

## SENATE RESOLUTION 193

At the request of Mr. REID, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of Senate Resolution 193, a resolution designating December 13, 1998, as "National Children's Memorial Day."

## SENATE RESOLUTION 237

At the request of Mr. FEINGOLD, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of Senate Resolution 237, a resolution expressing the sense of the Senate regarding the situation in Indonesia and East Timor.

# SENATE RESOLUTION 256—RELATIVE TO PRIVATE RELIEF LEGISLATION AND THE UNITED STATES COURT OF FEDERAL CLAIMS

Mr. BINGAMAN submitted the following resolution; which was referred to the Committee on the Judiciary:

## S. RES. 256

*Resolved*, That (a) S. 2274 entitled "A bill for the relief of Richard M. Barlow of Santa Fe, New Mexico" now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims.

(b) The chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to Mr. Richard M. Barlow of Santa Fe, New Mexico.

## AMENDMENTS SUBMITTED

## PRODUCT LIABILITY REFORM ACT OF 1998

## ROBB AMENDMENT NO. 3066

(Ordered to lie on the table.)

Mr. ROBB 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:

In section 107(a), after "other than toxic harm" insert the following: "(including any illness caused by exposure to asbestos)".

## DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999

## KERREY (AND HAGEL)

## AMENDMENTS NOS. 3067-3068

Mr. KERREY (for himself and Mr. HAGEL) submitted two amendments in-

tended to be proposed by them to the bill (S. 2168) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes; as follows:

## AMENDMENT NO. 3067

On page 93, between lines 18 and 19, insert the following:

### SEC. 423. TEMPORARY PROHIBITION ON IMPLEMENTATION OR ENFORCEMENT OF PUBLIC WATER SYSTEM TREATMENT REQUIREMENTS FOR COPPER ACTION LEVEL.

(a) IN GENERAL.—None of the funds made available by this or any other Act for any fiscal year may be used by the Administrator of the Environmental Protection Agency to implement or enforce the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level, until—

(1) the Administrator and the Director of the Centers for Disease Control and Prevention jointly conduct a study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to copper in drinking water, that—

(A) includes an analysis of the health effects that may be experienced by groups within the general population (including infants) that are potentially at greater risk of adverse health effects as the result of the exposure;

(B) is conducted in consultation with interested States;

(C) is based on the best available science and supporting studies that are subject to peer review and conducted in accordance with sound and objective scientific practices; and

(D) is completed not later than 30 months after the date of enactment of this Act; and

(2) based on the results of the study and, once peer reviewed and published, the 2 studies of copper in drinking water conducted by the Centers for Disease Control and Prevention in the State of Nebraska and the State of Delaware, the Administrator establishes an action level for the presence of copper in drinking water that protects the public health against reasonably expected adverse effects due to exposure to copper in drinking water.

(b) CURRENT REQUIREMENTS.—Nothing in this section precludes a State from implementing or enforcing the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) that are in effect on the date of enactment of this Act, to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level.

## AMENDMENT NO. 3068

On page 93, between lines 18 and 19, insert the following:

### SEC. 423. TEMPORARY PROHIBITION ON IMPLEMENTATION OR ENFORCEMENT OF PUBLIC WATER SYSTEM TREATMENT REQUIREMENTS FOR COPPER ACTION LEVEL.

(a) IN GENERAL.—None of the funds made available by this or any other Act for any fiscal year may be used by the Administrator of the Environmental Protection Agency to implement or enforce the national primary

drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level, until—

(1) the Administrator and the Director of the Centers for Disease Control and Prevention jointly conduct a study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to copper in drinking water, that—

(A) includes an analysis of the health effects that may be experienced by groups within the general population (including infants) that are potentially at greater risk of adverse health effects as the result of the exposure;

(B) is conducted in consultation with interested States;

(C) is based on the best available science and supporting studies that are subject to peer review and conducted in accordance with sound and objective scientific practices; and

(D) is completed not later than 30 months after the date of enactment of this Act; and

(2) based on the results of the study and, once peer reviewed and published, the 2 studies of copper in drinking water conducted by the Centers for Disease Control and Prevention in the State of Nebraska and the State of Delaware, the Administrator establishes an action level for the presence of copper in drinking water that protects the public health against reasonably expected adverse effects due to exposure to copper in drinking water.

(b) CURRENT REQUIREMENTS.—Nothing in this section precludes a State from implementing or enforcing the national primary drinking water regulations for lead and copper in drinking water promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) that are in effect on the date of enactment of this Act, to the extent that the regulations pertain to the public water system treatment requirements related to the copper action level.

## PRODUCT LIABILITY REFORM ACT OF 1998

### TORRICELLI (AND OTHERS) AMENDMENT NO. 3069

(Ordered to lie on the table)

Mr. TORRICELLI (for himself, Mr. FEINSTEIN, Mrs. BOXER, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by them to the bill, S. 648, supra; as follows:

In section 101, after paragraph (9), insert the following:

(9A) FIREARM.—The term "firearm"—

(A) has the meaning given that term in section 921(3) of title 18, United States Code; and

(B) includes any firearm included under the definition of that term under section 5845 of the Internal Revenue Code of 1986.

In the heading of section 102(a)(2)(B), strike "NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION".

In section 102(a)(2)(B), strike clause (ii) and redesignate clause (iii) as clause (ii).

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING HARM CAUSED BY A FIREARM OR AMMUNITION.—A civil action brought for harm caused by 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.

