

104TH CONGRESS
1ST SESSION

S. 300

To reform the civil justice system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 30), 1995

Mr. McCONNELL (for himself and Mr. ABRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the civil justice system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lawsuit Reform Act
5 of 1995”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Authority.
- Sec. 5. Equity in legal fees.
- Sec. 6. Early offer and recovery mechanisms.
- Sec. 7. Reform of joint and several liability.
- Sec. 8. Single recovery.
- Sec. 9. Limitation on punitive damages.
- Sec. 10. Alternative dispute resolution.

- Sec. 11. Reliability of expert evidence.
- Sec. 12. Express authorization for private right of action.
- Sec. 13. Applicability.
- Sec. 14. Severability.
- Sec. 15. Effective date.

1 **SEC. 3. FINDINGS.**

2 The Congress finds that—

3 (1) the United States civil justice system is in-
4 efficient, unpredictable, costly, and impedes competi-
5 tiveness in the world marketplace for business and
6 employees;

7 (2) the defects in the civil justice system have
8 a direct and undesirable effect on interstate com-
9 merce by decreasing the availability of goods and
10 services in commerce;

11 (3) reform efforts should respect the role of the
12 States in the development of civil justice rules, but
13 recognize the national Government's role in remov-
14 ing barriers to interstate commerce;

15 (4) the spiralling cost of litigation has contin-
16 ued unabated for the past 30 years; and

17 (5) there is a need to restore rationality, cer-
18 tainty, and fairness to the legal system, to promote
19 honesty and integrity within the legal profession,
20 and to encourage alternative means to the conten-
21 tious litigation system in resolving disputes.

1 **SEC. 4. AUTHORITY.**

2 This Act is enacted pursuant to Congress' powers
3 under Article I, section 8, clauses 3, 9, and 18, of the
4 United States Constitution.

5 **SEC. 5. EQUITY IN LEGAL FEES.**

6 (a) DISCLOSURE OF ATTORNEY'S FEES INFORMA-
7 TION.—

8 (1) DEFINITIONS.—For purposes of this sub-
9 section—

10 (A) the term “attorney” means any natu-
11 ral person, professional law association, cor-
12 poration, or partnership authorized under appli-
13 cable State law to practice law;

14 (B) the term “attorney’s services” means
15 the professional advice or counseling of or rep-
16 resentation by an attorney, but such term shall
17 not include other assistance incurred, directly
18 or indirectly, in connection with an attorney’s
19 services, such as administrative or secretarial
20 assistance, overhead, travel expenses, witness
21 fees, or preparation by a person other than the
22 attorney of any study, analysis, report, or test;

23 (C) the term “claimant” means any natu-
24 ral person who files a civil action arising under
25 any Federal law or in any diversity action in
26 Federal court and—

1 (i) if such a claim is filed on behalf of
2 the claimant's estate, the term shall in-
3 clude the claimant's personal representa-
4 tive; or

5 (ii) if such a claim is brought on be-
6 half of a minor or incompetent, the term
7 shall include the claimant's parent, guard-
8 ian, or personal representative;

9 (D) the term "contingent fee" means the
10 cost or price of an attorney's services deter-
11 mined by applying a specified percentage, which
12 may be a firm fixed percentage, a graduated or
13 sliding percentage, or any combination thereof,
14 to the amount of the settlement or judgment
15 obtained;

16 (E) the term "hourly fee" means the cost
17 or price per hour of an attorney's services;

18 (F) the term "initial meeting" means the
19 first conference or discussion between the
20 claimant and the attorney, whether by tele-
21 phone or in person, concerning the details,
22 facts, or basis of the claim;

23 (G) the term "natural person" means any
24 individual, and does not include an artificial or-
25 ganization or legal entity, such as a firm, cor-

1 poration, association, company, partnership, so-
2 ciety, joint venture, or governmental body; and

3 (H) the term “retain” means the act of a
4 claimant in engaging an attorney’s services,
5 whether by express or implied agreement, by
6 seeking and obtaining the attorney’s services.

7 (2) DECISION ON COMPENSATION.—A claimant
8 who retains an attorney may elect whether to com-
9 pensate the attorney’s services in connection with
10 the claim on an hourly basis or a contingent fee
11 basis.

12 (3) DISCLOSURE AT INITIAL MEETING.—An at-
13 torney retained by a claimant shall, at the initial
14 meeting, disclose to the claimant the claimant’s right
15 to elect the method of compensating the attorney’s
16 services and the claimant’s right to receive a written
17 statement of the information described under para-
18 graph (5).

19 (4) RIGHT OF ATTORNEY.—If, within 30 days
20 after receiving the information described under para-
21 graph (5), a claimant has failed to elect the method
22 of compensating the attorney’s services, the attorney
23 may select the method of compensation and shall no-
24 tify the claimant of the selection.

