent corporation), subsidiary, branch, division, department, or unit of that corporation; and

(ii) the number of employees of that corporation shall include the number of employees of any parent corporation (or other subsidiary of the parent corporation), subsidiary, branch, division, department, or unit of that corporation.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, 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 a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

#### SEC. 112. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

(a) IN GENERAL.—Subject to subsection (b), a defendant may be liable for damages that are only punitive in nature without regard to section 111 in any product liability action that is subject to this title—

(1) in which the alleged harm to the claimant is death; and

(2) that is subject to an applicable State law that, as of the date of enactment of this Act, provides, or is construed to provide, for damages that are only punitive in nature.

(b) LIMITATION.—Subsection (a) shall apply to an action that meets the requirements of paragraphs (1) and (2) of that subsection only during such period as the State law provides, or is construed to provide, for damages that are only punitive in nature.

(c) SUNSET.—This section shall cease to be effective on September 1, 1998.

#### SEC. 113. WORKERS' COMPENSATION SUBROGATION.

(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 that 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 insurer.

(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 insurer.

(B) RIGHTS OF INSURER.—

(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 insurer shall, in the same manner as any party in the action (even if the insurer 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 submitted 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.

## TITLE II—BIOMATERIALS ACCESS ASSURANCE

### TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

#### SEC. 301. FEDERAL CAUSE OF ACTION PRECLUDED.

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

#### SEC. 302. EFFECTIVE DATE.

This Act shall apply with respect to any 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 that date of enactment.

## ADDITIONAL STATEMENTS

### THE NOMINATION OF PETER SCHER TO BE SPECIAL TRADE AMBASSADOR FOR AGRICULTURE

• Mr. FEINGOLD. Mr. President, I want to make a few brief comments re-

garding the nomination of Mr. Peter Scher to be the Special Trade Ambassador for Agriculture which the Senate approved yesterday. I am pleased to report that the Senate Foreign Relations Committee, on which I serve, considered the nomination of Mr. Scher and favorably reported his nomination last month.

I met with Mr. Scher following his confirmation hearing before the Senate Foreign Relations Committee to discuss with him the problems Wisconsin's agricultural sector has had with our existing trade agreements such as the Uruguay Round of GATT and the North American Free Trade Agreement. I urged Mr. Scher, in his new position, to work diligently to ensure that our trading partners are complying with their agricultural trade obligations established by these agreements.

Specifically, I asked Mr. Scher and the USTR to accept a Section 301 petition filed by the dairy industry asking USTR to challenge the Canadian export pricing scheme before the World Trade Organization. Canada's dairy export subsidies violate the export subsidy reduction commitments under the Uruguay Round. These subsidies disadvantage the U.S. dairy industry in its efforts to compete in world markets. I also pointed out that Canada also has effectively prohibited our dairy industry from exporting products to lucrative Canadian markets. Not only must USTR aggressively pursue WTO dispute settlement proceedings against Canadian export subsidies, but it must also seek greater access for U.S. dairy products to Canadian markets, among others, in any upcoming trade negotiations.

I am pleased that late last month U.S. Trade Representative Barshesky agreed to pursue formal WTO dispute resolution proceedings challenging the Canadian dairy export subsidy scheme as well as European Union violations of the dairy provisions of the Uruguay Round. I appreciate the cooperation of Mr. Scher and Ambassador Barshesky on this important matter.

I also raised with Mr. Scher the problems the U.S. potato industry has had with respect to access to both Canadian and Mexican markets. I urged him to pursue negotiations with the Canadians to allow greater access of U.S. potatoes to their domestic markets and to aggressively seek accelerated reduction in Mexican tariffs for U.S. potatoes, a commitment made to potato growers when NAFTA was approved. Mr. Scher assured me that potatoes would be among the commodities to be considered in upcoming negotiations with Mexico.

I believe Mr. Scher has a fundamental understanding of both the importance of trade to agriculture generally and of the complex trade problems the U.S. dairy industry faces regarding compliance with existing trade agreements. For that reason, I have supported the approval of his nomina-

tion. But I expect USTR, with Mr. Scher acting as Ambassador, to aggressively pursue the resolution of the critical issues facing our domestic dairy and potato sectors. I will continue to work with USTR to resolve these issues and will hold Mr. Scher to his commitment that USTR will use all existing tools to ensure compliance with existing trade agreements and to pursue greater access for agriculture to international markets.

I continue to have serious reservations about U.S. efforts to begin new trade negotiations until the problems with our current bilateral and multilateral agreements are successfully resolved. Wisconsin is home to 24,000 dairy farmers, 140 cheese processing plants and many other businesses associated with milk production and processing. Dairy contributes some \$4 billion in income to Wisconsin's economy and provides 130,000 jobs. Wisconsin is also the fifth largest potato producing state with a large chip and french fry processing sector. Overall, Wisconsin ranks tenth in the nation in farm numbers and ninth nationally with respect to market value of agricultural products sold.

Wisconsin's farmers and food processing industry could greatly benefit by gaining a greater share of international markets. However, for that to happen, our trade agreements must not only be fair, they must be enforceable. To date, our trade agreements have not only failed to provide significant benefits for many agricultural sectors, including dairy, they have placed some sectors at a distinct disadvantage. I will look at all future trade agreement proposals with an eye to these issues and make decisions on those proposals based, in part, on how they treat Wisconsin farmers. •

## TRIBUTE TO LEE H. CLARK

• Mr. ABRAHAM. Mr. President, I rise today to pay homage to a man of great character, commitment, and integrity.

Lee H. Clark has dedicated his life to public service. Beginning at the tender age of eighteen, Lee entered the United States Navy in 1943 where he served honorably for three years. After his commitment to the Navy, Lee entered college where he threw himself into academics, gaining a Master's degree in business from the University of Michigan. Following his education, Lee returned home and started his own business. Soon after, with his company flourishing, Lee's interest in the political process was sparked after serving as a precinct delegate in 1956. Lee entered into the political realm with the same determination and vigor that he displayed throughout his entire life and four years later ran for Congress. Although his bid for office was unsuccessful, Lee's desire for public service was unabated and he began a long, meritorious career in service to the State of Michigan.