#### BOXER AMENDMENTS. NOS. 3070–3078

(Ordered to lie on the table)

Mrs. BOXER submitted nine amendments intended to be proposed by her to the bill, S. 2168, *supra*;

##### AMENDMENT No. 3070

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING HARM THAT RESULTS IN A DISABILITY THAT RENDERS AN INJURED PARTY INCAPABLE OF CONTINUING TO WORK IN THE OCCUPATION OF THE PARTY.—A civil action brought for harm caused by a product that results in a disability that renders an injured party incapable of continuing to work in the occupation that that party was engaged in at the time of the injury 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.

##### AMENDMENT No. 3071

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING A LOSS OF FERTILITY.—A civil action brought for harm caused by a product that includes a loss of fertility caused by that 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.

##### AMENDMENT No. 3072

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING SEVERE DISFIGUREMENT.—A civil action brought for harm caused by a product that includes severe disfigurement caused by that 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.

##### AMENDMENT No. 3073

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING BLINDNESS.—A civil action brought for harm caused by a product that includes blindness caused by that 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.

##### AMENDMENT No. 3074

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING PERMANENT PARALYSIS.—A civil action brought for harm caused by a product that includes permanent paralysis caused by that 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.

##### AMENDMENT No. 3075

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING MULTIPLE LIMB LOSS.—A civil action brought for harm

caused by a product that includes multiple limb loss caused by that 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.

##### AMENDMENT No. 3076

On page 14, between lines 19 and 20, insert the following:

(E) ACTIONS INVOLVING HARM CAUSED BY A HANDGUN.—

(i) IN GENERAL.—A civil action against a transferor of a handgun (as defined in section 921(a) of title 18, United States Code) for harm caused by the handgun 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, unless the transferee was provided with a locking device for that handgun at the time of transfer.

(ii) DEFINITION OF LOCKING DEVICE.—In this subparagraph, the term “locking device” means a device or locking mechanism—

(I) that—

(aa) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

(bb) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

(cc) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm, and that is designed to be unlocked only by means of a key, a combination, or other similar means; and

(II) that is approved by a licensed firearms manufacturer (as defined in section 921(a) of title 18, United States Code) for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred.

##### AMENDMENT No. 3077

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING SEVERE BRAIN DAMAGE THAT RENDERS AN INJURED PARTY INCAPABLE OF UNASSISTED LIVING.—A civil action brought for harm caused by a product that includes severe brain damage caused by that product that renders an injured party incapable of unassisted living 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.

##### AMENDMENT No. 3078

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING INTERNAL ORGAN DAMAGE THAT RESULTS IN A NEED FOR AN ORGAN TRANSPLANT.—A civil action brought for harm caused by a product that includes internal organ damage caused by that product that results in a need for an organ transplant 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.

#### CONRAD AMENDMENT No. 3079

(Ordered to lie on the table)

Mr. CONRAD submitted an amendment intended to be proposed by him to the bill, S. 648, *supra*; as follows:

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS RELATING TO HARM CAUSED BY VIOLENT, PORNOGRAPHIC, OBSCENE, OR INDECENT MATERIALS.—

(i) IN GENERAL.—A civil action brought for harm caused by any violent, pornographic, obscene, or indecent material 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) MATERIALS INCLUDED.—The materials referred to in clause (i) include any movie, television show, videotape, record, audio tape recording, CD-ROM, or other visual, audio, or electronic media that is violent, pornographic, obscene, or indecent.

#### LEAHY AMENDMENTS NOS. 3080–3081

(Ordered to lie on the table)

Mr. LEAHY submitted two amendments intended to be proposed by him to the bill, S. 648, *supra*; as follows:

##### AMENDMENT No. 3080

In section 102(a)(2), strike subparagraph (A) and insert the following:

(A) ACTIONS FOR COMMERCIAL LOSS, ECONOMIC LOSS, AND NONECONOMIC LOSS.—

(i) COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable commercial law, including applicable State law based on the Uniform Commercial Code.

(ii) ECONOMIC LOSS AND NONECONOMIC LOSS.—A civil action brought for economic loss or noneconomic loss shall be governed only by applicable State law.

##### AMENDMENT No. 3081

In section 102(a)(2)—

(1) strike subparagraph (A); and

(2) redesignate subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

#### LEVIN AMENDMENT No. 3082

(Ordered to lie on the table)

Mr. LEVIN submitted an amendment intended to be proposed by him to the bill, S. 648, *supra*; as follows:

In section 110(a)(1), in the first sentence, strike “To the extent punitive damages are permitted by applicable State law, punitive damages” and insert “Punitive damages”.

#### KERRY (AND HOLLINGS)

##### AMENDMENT No. 3083

(Ordered to lie on the table.)

Mr. KERRY (for himself and Mr. HOLLINGS) submitted an amendment intended to be proposed by him to the bill, S. 648, *supra*; as follows:

To the pending substitute amendment, on page 22, line 23, after the period, add the following: “As used in this section, the term ‘toxic harm’ shall mean any harm caused by acute or repeated exposure to asbestos or any radioactive compounds or any other chemical or hazardous substance listed by the Centers for Disease Control Agency or the Toxic Substances and Disease Registry.”

#### WELLSTONE AMENDMENTS. NOS. 3084–3085

(Ordered to lie on the table.)

Mr. WELLSTONE submitted two amendments intended to be proposed by him to the bill, S. 648, *supra*; as follows:

## AMENDMENT NO. 3084

At the end of the substitute add the following:

**TITLE IV—PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY IN PRODUCT LIABILITY CASES**

**SEC. 401. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY PRODUCT LIABILITY CASES.**

(a) **SHORT TITLE.**—This section may be cited as the “Sunshine in Litigation Act of 1998”.