1 (5) INFORMATION AFTER INITIAL MEETING.—

2 Within 30 days after the initial meeting, an attorney
3 retained by a claimant shall provide a written state-
4 ment to the claimant containing—

5 (A) the estimated number of hours of the
6 attorney's services that will be spent—

7 (i) settling or attempting to settle the
8 claim or action; and

9 (ii) handling the claim through trial;

10 (B) the attorney's hourly fee for services in
11 the claim or action and any conditions, limita-
12 tions, restrictions, or other qualifications on the
13 fee the attorney determines are appropriate;
14 and

15 (C) the attorney's contingent fee for serv-
16 ices in the claim or action and any conditions,
17 limitations, restrictions, or other qualifications
18 on the fee the attorney determines are appro-
19 priate.

20 (6) INFORMATION AFTER SETTLEMENT.—An
21 attorney retained by a claimant shall, within a rea-
22 sonable time not later than 30 days after the date
23 on which the claim or action is finally settled or ad-
24 judicated, provide a written statement to the claim-
25 ant containing—

1 (A) the actual number of hours of the at-
2 torney's services in connection with the claim;

3 (B) the total amount of the hourly fees or
4 total contingent fee for the attorney's services
5 in connection with the claim; and

6 (C) the actual fee per hour of the attor-
7 ney's services in connection with the claim, de-
8 termined by dividing the total amount of the
9 hourly fees or the total contingent fee by the
10 actual number of hours of attorney's services.

11 (7) FAILURE TO DISCLOSE.—A claimant to
12 whom an attorney fails to disclose information re-
13 quired by this section may withhold 10 percent of
14 the fee and file a civil action for damages in the
15 court in which the claim or action was filed or could
16 have been filed.

17 (8) OTHER REMEDIES.—This section shall sup-
18 plement and not supplant any other available rem-
19 edies or penalties.

20 (b) LIMITATION ON ATTORNEY CONTINGENT
21 FEES.—

22 (1) DEFINITIONS.—For purposes of this sub-
23 section, the term—

24 (A) “allegedly liable party” means a per-
25 son, partnership, corporation, and the insurers

1 thereof, or any other individual or entity alleged
2 by the claimant to be liable for at least some
3 portion of the damages alleged by the claimant;

4 (B) “claimant” means an individual who,
5 in his or her own right, or vicariously, is seek-
6 ing compensation for tortious physical or men-
7 tal injury, property damage, or economic loss;

8 (C) “contingent fee” means the fee nego-
9 tiated in a contingent fee agreement which is
10 only payable from the proceeds of any recovery
11 on behalf of a claimant;

12 (D) “contingent fee agreement” means a
13 fee agreement between an attorney and a claim-
14 ant wherein the attorney agrees to bear the risk
15 of no or inadequate compensation in exchange
16 for a proportionate share of part of or all of
17 any recovery by settlement or verdict obtained
18 for the claimant;

19 (E) “contingent fee attorney” means an
20 attorney who agrees to represent a claimant in
21 exchange for a contingent fee;

22 (F) “fixed fee” means an agreement be-
23 tween an attorney and a claimant whereby the
24 attorney agrees to perform a specific legal task

1 in exchange for a specific sum to be paid by a
2 claimant;

3 (G) “hourly rate fee”—

4 (i) means the fee generated by an
5 agreement or otherwise by operation of law
6 between an attorney and a claimant stat-
7 ing that the claimant pay the attorney a
8 fee determined by multiplying the hourly
9 rate negotiated, or otherwise set by law,
10 between the attorney and the claimant, by
11 the number of hours that the attorney has
12 worked on behalf of the claimant in fur-
13 therance of the claimant’s interest; and

14 (ii) may also be a contingent fee to
15 the extent it is only payable from the pro-
16 ceeds of any recovery on behalf of the
17 claimant;

18 (H) “pre-retention offer” means an offer
19 to settle a claim for compensation for damages
20 arising out of a civil action made to a claimant
21 not represented by an attorney at the time of
22 the offer;

23 (I) “post-retention offer” means an offer
24 in response to a demand for compensation made
25 within the time constraints, and conforming to

1 the provisions of this subsection, to settle a
2 claim for damages arising out of a civil action
3 made to a claimant who is represented by a
4 contingent fee attorney;

5 (J) “response” means a written commu-
6 nication by a claimant or an allegedly respon-
7 sible party or the attorney for either, deposited
8 into the United States Mail and sent by cer-
9 tified mail; and

10 (K) “settlement offer” means a written
11 offer of settlement stated in a response filed
12 within the time limits described in this sub-
13 section.

14 (2) APPLICABILITY.—(A) This subsection shall
15 apply with respect to any civil action filed against
16 any person in any Federal or State court based upon
17 any cause of action (including, but not limited to
18 negligence, strict or product liability, breach of im-
19 plied warranty or professional malpractice) in which
20 damages are sought for tortious physical or mental
21 injury, property damage, or economic loss, except a
22 civil action arising under a Federal law that author-
23 izes an award of attorney fees to a prevailing party.

