

106TH CONGRESS  
2D SESSION

# H. R. 5119

To provide for health care liability reform.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 6, 2000

Mr. THORNBERRY introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To provide for health care liability reform.

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 “Health Care Liability  
5 Reform Act”.

6 **SEC. 2. HEALTH CARE LIABILITY REFORM.**

7 (a) PUNITIVE DAMAGES.—

8 (1) AWARD.—Punitive damages may, to the ex-  
9 tent permitted by applicable State law, be awarded  
10 against a manufacturer or product seller in a civil  
11 action if the claimant establishes by clear and con-

1       vincing evidence that the harm suffered was the re-  
2       sult of conduct manifesting actual malice.

3               (2) DRUGS AND DEVICES.—The manufacturer  
4       of a prescription drug or device and a health care  
5       provider shall not be subject to punitive damages  
6       with respect to harm caused by a drug or device if  
7       the drug or device was approved under the Federal  
8       Food, Drug, and Cosmetic Act unless—

9               (A) the manufacturer withholds from the  
10       Food and Drug Administration, or

11              (B) the health care provider withholds  
12       from a patient,

13       information which is relevant to the performance of  
14       the drug or device and causally related to the harm  
15       suffered by the plaintiff.

16              (3) LIMITATION ON AMOUNT.—The amount of  
17       punitive damages that may be awarded for a claim  
18       in any civil action shall not exceed 3 times the  
19       amount awarded to the claimant for the economic  
20       injury on which such claim is based, or \$250,000,  
21       whichever is greater.

22              (b) SEVERAL LIABILITY FOR NONECONOMIC DAM-  
23       AGES.—In any action, the liability of each manufacturer  
24       or product seller of the product involved in such action  
25       shall be several only and shall not be joint for noneconomic

1 damages and the liability of a health care provider shall  
2 be several only and shall not be joint for noneconomic  
3 damages. Such manufacturer, product seller, or health  
4 care provider shall be liable only for the amount of non-  
5 economic damages allocated to such manufacturer or seller  
6 in direct proportion to such manufacturer's, seller's, or  
7 health care provider's percentage of responsibility as de-  
8 termined by the trier of fact.

9 (c) DEFINITIONS.—As used in this section:

10 (1) CLAIMANT.—The term “claimant” means  
11 any person who brings a product liability action and  
12 any person on whose behalf such an action is  
13 brought, including such person's decedent if such an  
14 action is brought through or on behalf of an estate  
15 or such person's legal representative if it is brought  
16 through or on behalf of a minor or incompetent.

17 (2) MALICE.—The term “malice” means con-  
18 duct that is either—

19 (A) specifically intended to cause serious  
20 personal injury, or

21 (B) carried out with both a flagrant indif-  
22 ference to the rights of the claimant and an  
23 awareness that such conduct is likely to result  
24 in serious personal injury.

1           (3) MANUFACTURER.—With respect to a prod-  
2           uct, the term “manufacturer” means—

3                   (A) any person who is engaged in a busi-  
4                   ness to produce, create, make, or construct the  
5                   product and who designs or formulates the  
6                   product or has engaged another person to de-  
7                   sign or formulate the product,

8                   (B) a product seller of the product who,  
9                   before placing the product in the stream of  
10                  commerce—

11                   (i) designs or formulates or has en-  
12                   gaged another person to design or formu-  
13                   late an aspect of the product after the  
14                   product was initially made by another, and

15                   (ii) produces, creates, makes, or con-  
16                   structs such aspect of the product, or

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

20           (4) PRODUCT.—The term “product”—

21                   (A) means any object, substance, mixture,  
22                   or raw material in a gaseous, liquid, or solid  
23                   state—

1 (i) which is capable of delivery itself,  
2 in a mixed or combined state, or as a com-  
3 ponent part or ingredient,

4 (ii) which is produced for introduction  
5 into trade or commerce,

6 (iii) which has intrinsic economic  
7 value, and

8 (iv) which is intended for sale or lease  
9 to persons for commercial or personal use,  
10 and

11 (B) does not include—

12 (i) human tissue, human organs,  
13 human blood, and human blood products,  
14 or

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

17 (5) PRODUCT SELLER.—The term “product  
18 seller”—

19 (A) means a person—

20 (i) who sells, distributes, leases, pre-  
21 pares, blends, packages, or labels a product  
22 or is otherwise involved in placing a prod-  
23 uct in the stream of commerce, or

24 (ii) who installs, repairs, or maintains  
25 the harm-causing aspect of a product, and

- 1 (B) does not include—
- 2 (i) a manufacturer,
- 3 (ii) a seller or lessor of real property,
- 4 (iii) a provider of professional services
- 5 in any case in which the sale or use of a
- 6 product is incidental to the transaction and
- 7 the essence of the transaction is the fur-
- 8 nishing of judgment, skill, or services,
- 9 (iv) any person who acts only in a fi-
- 10 nancial capacity with respect to the sale of
- 11 a product, or
- 12 (v) any person who leases a product
- 13 under a lease arrangement in which the se-
- 14 lection, possession, maintenance, and oper-
- 15 ation of the product are controlled by a
- 16 person other than the lessor.

17 **SEC. 3. PREEMPTION.**

18 This Act preempts State law, with respect to both

19 procedural and substantive measures, to the extent that

20 such law—

- 21 (1) permits the recovery of a greater amount of
- 22 punitive damages by a plaintiff than that authorized
- 23 by section 2(a)(3); or
- 24 (2) permits an action for joint liability for non-
- 25 economic damages against a manufacturer or prod-

1       uct seller of a product involved in the action or  
2       against a health care provider, which action is pro-  
3       hibited by section 2(b).

4 Any issue that is not governed by this Act shall be gov-  
5 erned by otherwise applicable State or Federal law.

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