(b) **PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.**—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

**“§1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases**

“(a)(1) In any civil action brought in any Federal or State court on any theory for harm caused by a product, a court shall enter an order restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

“(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

“(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

“(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

“(2) No order entered in accordance with paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

“(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

“(c)(1) No agreement between or among parties in a civil action brought on any theory for harm caused by a product may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

“(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.”.

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

“1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

## AMENDMENT NO. 3085

At the end of the substitute add the following:

**TITLE IV—PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY IN PRODUCT LIABILITY CASES**

**SEC. 401. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY PRODUCT LIABILITY CASES.**

(a) **SHORT TITLE.**—This section may be cited as the “Sunshine in Litigation Act of 1998”.

(b) **PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.**—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

**“§1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases**

“(a)(1) In any civil action brought in any Federal or State court on any theory for harm caused by a product, a court shall enter an order restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

“(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

“(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

“(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

“(2) No order entered in accordance with paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

“(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

“(c)(1) No agreement between or among parties in a civil action brought on any theory for harm caused by a product may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

“(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.”.

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

“1660. Protective orders and sealing of cases and settlements relating to public health or safety in product liability cases.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

## STEVENSON AMENDMENT NO. 3086

(Ordered to lie on the table.)

Mr. STEVENSON submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

On page 11, at the end of line 16 insert the following new sentence: “The term shall not

be construed to mean attorney fees awarded pursuant to state law authorizing attorney fee awards to the prevailing party in a civil action.”

## FAIRCLOTH AMENDMENT NO. 3087

(Ordered to lie on the table.)

Mr. FAIRCLOTH submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Legal Reform Commission Act of 1998”.

## SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) **ESTABLISHMENT.**—There is established a commission to be known as the Legal Reform Commission (hereafter in this Act referred to as the “Commission”).

## (b) MEMBERSHIP.—

(1) **COMPOSITION.**—The Commission shall be composed of 11 members of whom—

(A) one shall be appointed by the President;

(B) one shall be appointed by the President pro tempore of the Senate;

(C) one shall be appointed by the Speaker of the House of Representatives;

(D) two shall be appointed by the Majority Leader of the Senate;

(E) two shall be appointed by the Minority Leader of the Senate;

(F) two shall be appointed by the Majority Leader of the House of Representatives; and

(G) two shall be appointed by the Minority Leader of the House of Representatives.

(2) **CHAIRMAN AND VICE CHAIRMAN.**—The members of the Commission shall select a Chairman and a Vice Chairman from the members.

## (3) PROHIBITION.—

(A) **CHAIRMAN.**—The Chairman of the Commission may not be an employee or former employee of the Federal Government.

(B) **MEMBERS.**—No member of the Commission may be a member or former member of the Bar of any State.

(4) **DATE.**—The appointments of the members of the Commission shall be made no later than June 1, 1998.

(c) **PERIOD OF APPOINTMENT; VACANCIES.**—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) **INITIAL MEETING.**—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) **MEETINGS.**—The Commission shall meet at the call of the Chairman.

(f) **QUORUM.**—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

## SEC. 3. DUTIES OF THE COMMISSION.

## (a) STUDY.—

(1) **IN GENERAL.**—The Commission shall conduct a thorough study of all matters relating to the reform and simplification of the United States legal system.

(2) **MATTERS STUDIED.**—The matters studied by the Commission shall include reform of—

(A) Federal law;

(B) State law;

(C) criminal law;

(D) civil law;

(E) judicial, trial, and appellate processes;

(F) the Federal Rules of Evidence;

(G) the Federal Rules of Civil Procedure; and

(H) the Federal Rules of Criminal Procedure.

(b) **RECOMMENDATIONS.**—The Commission shall develop recommendations on all matters studied under subsection (a) relating to reform of the United States legal system.

(c) **REPORT.**—No later than 2 years after the date of enactment of this Act, the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

#### SEC. 4. POWERS OF THE COMMISSION.

(a) **HEARINGS.**—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property.

#### SEC. 5. COMMISSION PERSONNEL MATTERS.

(a) **COMPENSATION OF MEMBERS.**—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) **TRAVEL EXPENSES.**—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

#### (c) STAFF.—

(1) **IN GENERAL.**—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) **COMPENSATION.**—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without

interruption or loss of civil service status or privilege.

(e) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

#### SEC. 6. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its report under section 3.

#### SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated such sums as are necessary to the Commission to carry out the purposes of this Act.

(b) **AVAILABILITY.**—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

#### HOLLINGS (AND CONRAD) AMENDMENT NO. 3088

(Ordered to lie on the table.)

Mr. HOLLINGS (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by them to the bill, S. 648, supra; as follows:

On page 14, between lines 19 and 20, insert the following:

(E) **PORNOGRAPHIC MATERIALS.**—A civil action brought for harm caused by violent or pornographic, obscene, or indecent materials, including movies, television shows, videotapes, records, audio tape recordings, CD-ROMs, and other visual, audio, or electronic media or products, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any other applicable Federal or State law.

#### HOLLINGS AMENDMENTS. NOS. 3089–3093

(Ordered to lie on the table.)

Mr. HOLLINGS submitted five amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

#### AMENDMENT No. 3089

On page 14, strike lines 6 through 11.

#### AMENDMENT No. 3090

On page 10, strike line 2 and insert the following:

utility, natural gas, or steam; or  
(iii) toys or other articles intended for use by children.