24 (B)(i) Nothing in this section shall apply to any
25 agreement between a claimant and an attorney to—

1 (I) retain the attorney on an hourly rate
2 fee or fixed fee basis solely to evaluate a pre-
3 retention offer; and

4 (II) retain the attorney to collect overdue
5 amounts from an accepted pre-retention or
6 post-retention settlement offer.

7 (ii) This subsection shall not apply to contin-
8 gent fee agreements in civil actions where neither a
9 pre-retention nor a post-retention offer of settlement
10 is made.

11 (3) WRITTEN HOURLY RATE FEE AGREE-
12 MENT.—With respect to a civil action, if a contin-
13 gent fee attorney has not entered into a written
14 agreement with a claimant at the time of retention
15 setting forth the attorney’s hourly rate, then a rea-
16 sonable hourly rate shall be payable, subject to the
17 limitations described in this section.

18 (4) NATURE OF DEMAND FOR COMPENSA-
19 TION.—(A) With respect to a civil action, at any
20 time after retention, a contingent fee attorney shall,
21 on behalf of the claimant, send a demand for com-
22 pensation by certified mail to an allegedly respon-
23 sible party.

24 (B) The demand for compensation under sub-
25 paragraph (A) shall contain the material facts rel-

1 evant to the civil action involved and a description
2 of the evidence determined by the contingent fee at-
3 torney to be discoverable by the alleged liable party
4 during the course of litigation, including—

5 (i) the name, address, age, marital status
6 and occupation of the claimant or of the injured
7 or deceased party if the claimant is operating in
8 a representative capacity;

9 (ii) a brief description of how the damages
10 arose;

11 (iii) the names and, if known, the address-
12 es, telephone numbers, and occupations of all
13 known witnesses;

14 (iv) copies of photographs in the claimant's
15 possession which relate to the claim for dam-
16 ages;

17 (v) the basis for claiming that the party to
18 whom the claim is addressed is at least partially
19 liable for causing the injury;

20 (vi) if the claim for damages is based upon
21 a physical or mental injury—

22 (I) a description of the nature of the
23 injury, the names and addresses of all phy-
24 sicians, other health care providers, and
25 hospitals, clinics, or other medical service

1 entities that provided medical care to the
2 claimant or injured party including the
3 date and nature of the service; and

4 (II) medical records relating to the in-
5 jury and those involving a prior injury or
6 preexisting medical condition which an al-
7 legedly liable party would be able to intro-
8 duce into evidence in a trial or, in lieu
9 thereof, providing executed releases allow-
10 ing the allegedly responsible party to ob-
11 tain such records directly from the claim-
12 ant's physicians, health care providers and
13 entities that provided medical care; and

14 (vii) with respect to demand for a com-
15 pensation that includes an amount for medical
16 expenses, wages lost or other special damages
17 suffered as a consequence of the injury, rel-
18 evant documentation thereof, including records
19 of earnings if a claimant is self-employed and
20 employer records of earnings if a claimant is
21 employed.

22 (C) A claimant's attorney shall provide copies
23 of each demand for compensation under this para-
24 graph to the claimant and to each allegedly liable
25 party at the time of the dispatch of the demand for

1 compensation. Where reproduction costs would be
2 significant relative to the size of the settlement offer,
3 the claimant's attorney, may, in the alternative,
4 offer other forms of access to the materials, conven-
5 ient and at reasonable cost to allegedly responsible
6 party's attorney.

7 (D) A contingent fee attorney who fails to file
8 a demand for compensation under this paragraph
9 shall not be entitled to any fee greater than 10 per-
10 cent of any settlement or judgment received by the
11 claimant client after reasonable expenses have been
12 deducted.

13 (5) TIME LIMIT FOR RESPONSE SETTING
14 FORTH SETTLEMENT OFFER.—(A) An allegedly lia-
15 ble party shall have 60 days from the date of the re-
16 ceipt of a demand for compensation under para-
17 graph (4) to issue a response stating a settlement
18 offer.

19 (B) If within 30 days after the date of the re-
20 ceipt of a demand for compensation under para-
21 graph (4), an allegedly liable party notifies the attor-
22 ney of the claimant that such party seeks to have a
23 medical examination of the claimant, and the claim-
24 ant is not made available for such examination with-
25 in 10 days after the date of the receipt of such a

1 request, the 60-day period described under subpara-
2 graph (A) shall be extended by one day for each day
3 that such request is not honored after the expiration
4 of such 10-day period. Any such extension shall also
5 include a further period of 10 days from the date of
6 the completion of the medical examination.

7 (C) A response under this paragraph shall be
8 open for acceptance for a minimum of 30 days from
9 the date of the receipt of such response by the attor-
10 ney of the claimant and shall state whether such re-
11 sponse expires in 30 days or remains open for ac-
12 ceptance for a longer period or until notice of with-
13 drawal is given.

14 (D) A settlement offer in a response under this
15 subsection may be increased during the 60-day pe-
16 riod described under subparagraph (A) by issuing an
17 additional response.