#### AMENDMENT No. 3091

On page 12, between lines 17 and 18, insert the following:

(21) **TOXIC HARM.**—The term “toxic harm” means harm caused by acute or repeated exposure to naturally-occurring or synthesized minerals or mineral products, organic compounds, microorganisms, biological products, radioactive compounds, or any chemical or hazardous substance listed by the Centers for Disease Control Agency for Toxic Substances and Disease Registry.

#### AMENDMENT No. 3092

On page 9, between lines 14 and 15, insert the following:

(iv) meets the Federal Trade Commission's definition of “Made in the United States”; and

#### AMENDMENT No. 3093

On page 25, beginning with line 20, strike through line 24 on page 28.

#### FEINGOLD AMENDMENT NO. 3094

(Ordered to lie on the table.)

Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

In section 102(b), strike “that the State law applies to a matter covered by this title” and insert “an issue is covered under this Act”.

In section 110(a)(1), in the first sentence, strike “To the extent punitive damages are permitted by applicable State law, punitive damages” and insert “Punitive damages”.

At the end of section 107, add the following:

(b) **PREEMPTION OF STATE LAW.**—To the extent that a State has established a term-of-years limitation on the filing of actions of the type set forth in this section, that limitation is preempted without regard to whether the period is less than or greater than 18 years.

#### BREAUX AMENDMENT NO. 3095

(Ordered to lie on the table.)

Mr. BREAUX submitted an amendment intended to be proposed by him to the bill, S. 648, supra; as follows:

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

#### SEC. 1. SHORT TITLE AND FINDINGS.

(a) **SHORT TITLE.**—This Act may be cited as the “Product Safety and Liability Fairness Act of 1997”.

(b) **FINDINGS.**—The Congress finds the following:

(1) For too long, the Congress has engaged in a contentious debate over federal product liability legislation without making significant progress in addressing the legitimate concerns of all sides to the debate;

(2) As the Congress has always been presented with only the two extreme positions of the proponents and opponents of federal product liability legislation, it is time for a true common sense middle ground;

(3) While the opponents of federal product liability legislation contend that there is no need for any reform at all, there is real concern among businesses and others about the effect of the product liability system that Congress should examine;

(4) While the proponents of federal product liability legislation speak forcefully about the problem of frivolous lawsuits and slow and costly litigation, the bills supported by the proponents often fail to address these issues while instead placing restrictions and limitations on legitimate claims;

(5) While no persons with legitimate claims should be denied redress and their constitutional rights to a trial by jury, and while the product liability system does and must continue to provide valuable deterrence to the manufacture and sale of dangerous or defective products, there is no role in our legal system for frivolous product liability lawsuits;

(6) The several states and their courts can and must continue to be the primary architects and regulators of the tort system, with only infrequent and limited intervention by the federal government;

(7) If the Congress is to intervene in this traditional province of the states, it should do so only to address real issues while balancing the interest of all sides to the debate;

(8) Federal legislation that seeks to limit frivolous product liability lawsuits and which encourages alternative and less costly forms of dispute resolution fits this narrow role for the federal government to take in the area of product liability law.

#### SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

## TABLE OF CONTENTS

Sec. 1. Short title and findings.

Sec. 2. Table of contents.

Sec. 3. Definitions.

Sec. 4. Applicability; preemption.

Sec. 5. Jurisdiction of Federal courts.

Sec. 6. Effective date.

## TITLE I—DETERRENCE OF FRIVOLOUS PRODUCT LIABILITY ACTIONS

Sec. 101. Requirement of an affidavit in product liability actions.

Sec. 102. Sanctions for frivolous product liability suits.

Sec. 103. Amendments to Federal Rules of Civil Procedures and Evidence for product liability cases.

Sec. 104. Special rules of procedure applicable in courts of the states in product liability cases.

## TITLE II—OFFERS OF JUDGMENT AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR PRODUCT LIABILITY CASES

Sec. 201. Offers of judgment.

Sec. 202. Alternative dispute resolution procedures.

## TITLE III—UNIFORM PROCEDURES AND STANDARDS FOR PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES

Sec. 301. Uniform standards for punitive damages.

Sec. 302. Determining amount of punitive damages.

## TITLE IV—STATUTE OF LIMITATIONS IN PRODUCT LIABILITY CASES

Sec. 401. Uniform statute of limitations.

## TITLE V—USEFUL SAFE LIFE

Sec. 501 Statute of repose beyond useful safe life in product liability cases.

## TITLE VI—PRODUCT LIABILITY CLASS ACTIONS

Sec. 601. Notification requirement of class action certification or settlement.

## TITLE VII—STUDY OF PRODUCT LIABILITY SYSTEM

Sec. 701. Study of Product Liability System.

## SEC. 3. DEFINITIONS.

As used in this Act, the term—

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

(A) used in a trade or a business;

(B) held for the production of income; or,

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

(2) "claimant" means any person who brings a civil action subject to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(3) "defendant" means a person against whom a claimant brings a civil action subject to this Act;

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

(5) "harm" means any injury to a person, including illness, disease, or death resulting from that injury, and including injury consisting of economic or pecuniary loss;

(6) "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, or constructs and 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; or

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

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

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

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

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

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

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specially recognized as a product pursuant to State law;

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

(A) a seller or lessor of real property;

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

(C) any person who—

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

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

(11) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political sub-division thereof.

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

(13) "useful safe life" means the period beginning at the time of delivery of the prod-

uct and extending for the time during which the product would normally be likely to perform in a safe manner."

## SEC. 4. APPLICABILITY; PREEMPTION.

(A) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller for harm caused by a product.