18 (E) If an additional response has been sent
19 under this paragraph, the time for acceptance shall
20 be 10 days from the date of the receipt of such addi-
21 tional response by the attorney of the claimant or 30
22 days from the date of the receipt of the initial re-
23 sponse, whichever is later, unless the additional re-
24 sponse specifies a longer period of time for accept-
25 ance as described under subparagraph (C).

1 (6) MATERIAL TO ACCOMPANY SETTLEMENT
2 OFFER.—An allegedly responsible party and the at-
3 torney of such party shall include in any response
4 stating a settlement offer under paragraph (5) cop-
5 ies of materials in their possession concerning the
6 claim upon which the allegedly liable party relied in
7 making a settlement offer, except for material which
8 such party believes in good faith would not be dis-
9 coverable by the claimant during the course of litiga-
10 tion. Where reproduction costs would be significant
11 relative to the size of the settlement offer, the alleg-
12 edly responsible party, may, in the alternative, offer
13 other forms of access to the materials, convenient
14 and at reasonable cost to claimant’s attorney.

15 (7) EFFECT OF PRE-DEMAND SETTLEMENT
16 OFFER.—A settlement offer under this subsection to
17 a claimant represented by a contingent fee attorney
18 made prior to the receipt of a demand for compensa-
19 tion, which is open for acceptance for 60 days or
20 more from the time of its receipt and which con-
21 forms to the requirements of paragraph (6), shall be
22 considered a post-retention offer and shall have the
23 same effect under this subsection as if it were a re-
24 sponse to a demand for compensation.

1 (8) PRE-RETENTION OFFER.—(A) An attorney
2 retained after a claimant has received a pre-reten-
3 tion offer under this subsection may not enter into
4 an agreement with the claimant to receive a contin-
5 gent fee based upon or payable from the proceeds of
6 the pre-retention offer which remains in effect.

7 (B) An attorney entering a fee agreement that
8 would effectively result in a claimant's paying a per-
9 centage of a pre-retention offer to the attorney for
10 prosecuting the claim shall be considered to have
11 charged an unreasonable and excessive fee. With re-
12 spect to an attorney where a pre-retention offer has
13 been provided—

14 (i) the attorney may contract with a claim-
15 ant to receive an hourly rate fee or fixed fee for
16 advising the claimant regarding the pre-reten-
17 tion offer; or

18 (ii) the attorney may contract with a
19 claimant to receive a contingent fee applicable
20 to any amount received by a claimant, by settle-
21 ment or judgment, above the amount of the
22 pre-retention offer.

23 (9) POST-RETENTION OFFER WHERE A PRE-RE-
24 TENTION OFFER HAS BEEN MADE.—A claimant in
25 receipt of a pre-retention offer under this subsection

1 which such claimant has not accepted and who later
2 receives a post-retention offer which is accepted, is
3 not obligated to pay the retained attorney a fee
4 greater than the hourly rate fee calculated on the
5 basis of the number of hours the attorney has
6 worked on behalf of claimant in furtherance of the
7 claimant's claim, but not exceeding 20 percent of the
8 excess of the post-retention offer less the pre-retention
9 offer.

10 (10) POST-RETENTION OFFER WHERE NO PRE-
11 RETENTION OFFER HAS BEEN MADE.—A claimant
12 not in receipt of a pre-retention offer under this sub-
13 section who has received a post-retention offer which
14 is accepted, is not obligated to pay the retained at-
15 torney a fee greater than the hourly rate fee cal-
16 culated on the basis of the number of hours the at-
17 torney has worked on behalf of claimant in further-
18 ance of claimant's claim, but not exceeding 10 per-
19 cent of the first \$100,000, plus 5 percent of any
20 amount above \$100,000, of the accepted post-retention
21 offer after reasonable expenses have been de-
22 ducted.

23 (11) CALCULATION OF ATTORNEY FEE WHEN
24 THERE IS A SUBSEQUENT RESOLUTION OF THE
25 CLAIM.—If an allegedly liable party's post-retention

1 settlement offer under this subsection is rejected,
2 but a later settlement offer is accepted, or there is
3 a judgment in favor of claimant, the claimant, irre-
4 spective of any pre-retention offer, is not obligated
5 to pay the retained attorney a fee greater the sum
6 of—

7 (A) the amount of the fee that would have
8 been calculated under paragraph (10) had the
9 post-retention offer been accepted but only as
10 applied to the subsequent settlement offer or
11 judgment up to the amount of the post-reten-
12 tion offer; and

13 (B) the product of multiplying the contin-
14 gent fee percentage negotiated between the con-
15 tingent fee attorney and claimant and the
16 amount by which the subsequent settlement or
17 judgment exceeds the post-retention offer, after
18 reasonable expenses have been deducted.