(b) SCOPE OF PREEMPTION.—This Act supercedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery and that is inconsistent with State law. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

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

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

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

(3) affect any provision of chapter 97 of title 28, United States Code;

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

(5) 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

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

(7) affect any provision of chapter 2 of title 45, United States Code;

## SEC. 5. JURISDICTION OF FEDERAL COURTS.

This Act shall not establish jurisdiction in the district courts of the United States pursuant to section 1331 or 1337 of title 28, United States Code.

## SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to civil actions commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effect date of this Act.

## TITLE I—DETERRENCE OF FRIVOLOUS PRODUCT LIABILITY ACTIONS

## SEC. 101. REQUIREMENT OF AN AFFIDAVIT IN PRODUCT LIABILITY ACTIONS.

(a) SUBMISSION OF AN AFFIDAVIT WITH COMPLAINT.—In any civil action subject to this Act, the claimant's shall be accompanied by an affidavit signed by the attorney of record for the claimant, or if unrepresented, by the claimant.

(b) CONTENTS OF THE AFFIDAVIT.—The affidavit shall:

(1) certify that the affiant conducted a reasonable inquiry into the circumstances averred in the claim for relief as they pertain to each defendant, and

(2) attest that the affiant has a sound reason to believe that the circumstances as averred in the claim for relief are confirmed by the inquiry referred to in (1) and are in all respects supportable by facts which the affiant reasonably believes to be true and provable at trial.

## SEC. 102. SANCTIONS FOR FRIVOLOUS PRODUCT LIABILITY SUITS.

If a claimant submits in bad faith, or fails to submit, an affidavit pursuant to section

101 of this title, the court, upon motion made within the time for responsive pleadings, shall impose upon the claimant an appropriate sanction which may include an order to pay to the other party or parties the amount of reasonable expenses, including reasonable attorney's fees, incurred up to the time of the disposition of the motion.

**SEC. 103. AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE AND EVIDENCE IN PRODUCT LIABILITY CASES.**

(a) **MANDATORY SANCTIONS UNDER FRCP 11.**—Rule 11 of the Federal Rules of Civil Procedure (28 U.S.C. App.) is amended by adding at the end of subsection (c)—

"If in an action subject to [this bill] alleging harm caused by a product, the court finds a violation of subsection (b), sanctions shall be mandatory."

(b) **PLEADINGS WITH PARTICULARITY UNDER FRCP 9.**—Rule 9 of the Federal Rule of Civil Procedure (28 U.S.C. App.) is amended by adding—

(i) Punitive Damages. The basis for claims of punitive damages in any complaint alleging harm caused by a product [as defined at \_\_\_\_\_] shall be stated with particularity and shall include such supporting particulars as are within the pleader's knowledge.

(c) **EVIDENCE OF INTOXICATION OR IMPAIRMENT OF DRUGS.**—Rule 403 of the Federal Rules of Evidence (28 U.S.C. ) is amended by designating the existing paragraph "(a)" and adding—

"(b) Evidence that a claimant was under the influence of drugs or alcohol at the time of the injury shall be presumed admissible in all actions subject to [this bill]."

**SEC. 104. SPECIAL RULES OF PROCEDURE APPLICABLE IN THE COURTS OF THE STATES IN PRODUCT LIABILITY CASES.**

For all actions subject to this Act brought in courts other than the courts of the United States, the following rules shall apply:

(a) **MANDATORY SANCTIONS.**—If a court, upon motion or its own accord, finds that a party to an action subject to this Act has put forth a pleading, motion, petition or claim that was—

(1) made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs;

(2) not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; or

(3) lacking evidentiary support and unlikely to have evidentiary support after reasonable opportunity for further investigation or discovery,

the court shall impose sanctions sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.

(b) **PLEADING CLAIMS FOR PUNITIVE DAMAGES WITH PARTICULARITY.**—The basis for claims of punitive damages in any complaint in an action subject to this Act shall be stated with particularity and shall include such supporting particulars as are within the pleader's knowledge.

(c) **EVIDENCE OF INTOXICATION OR IMPAIRMENT OF DRUGS.**—Evidence that a claimant was under the influence of drugs or alcohol at the time of the injury shall be presumed admissible in all actions subject to this Act.

**TITLE II—OFFERS OF JUDGMENT AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR PRODUCT LIABILITY CASES**

**SEC. 201. OFFERS OF JUDGMENT.**

(a) **CLAIMANT'S OFFER OF JUDGMENT.**—Any claimant may, at any time after the filing of a complaint subject to this Act, serve an offer of judgment to be entered against a defendant for a specific dollar amount as complete satisfaction of the claim.

(b) **DEFENDANT'S OFFER.**—A defendant may serve an offer to allow judgment to be entered against that defendant for a specific dollar amount as complete satisfaction of the claim.

(c) **EXTENSION OF RESPONSE PERIOD.**—In any case in which an offer of judgment is served pursuant to subsection (a) or (b), the court may, upon motion by the offeree made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than sixty days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material and is not, after reasonable inquiry, otherwise available to the moving party.

(d) **DEFENDANT'S PENALTY FOR REJECTION OF OFFER.**—If a defendant, as offeree, does not serve on a claimant a written notification of acceptance of an offer of judgment served by a claimant in accordance with subsection (a) within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within thirty days after the court's denial of such motion, and a final judgment, including all compensatory, punitive, exemplary or other damages, is entered in such action in an amount greater than the specific dollar amount of such offer of judgment, the court shall modify the judgment against that defendant by including in the judgment an additional amount not to exceed the lesser of \$50,000 or the difference between the offer and the judgment.