19 (12) PROVISION OF CLOSING STATEMENT.—
20 Upon receipt of any settlement or judgment under
21 this subsection, and prior to disbursement thereof, a
22 contingent fee attorney shall provide the claimant
23 with a written statement detailing how the proceeds
24 are to be distributed, including the amount of the
25 expenses paid out or to be paid out of the proceeds,

1 the amount of the fee, how the fee amount is cal-
2 culated, and the amount due the claimant.

3 (13) EFFECT ON CONTRAVENING AGREE-
4 MENTS.—(A) A contingent fee attorney who enters
5 into a fee agreement with a claimant which violates
6 the provisions of this subsection is deemed to have
7 charged an unreasonable and excessive fee.

8 (B) A claimant who has entered into an agree-
9 ment with a contingent fee attorney which violates
10 the provisions of this subsection is entitled to recover
11 from the attorney any reasonable fees and costs in-
12 curred to establish such agreement violated the pro-
13 visions of this subsection.

14 (C) The failure by the claimant's attorney, or
15 the attorney for an alleged responsible party, to
16 comply with the provisions of this subsection may be
17 considered grounds for disciplinary proceedings and
18 sanctions as determined appropriate by the licensing
19 or regulatory agency or court of the State in which
20 the claim arose.

21 (c) AMENDMENT TO THE FEDERAL RULES OF CIVIL
22 PROCEDURE.—Rule 11(c) of the Federal Rules of Civil
23 Procedure is amended—

1 (1) in the matter preceding paragraph (1) by
2 striking out “may” and inserting in lieu thereof
3 “shall”;

4 (2) in subdivision (1)(A) in the third sentence
5 by striking out “may” and inserting in lieu thereof
6 “shall”; and

7 (3) in paragraph (2)—

8 (A) by amending the first sentence to read
9 as follows: “A sanction imposed for a violation
10 of this rule shall be sufficient to deter repetition
11 of such conduct or comparable conduct by oth-
12 ers similarly situated and to compensate the
13 parties that were injured by such conduct.”;
14 and

15 (B) in the second sentence by striking “,
16 if imposed on motion and warranted for effec-
17 tive deterrence,”.

18 (d) PREVAILING PARTY COSTS AND ATTORNEYS’
19 FEES.—

20 (1) IN GENERAL.—Subject to paragraphs (2)
21 and (3), in any civil action filed against any person
22 in any Federal or State court, based on any cause
23 of action (including, but not limited to negligence,
24 strict or product liability, breach of implied warranty
25 or professional malpractice) in which damages are

1 sought for tortious physical or mental injury, prop-
2 erty damage, or economic loss the court may award
3 each prevailing party costs and reasonable attorneys'
4 fees.

5 (2) AMOUNT OF AWARD.—An award of costs
6 and reasonable attorneys' fees under paragraph (1)
7 may not exceed—

8 (A) the actual cost incurred by the
9 nonprevailing party or the attorneys' fee pay-
10 able for services in connection with such civil
11 action; or

12 (B) if no such cost was incurred by the
13 nonprevailing party due to a contingency fee
14 agreement, an amount equal to the reasonable
15 costs that would have been incurred by the
16 nonprevailing party for a noncontingent attor-
17 neys' fee payable for services in connection with
18 such civil action.

19 (3) LIMITATION.—

20 (A) Notwithstanding paragraph (1) or (2),
21 the court shall not award an attorney's fee in
22 any case in which the nonprevailing party—

23 (i) had a taxable income of less than
24 \$75,000 in the calendar year preceding the
25 calendar year in which the civil action was

1 filed, if the nonprevailing party is an indi-
2 vidual; or

3 (ii) had an average taxable income of
4 less than \$50,000 for the 3 calendar years
5 preceding the calendar year in which the
6 civil action was filed, if the nonprevailing
7 party is not an individual.

8 (B) The court shall retain discretion to
9 refuse to award or may reduce the amount
10 awarded as an attorney’s fee under paragraph
11 (1) to the extent the court finds would be in the
12 interests of justice.

13 **SEC. 6. EARLY OFFER AND RECOVERY MECHANISMS.**

14 (a) IN GENERAL.—Chapter 111 of title 28, United
15 States Code, is amended by adding at the end thereof the
16 following new section:

17 **“§ 1659. Early offer and recovery mechanisms**

18 “(a) For purposes of this section:

19 “(1) The term ‘allegedly liable defendant’
20 means a person, partnership, or corporation alleged
21 by the claimant to be responsible for at least some
22 portion of an injury alleged by a claimant.

23 “(2) The term ‘allowable expense’ means rea-
24 sonable expenses incurred for products, services, and
25 accommodations reasonably needed for medical care,

1 training, and other remedial treatment and care of
2 an injured individual.

3 “(3) The term ‘claimant’ means an individual
4 who, in his or her own right, or vicariously, is seek-
5 ing compensation for tortious physical or mental in-
6 jury, property damage or economic loss.