(e) **CLAIMANT'S PENALTY FOR REJECTION OF OFFER.**—If the claimant, as offeree, does not serve on the defendant a written notice of acceptance of an offer of judgment served by a defendant in accordance with subsection (b) within thirty days after such service and a final judgment is entered in such an amount less than the specific dollar amount of such offer of judgment, the court shall reduce the amount of the final judgment in such action by the amount of any punitive damages awarded. If the claimant is not the prevailing party in such action, the claimant's refusal to accept an offer of judgment shall not result in the payment of any penalty under this subsection.

(f) **EVIDENCE OF OFFER.**—An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine attorney's fees and costs.

**SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN PRODUCT LIABILITY CASES.**

(a) **IN GENERAL.**—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 201, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) **DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.**—The court shall assess reasonable attorney's fees and costs against the offeree, if—

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

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

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

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

**TITLE III—UNIFORM PROCEDURES AND STANDARDS FOR PUNITIVE DAMAGES IN PRODUCT LIABILITY CASES**

**SEC. 301. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.**

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

**SEC. 302. DETERMINING AMOUNT OF PUNITIVE DAMAGES**

In determining the amount of punitive damages, the trier of fact shall, unless deemed significantly prejudicial by the court, consider all of the following facts—

(1) the financial condition of the manufacturer or product seller;

(2) the severity of the harm caused by the conduct of the manufacturer or product seller;

(3) the duration of the conduct or any concealment of it by the manufacturer or product seller;

(4) the profitability of the conduct to the manufacturer or product seller;

(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;

(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;

(7) prospective awards of compensatory damages to persons similarly situated to the claimant;

(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and

(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

**TITLE IV—STATUTE OF LIMITATIONS IN PRODUCT LIABILITY CASES**

**SEC. 401. UNIFORM STATUTE OF LIMITATIONS.**

(a) **IN GENERAL.**—Except as provided in paragraph (b), a product liability action 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—

(1) the harm that is the subject of the action; and

(2) the cause of the harm.

(b) **EXCEPTION.**—A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have a legal disability.

## TITLE V—USEFUL SAFE LIFE OF PRODUCTS

## SEC. 501. STATUTE OF REPOSE BEYOND USEFUL SAFE LIFE IN PRODUCT LIABILITY CASES.

(a) IN GENERAL.—Except as provided in Subsection (a)(2), in any civil action subject to this Act against a product manufacturer or seller for harm caused by a product that is a capital good, such defendant shall not be liable for damages if the defendant proves by a preponderance of the evidence that the harm was caused by use of the product after its useful safe life.

(1) In determining the useful safe life of the product, the trier of fact shall consider, among other things, the following:

(A) the number of years the product has been in use and the frequency of product use;

(B) the average age of similar or like products still in similar uses;

(C) the normal practices of the product user, similar product users, and the product manufacturer or seller with respect to the circumstances, frequency, and purposes of the use of the product;

(D) any representations, instructions, or warnings made by the product manufacturer or seller concerning the proper use of the product or the expected useful safe life of the product; and

(E) any modification or alteration of the product by a user or third party.

(2) A product manufacturer or seller may be liable for damages caused by a product used beyond its useful safe life if:

(A) the product manufacturer or seller expressly or impliedly warranted that the product may be utilized safely for a longer period; or

(B) the product manufacturer or seller intentionally misrepresented facts about the product, or fraudulently concealed information about the product, and such conduct was a substantial cause of the claimant's damages.

(b) PRESUMPTION REGARDING USEFUL SAFE LIFE.—If the harm was caused more than twenty (20) years after the time of delivery, a presumption arises that the harm was caused by use of the product after its useful safe life. This presumption may be rebutted by a preponderance of evidence.

## TITLE VI—PRODUCT LIABILITY CLASS ACTIONS

## SEC. 601. NOTIFICATION REQUIREMENT OF CLASS ACTION CERTIFICATION OR SETTLEMENT.

(a) IN GENERAL.—Part V of title 28, United States Code, is amended by inserting after chapter 113 the following new chapter:

## CHAPTER 114—PRODUCT LIABILITY CLASS ACTIONS

Sec. 1711. Notification of class action certifications and settlements.

## 1711. NOTIFICATION OF CLASS ACTION CERTIFICATIONS AND SETTLEMENTS.

(a) For purposes of this section, the term—

(1) “class” means a group of similarly situated individuals, defined by a class certification order, that comprise a party in a class action lawsuit;

(2) “class action” means a lawsuit file pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State rules of procedure authorizing a lawsuit to be brought by 1 or more representative individuals on behalf of a class;

(3) “class certification order” means an order issued by a court approving the treatment of a lawsuit as a class action;

(4) “class member” means a person that falls within the definition of the class;

(5) “class counsel” means the attorneys representing the class in a class action;

(6) “electronic legal databases” means computer services available to subscribers

containing text of judicial opinions and other legal materials, such as LEXIS OR WESTLAW;

(7) “official court reporter” means a publicly available compilation of published judicial opinions;

(8) “plaintiff class action” means a class action in which the plaintiff is a class; and

(9) “proposed settlement” means a settlement agreement between the parties in a class action that is subject to court approval before it becomes binding on the parties.

(b) This section shall not apply except to product liability cases subject to [this bill]. This section shall apply to—

(1) all product liability plaintiff class actions filed in Federal court; and

(2) all product liability plaintiff class actions filed in State court in which—

(A) any class member resides outside the State in which the action is filed; and

(B) the transaction or occurrence that gave rise to the lawsuit occurred in more than one State.

(c) No later than 10 days after a proposed settlement in a class action is filed in court, and at least 14 days prior to a court order approving such settlement, class counsel shall serve the State attorney general of each State in which a class member resides and the Department of Justice as if they were parties in the class action with—

(1) a copy of the complaint and any materials filed with the complaint and any amended complaints;

(2) notice of any future scheduled judicial hearing in the class action;

(3) any proposed or final notification to class members of—

(A) their rights to request exclusion from the class action; and

(B) a proposed settlement of a class action;

(4) any proposed or final class action settlement;

(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

(6) any final judgment or notice of dismissal;

(7)(A) if feasible the names of class members who reside in each State attorney general's respective State and their estimated proportionate claim to the entire settlement; or

(B) if not feasible, a reasonable estimate of the number of class members residing in each attorney general's State and their estimated proportionate claim to the entire settlement; and

(8) any written judicial opinion relating to the materials described under paragraphs (3) through (6).

(d) A hearing to consider final approval of a proposed settlement may not be held earlier than 120 days after the date on which the State attorneys general and the Department of Justice are served notice under subsection (c).

(e) Any court with jurisdiction over a plaintiff class action shall require that—

(1) any written notice provided to the class through the mail or publication in printed media contain a short summary written in plain, easily understood language, describing—

(A) the subject matter of the class action;

(B) the legal consequences of joining the class action;

(C) if the notice is informing class members of a proposed settlement agreement—

(i) the benefits that will accrue to the class due to the settlement;

(ii) the rights that class members will lose or waive through the settlement;

(iii) obligations that will be imposed on the defendants by the settlement;

(iv) a good faith estimate of the dollar amount of any attorney's fee if possible; and

(v) an explanation of how any attorney's fee will be calculated and funded; and

(D) any other material matter; and

(2) any notice provided through television or radio to inform the class of its rights to be excluded from a class action or a proposed settlement shall, in plain, easily understood language—

(A) describe the individuals that may potentially become class members in the class action; and

(B) explain that the failure of individuals falling within the definition of the class to exercise their right to be excluded from a class action will result in the individual's inclusion in the class action.

(f) Compliance with this section shall not immunize any party from any legal action under Federal or State law, including actions for malpractice or fraud.

(g)(1) A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action lawsuit if the class member resides in a State where the State attorney general has not been provided notice and materials under subsection (c). The rights created by this subsection shall apply only to class members or any person acting on their behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

(2) Nothing in this chapter shall be construed to impose any obligations, duties, or responsibilities upon State attorneys general or the attorney general of the United States.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The Table of chapters of part V of title 28, United States Code, is amended by inserting after the item relating to chapter 113 the following:

“114. Class Actions ..... 1711.”

## TITLE VII—STUDY OF PRODUCT LIABILITY SYSTEM

## SEC. 701. STUDY OF THE PRODUCT LIABILITY SYSTEM.

(a) STUDY BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce, in conjunction with the Attorney General of the United States, shall, in consultation with the courts of the several states and the attorneys general of the states, complete a study of the product liability system in the state and federal courts. Such study shall focus on—

(1) The relative caseload in the courts of product liability claims;

(2) The size and frequency of awards of punitive damages in products liability cases and the need for further reform in that area;

(3) Whether damage awards differ according to location of litigation and the impact of any such finding on the filing and resolution of product liability claims;

(4) Whether damage awards in product liability cases for economic and non-economic losses differ according to the sex, race or ethnicity of the claimant;

(5) The cost and availability of liability insurance and the impact of the product liability system on that cost and availability.

(6) The effects of this Act on the resolution of product liability claims.

(b) REPORT TO CONGRESS.—The Secretary of Commerce shall report to Congress on the findings of this study within 24 months of the date of enactment.

## SESSIONS AMENDMENTS NOS. 3096–3097

(Ordered to lie on the table)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:



## AMENDMENT NO. 3096

On page 2, beginning with line 1, strike through line 19 on page 34 and insert in lieu thereof the following:

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 1998".

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

Sec. 1. Short title; table of contents.

**TITLE I—PRODUCT LIABILITY REFORM**

Sec. 101. Definitions.

Sec. 102. Applicability; preemption.

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

Sec. 107. Statute of repose for durable goods used in a trade or business.

Sec. 109. Alternative dispute resolution procedures.

Sec. 110. Punitive damages reforms.

**TITLE II—BIOMATERIALS ACCESS ASSURANCE**

Sec. 201. Short title.

Sec. 202. Findings.

Sec. 203. Definitions.

Sec. 204. General requirements; applicability; preemption.

Sec. 205. Liability of biomaterials suppliers.

Sec. 206. Procedures for dismissal of civil actions against biomaterials suppliers.

Sec. 207. Subsequent impleader of dismissed defendant.

**TITLE I—PRODUCT LIABILITY REFORM****SEC. 101. DEFINITIONS.**

In this title:

(1) **ALCOHOLIC PRODUCT.**—The term "alcoholic product" includes any product 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.

(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 products 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, or 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 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 law, including applicable State law based on the Uniform Commercial Code.

(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 providing of an alcoholic product to an intoxicated person or minor 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.**—A civil action brought for harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel 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.**—Nothing in this Act shall be construed to pre-empt or supercede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title 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 caused 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. 107. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A TRADE OR BUSINESS.**

(a) **IN GENERAL.**—Except as provided in subsections (b) and (c), no product liability action that is subject to this title concerning a durable good alleged to have caused harm (other than toxic harm) for which the claimant has received or is eligible to receive workers' compensation may be filed after the 18-year period beginning at the time of delivery of the durable good to its first purchaser or lessee.