7 “(4) The term ‘collateral benefits’ means all
8 benefits and advantages received or entitled to be re-
9 ceived (regardless of the right of recoupment of any
10 other entity, through subrogation, trust agreement,
11 lien, or otherwise) by an injured individual or other
12 entity as reimbursement of loss because of personal
13 injury, payable or required to be paid—

14 “(A) in accordance with the laws of any
15 State or the Federal Government (other than
16 through a claim for breach of an obligation or
17 duty);

18 “(B) under the terms of any health or ac-
19 cident insurance, wage or salary continuation
20 plan, or disability income insurance; or

21 “(C) in discharge of familial obligations or
22 support.

23 “(5) The term ‘economic loss’ means—

24 “(A) pecuniary loss and monetary expenses
25 incurred by or on behalf of an injured individ-

1 ual as a result of tortious physical or mental in-
2 jury, property damage, or economic loss, includ-
3 ing allowable expenses, work loss, and replace-
4 ment services loss, whether caused by pain and
5 suffering or physical impairment, but not in-
6 cluding noneconomic loss; minus

7 “(B) collateral benefits.

8 “(6) The term ‘entity’ includes an individual or
9 person.

10 “(7) The term ‘intentional misconduct’ means
11 conduct, whether by act or omission, which inten-
12 tionally causes, or attempts to cause, by the one who
13 acts or fails to act, injury or with knowledge that in-
14 jury is substantially certain to follow. A person does
15 not intentionally cause, or attempt to cause, injury
16 if such party’s act or failure to act is for the purpose
17 of averting bodily harm to such party or another.

18 “(8) The term ‘replacement services loss’ means
19 reasonable expenses incurred in obtaining ordinary
20 and necessary services from others, not members of
21 the injured individual’s household or family, in lieu
22 of those the injured individual would have performed
23 for the benefit of the household or family, but does
24 not include benefits received by the injured individ-
25 ual.

1 “(9) The term ‘serious injury’ means bodily in-
2 jury which results in dismemberment, significant
3 and permanent loss of an important bodily function,
4 or significant and permanent scarring or disfigure-
5 ment.

6 “(10) The term ‘wanton conduct’ means con-
7 duct that the allegedly responsible party must have
8 realized was excessively dangerous, done heedlessly
9 and recklessly, and with a conscious disregard to the
10 consequences or the rights and safety of the claim-
11 ant.

12 “(11) The term ‘work loss’ means loss of in-
13 come from work the injured individual would have
14 performed if the individual had not been injured, re-
15 duced by any income from substitute work actually
16 performed by the individual or by income the indi-
17 vidual would have earned in available appropriate
18 substitute work that the individual was capable of
19 performing but unreasonably failed to undertake.

20 “(b)(1) In any civil action or claim against any per-
21 son, filed in any Federal or State court, based on any
22 cause of action to recover damages or compensation for
23 tortious physical or mental injury, property damage, or
24 economic loss, any allegedly liable defendant shall have the
25 option to offer, not later than 120 days after an injury

1 or after the initiation of the liability claim, to compensate
2 a claimant for reasonable economic loss, including future
3 economic loss, less amounts available from collateral
4 sources, and including reasonable hourly attorneys' fees
5 for the claimant. A claimant who agrees in writing to such
6 offer shall be foreclosed from bringing or continuing a civil
7 action against any allegedly liable defendant and any other
8 individuals or entities included under subsection (c). The
9 claimant may extend the time for receiving the offer.

10 “(2) Nothing in this section shall preclude a State
11 from enacting a requirement that compensation benefits
12 offered under paragraph (1) shall include a minimum dol-
13 lar amount in response to a claim for serious injury.

14 “(c) An offer under subsection (b) may include other
15 allegedly liable defendants, individuals, or entities that
16 were involved in the events which give rise to the civil ac-
17 tion, regardless of the theory of liability on which the claim
18 is based, with their consent.

19 “(d) Future economic damages shall be payable to
20 an individual under this section as such damages occur.

21 “(e) If, after an offer is made under subsection (b),
22 the participants in the offer dispute their relative contribu-
23 tions to the payments to be made to the individual, such
24 disputes shall be resolved through binding arbitration in

1 accordance with applicable rules and procedures estab-
2 lished by the Attorney General of the United States.

3 “(f)(1) In no event shall a civil action be foreclosed
4 under subsection (b) against any allegedly liable party if
5 the injured individual elects to prove, beyond a reasonable
6 doubt, that the allegedly liable party caused the injury by
7 intentional or wanton misconduct.

8 “(2) This subsection shall not apply with respect to
9 a personal injury unless the injured individual provides the
10 allegedly liable party making an offer with a notice of such
11 an election not later than 90 days after the date the offer
12 of compensation benefits was made.

13 “(g) Nothing in this section shall be construed to ef-
14 fect any applicable statute of limitations of any State or
15 of the United States.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 The table of sections for chapter 111 of title 28, United
18 States Code, is amended by adding at the end thereof the
19 following new item:

“1659. Early offer and recovery mechanisms.”.

20 **SEC. 7. REFORM OF JOINT AND SEVERAL LIABILITY.**

21 (a) DEFINITION.—As used in this section, the term
22 “concerted action” or “acting in concert” means the par-
23 ticipation in joint conduct by 2 or more persons who
24 agreed to jointly participate in such conduct with actual
25 knowledge of the wrongfulness of the conduct.

1 (b) IN GENERAL.—(1) Except as provided under sub-
2 section (c), joint and several liability may not be applied
3 to any civil action or claim against any person, filed in
4 any Federal or State court, based on any cause of action
5 to recover damages or compensation for tortious physical
6 or mental injury, property damage, or economic loss.

7 (2) A person found liable for damages in any such
8 action—

9 (A) may be found liable, if at all, only for dam-
10 ages directly attributable to the person's pro rata
11 share of fault or responsibility; and

12 (B) may not be found liable for damages attrib-
13 utable to the pro rata share of fault or responsibility
14 of any other person (without regard to whether that
15 person is a party to the action), including any per-
16 son filing the action.

17 (c) LIMITATION.—This section shall not apply to per-
18 sons acting in concert where the concerted action proxi-
19 mately caused the injury for which one or more persons
20 are found liable for damages.

21 **SEC. 8. SINGLE RECOVERY.**

22 (a) INADMISSIBLE EVIDENCE.—In any civil action or
23 claim against any person, filed in any Federal or State
24 court, based on any cause of action to recover damages
25 or compensation for tortious physical or mental injury,

1 property damage, or economic loss, the court shall not
2 allow the admission into evidence of proof of economic
3 losses that have been or will be paid by—

4 (1) Federal, State, or other governmental dis-
5 ability, unemployment, or sickness programs;

6 (2) Federal, State, or other governmental or
7 private health insurance programs;

8 (3) private or public disability insurance pro-
9 grams;

10 (4) employer wage continuation programs;

11 (5) any other program or compensation system,
12 if the payment is intended to compensate the claim-
13 ant for the same injury or disability which is the
14 subject of the claim; or

15 (6) persons other than family members of the
16 claimant.

17 (b) ADMISSIBLE EVIDENCE.—Only evidence of eco-
18 nomic loss that has not or will not be paid by the sources
19 described under subsection (a) shall be admissible in an
20 action or claim covered by this section.

21 (c) ELIMINATION OF SUBROGATION.—An entity that
22 is the source of the payments for losses that are inadmis-
23 sible under subsection (a)—

24 (1) shall not recover any amount against the
25 claimant;

1 (2) shall not be subrogated to the rights of the
2 claimant against the defendant; and

3 (3) shall not have a lien against the claimant's
4 judgment, on account of its payment to the claimant
5 for economic loss.

6 (d) PRETRIAL DETERMINATION.—The determination
7 of whether a claimant seeking damages or compensation
8 has received, will receive, or is entitled to receive, payment
9 from any one or more sources described under subsection
10 (a) (1) through (6) shall be made by the court in pretrial
11 proceedings.

12 **SEC. 9. LIMITATION ON PUNITIVE DAMAGES.**

13 (a) IN GENERAL.—Except as provided under section
14 1977A of the Revised Statutes (42 U.S.C. 1981a), the
15 amount of punitive damages that may be awarded in any
16 civil action or claim filed in any Federal or State court,
17 based on any cause of action to recover damages or com-
18 pensation for tortious physical or mental injury, property
19 damage, or economic loss shall not exceed the greater of—

20 (1) 3 times the amount awarded to the claimant
21 for the economic injury on which such claim is
22 based; or

23 (2) \$250,000.

24 (b) APPLICATION BY COURT.—This section shall be
25 applied by the court and shall not be disclosed to the jury.

1 **SEC. 10. ALTERNATIVE DISPUTE RESOLUTION.**

2 (a) GENERAL POLICY.—The policy of the United
3 States is to encourage the creation and use of alternative
4 dispute resolution techniques, and to promote the expedi-
5 tious resolution of such actions, because the traditional
6 litigation process is not always suited to the timely, effi-
7 cient, and inexpensive resolution of civil actions.

8 (b) NOTICE OF AVAILABILITY OF ALTERNATIVE DIS-
9 PUTE RESOLUTION.—In any civil action or claim arising
10 under any Federal law or in any diversity action in Fed-
11 eral court, each attorney who has made an appearance in
12 the case and who represents one or more of the parties
13 to the action shall, with respect to each party separately
14 represented, advise the party of the existence and avail-
15 ability of alternative dispute resolution options, including
16 extra judicial proceedings such as minitrials, third-party
17 mediation, court supervised arbitration, and summary jury
18 trial proceedings.

19 (c) CERTIFICATION OF NOTICE.—Each attorney de-
20 scribed under subsection (b) shall, simultaneous with the
21 filing of a complaint or a responsive pleading, file a certifi-
22 cation to the court that the attorney has provided the no-
23 tice required under subsection (b) to the client or clients
24 of such attorney. The attorney shall state in the certifi-
25 cation whether such client will agree to one or more of
26 the alternative dispute resolution techniques.