(b) **EXTENSION OF STATUTE OF REPOSE.**—Notwithstanding any other provision of this section and except as provided in section 106(b), a product liability action may be commenced within 2 years after the date of discovery or date on which discovery should have occurred, if the harm, and the cause of the harm, leading to a product liability action described in subsection (a) are discov-

ered or, in the exercise of reasonable care, should have been discovered, before the expiration of the 18-year period under this section.

(c) **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. 109. 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 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.

(b) **WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.**—

(1) **IN GENERAL.**—Except as provided in subsection (c), not later than 20 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.

(2) **EFFECT OF NOTICE.**—The filing of a written notice under paragraph (1) shall not constitute a waiver of any objection or defense in the action, including any objection on the grounds of jurisdiction.

(c) **EXTENSION.**—

(1) **IN GENERAL.**—The court may, upon motion by an offeree made before the expiration of the 20-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).

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

#### **SEC. 110. PUNITIVE DAMAGES REFORMS.**

(a) **GENERAL RULE.**—

(1) **UNIFORM STANDARD FOR AWARD OF PUNITIVE DAMAGES.**—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.

(2) **BIFURCATION AT REQUEST OF ANY PARTY.**—

(A) **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.

(B) **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.

(b) SPECIAL RULE FOR CERTAIN PERSONS AND ENTITIES.—

(1) IN GENERAL.—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.

## TITLE II—BIOMATERIALS ACCESS ASSURANCE

### SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1998".

#### AMENDMENT No. 3097

On page 14, beginning with line 20, strike through line 25, and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by any applicable Federal State law.

### GRAMM AMENDMENTS NOS. 3098–3101

(Ordered to lie on the table.)

Mr. GRAMM submitted four amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

#### AMENDMENT No. 3098

In section 105(b), strike "and except as otherwise provided in section 112".

#### AMENDMENT No. 3099

In section 105(b) add at the end: "Nothing in this Section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability."

#### AMENDMENT No. 3100

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) 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 who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of sophisticated user or bulk seller issues relating to employer responsibility for purposes of determining liability.

#### AMENDMENT No. 3101

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) 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 who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability.

### HARKIN AMENDMENTS NOS. 3102–3103

(Ordered to lie on the table.)

Mr. HARKIN submitted amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

#### AMENDMENT No. 3102

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING MINORS.—A civil action brought for harm caused by a product that includes harm involving permanent disability, disfigurement, or death, caused by that product to an individual under the age of 18 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.

#### AMENDMENT No. 3103

Strike subsections (a) and (b) of section 107 and insert the following:

(a) USEFUL SAFE LIFE DEFINED.—

(1) IN GENERAL.—For purposes of this subsection, the term "useful safe life" means, with respect to a product, the period beginning at the time of delivery of the product and ending on the date on which the product would not likely perform in a safe manner.

(2) FACTORS FOR CONSIDERATION.—In making a determination of what constitutes the useful safe life of a product, the court may consider evidence that is probative in determining whether the useful safe life of the product had expired, including—

(A) the amount of wear and tear on the product;

(B) the effect of deterioration from natural causes, climate, and other conditions under which the product was used or stored;

(C) the normal practices of the user, similar users, and the defendant with respect to—

(i) the circumstances and frequency of the use of the product;

(ii) the purposes of the use of the product; and

(iii) any repair, renewal, or replacement made with respect to the product;

(D) any representation, instruction, or warning made by the defendant concerning—

(i) the proper maintenance, storage, or use of the product; or

(ii) the expected useful safe life of the product; and

(E) any modification or alteration to the product made by a user or a third party.

(b) EXEMPTION; PRESUMPTION.—

(1) EXEMPTION FROM LIABILITY.—Except as provided in subsection (c), and subject to paragraph (2), in any product liability action concerning a product that is a durable good alleged to have caused harm (other than toxic harm), the defendant shall not be subject to liability to a claimant for damages resulting from harm caused by the durable good if the defendant proves by a preponderance of the evidence that the harm was caused after the expiration of the useful safe life of the product.

(2) LIABILITY OF DEFENDANT.—A defendant may be subject to liability for damages resulting from harm caused by a durable good after the expiration of the useful safe life of the product if—

(A) the defendant expressly warranted that the product could be utilized safely for a period longer than the useful safe life of the product; or

(B) the defendant intentionally misrepresented facts concerning the product, or fraudulently concealed information concerning the product, and that conduct was a substantial cause of the damages.

(3) PRESUMPTION REGARDING USEFUL SAFE LIFE.—If harm resulting in damages was caused by a durable good after the 18-year period beginning on the date of delivery of the product to the initial purchaser or lessee, there shall be a rebuttable presumption that the harm occurred after the expiration of the useful safe life of the product. The presumption may be rebutted by a preponderance of the evidence.

### SESSIONS AMENDMENTS NOS. 3104–3105

(Ordered to lie on the table.)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

#### AMENDMENT No. 3104

Strike section 2.

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

Strike sections 104 through 106.

Redesignate section 107 as section 104.

Strike section 108.

Redesignate sections 109 through 112 as sections 105 through 108, respectively.

#### AMENDMENT No. 3105

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

## NOTICES OF HEARINGS

### COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing entitled "Home Health Care: Can Small Agencies Survive New Regulations?" The hearing will be held on Wednesday, July 15, 1998, beginning at 10:00 a.m. in room 428A of the Russell Senate Office Building. For further information, please contact Suey Howe at 224-5175.

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.