1 (d) AGREEMENT TO PROCEED WITH ALTERNATIVE
2 DISPUTE RESOLUTION.—If all parties to an action agree
3 to proceed with one or more alternative dispute resolution
4 proceedings, the court shall issue an appropriate order
5 governing the conduct of such proceedings. The issuance
6 of an order governing the proceedings shall constitute a
7 waiver, by each party subject to the order, of the right
8 to proceed further in court.

9 **SEC. 11. RELIABILITY OF EXPERT EVIDENCE.**

10 Rule 702 of the Federal Rules of Evidence is amend-
11 ed—

12 (1) by striking out “If” and inserting in lieu
13 thereof “(a) IN GENERAL.—Subject to subsection
14 (b), if”; and

15 (2) by adding at the end thereof the following:

16 “(b) ADEQUATE BASIS FOR OPINION.—Testimony in
17 the form of an opinion by a witness that is based on sci-
18 entific knowledge shall be inadmissible in evidence unless
19 the court determines that such opinion is—

20 “(1) based on scientifically valid reasoning; and

21 “(2) sufficiently reliable so that the probative
22 value of such evidence outweighs the dangers speci-
23 fied under rule 403.

24 “(c) EXPERT OPINIONS ON NOVEL SCIENTIFIC PRIN-
25 CIPLES OR DISCOVERIES.—Where testimony in the form

1 of an opinion by a witness is sought to be used to establish
2 a novel scientific principle or discovery, it shall be admissi-
3 ble only if the principle or discovery, or its scientific under-
4 pinning, is sufficiently established to have gained general
5 acceptance in the field in which it belongs.

6 “(d) DISQUALIFICATION.—Testimony by a witness
7 who is qualified as an expert under subsection (a) is inad-
8 missible in evidence if such witness is entitled to receive
9 any compensation directly or indirectly contingent on the
10 legal disposition of any claim with respect to which such
11 testimony is offered.”.

12 **SEC. 12. EXPRESS AUTHORIZATION FOR PRIVATE RIGHT OF**
13 **ACTION.**

14 (a) IN GENERAL.—Chapter 85 of title 28, United
15 States Code, is amended by adding at the end thereof the
16 following new section:

17 **“§ 1368. Private right of action**

18 “No district court shall have jurisdiction over any
19 civil action filed by a party based on a private right of
20 action, unless such private right of action is expressly au-
21 thorized in the statute on which such action is based.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
23 The table of sections for chapter 85 of title 28, United
24 States Code, is amended by adding at the end thereof the
25 following new item:

“1368. Private right of action.”.

1 (c) STATE COURTS.—No Federal statute shall be
2 construed to give rise to a private right of action in a State
3 court, unless such private right of action is expressly au-
4 thorized in the statute on which such action is based.

5 **SEC. 13. APPLICABILITY.**

6 (a) PREEMPTION.—This Act shall preempt and su-
7 percede other Federal or State laws only to the extent any
8 such law is inconsistent with this Act. This Act shall not
9 preempt any Federal or State law that provides for de-
10 fenses in addition to those contained in this Act, places
11 greater limitations on the amount of attorney’s fees that
12 can be collected, or additional disclosure requirements
13 upon attorneys, or otherwise imposes restrictions on eco-
14 nomic, noneconomic, or punitive damages. Any issue aris-
15 ing under this Act that is not governed by the provisions
16 of this Act shall be governed by applicable Federal or
17 State law.

18 (b) RULE OF CONSTRUCTION.—Nothing in this Act
19 shall be construed to—

20 (1) waive or affect any defense of sovereign im-
21 munity asserted by any State under any provision of
22 law;

23 (2) waive or affect any defense of sovereign im-
24 munity asserted by the United States;

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

3 (4) preempt State choice-of-law rules with re-
4 spect to claims brought by a foreign nation or citi-
5 zen of a foreign nation; or

6 (5) affect the right of any court to transfer
7 venue or to apply the law of a foreign nation or to
8 dismiss a claim of a foreign or of a citizen of a for-
9 eign nation on the ground of inconvenient forum.

10 (c) STATE ELECTION REGARDING APPLICABILITY.—

11 A provision of this Act shall not apply to a State if such
12 State enacts a statute—

13 (1) citing the authority of this subsection; and

14 (2) declaring the election of such State that
15 such provision shall not apply to the State.

16 **SEC. 14. SEVERABILITY.**

17 If any provision of this Act or the application of any
18 such provision to any person or circumstance is held in-
19 valid, the remainder of this Act and the application of any
20 provision to any other person or circumstance shall not
21 be affected thereby.

1 **SEC. 15. EFFECTIVE DATE.**

2 This Act shall take effect and apply to claims or ac-
3 tions filed on and after the date occurring 30 days after
4 the date of enactment of this Act.

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S 300 IS—3