

108TH CONGRESS
2D SESSION

S. 2207

To improve women’s access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such services.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2004

Mr. GREGG (for himself and Mr. ENSIGN) introduced the following bill; which was read the first time

A BILL

To improve women’s access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such services.

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 “Pregnancy and Trau-
5 ma Care Access Protection Act of 2004”.

6 **SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

7 (a) IN GENERAL.—Except as otherwise provided for
8 in this section, the time for the commencement of a health

1 care lawsuit shall be 3 years after the date of manifesta-
2 tion of injury or 1 year after the claimant discovers, or
3 through the use of reasonable diligence should have discov-
4 ered, the injury, whichever occurs first.

5 (b) GENERAL EXCEPTION.—The time for the com-
6 mencement of a health care lawsuit shall not exceed 3
7 years after the date of manifestation of injury unless the
8 tolling of time was delayed as a result of—

9 (1) fraud;

10 (2) intentional concealment; or

11 (3) the presence of a foreign body, which has no
12 therapeutic or diagnostic purpose or effect, in the
13 person of the injured person.

14 (c) MINORS.—An action by a minor shall be com-
15 menced within 3 years from the date of the alleged mani-
16 festation of injury except that if such minor is under the
17 full age of 6 years, such action shall be commenced within
18 3 years of the manifestation of injury, or prior to the
19 eighth birthday of the minor, whichever provides a longer
20 period. Such time limitation shall be tolled for minors for
21 any period during which a parent or guardian and a health
22 care provider or health care organization have committed
23 fraud or collusion in the failure to bring an action on be-
24 half of the injured minor.

1 **SEC. 3. COMPENSATING PATIENT INJURY.**

2 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
3 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
4 health care lawsuit, nothing in this Act shall limit the re-
5 covery by a claimant of the full amount of the available
6 economic damages, notwithstanding the limitation con-
7 tained in subsection (b).

8 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
9 health care lawsuit, the amount of noneconomic damages
10 recovered, if otherwise available under applicable Federal
11 or State law, may be as much as \$250,000, regardless of
12 the number of parties against whom the action is brought
13 or the number of separate claims or actions brought with
14 respect to the same injury.

15 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
16 DAMAGES.—In any health care lawsuit—

17 (1) an award for future noneconomic damages
18 shall not be discounted to present value;

19 (2) the jury shall not be informed about the
20 maximum award for noneconomic damages under
21 subsection (b);

22 (3) an award for noneconomic damages in ex-
23 cess of \$250,000 shall be reduced either before the
24 entry of judgment, or by amendment of the judg-
25 ment after entry of judgment, and such reduction

1 shall be made before accounting for any other reduc-
2 tion in damages required by law; and

3 (4) if separate awards are rendered for past
4 and future noneconomic damages and the combined
5 awards exceed \$250,000, the future noneconomic
6 damages shall be reduced first.

7 (d) FAIR SHARE RULE.—In any health care lawsuit,
8 each party shall be liable for that party's several share
9 of any damages only and not for the share of any other
10 person. Each party shall be liable only for the amount of
11 damages allocated to such party in direct proportion to
12 such party's percentage of responsibility. A separate judg-
13 ment shall be rendered against each such party for the
14 amount allocated to such party. For purposes of this sec-
15 tion, the trier of fact shall determine the proportion of
16 responsibility of each party for the claimant's harm.

17 **SEC. 4. MAXIMIZING PATIENT RECOVERY.**

18 (a) COURT SUPERVISION OF SHARE OF DAMAGES
19 ACTUALLY PAID TO CLAIMANTS.—

20 (1) IN GENERAL.—In any health care lawsuit,
21 the court shall supervise the arrangements for pay-
22 ment of damages to protect against conflicts of in-
23 terest that may have the effect of reducing the
24 amount of damages awarded that are actually paid
25 to claimants.

1 (2) CONTINGENCY FEES.—

2 (A) IN GENERAL.—In any health care law-
3 suit in which the attorney for a party claims a
4 financial stake in the outcome by virtue of a
5 contingent fee, the court shall have the power
6 to restrict the payment of a claimant's damage
7 recovery to such attorney, and to redirect such
8 damages to the claimant based upon the inter-
9 ests of justice and principles of equity.

10 (B) LIMITATION.—The total of all contin-
11 gent fees for representing all claimants in a
12 health care lawsuit shall not exceed the fol-
13 lowing limits:

14 (i) 40 percent of the first \$50,000 re-
15 covered by the claimant(s).

16 (ii) 33 $\frac{1}{3}$ percent of the next \$50,000
17 recovered by the claimant(s).

18 (iii) 25 percent of the next \$500,000
19 recovered by the claimant(s).

20 (iv) 15 percent of any amount by
21 which the recovery by the claimant(s) is in
22 excess of \$600,000.

23 (b) APPLICABILITY.—

24 (1) IN GENERAL.—The limitations in subsection

25 (a) shall apply whether the recovery is by judgment,

1 settlement, mediation, arbitration, or any other form
2 of alternative dispute resolution.

3 (2) MINORS.—In a health care lawsuit involving
4 a minor or incompetent person, a court retains the
5 authority to authorize or approve a fee that is less
6 than the maximum permitted under this section.

7 (c) EXPERT WITNESSES.—

8 (1) REQUIREMENT.—No individual shall be
9 qualified to testify as an expert witness concerning
10 issues of negligence in any health care lawsuit
11 against a defendant unless such individual—

12 (A) except as required under paragraph
13 (2), is a health care professional who—

14 (i) is appropriately credentialed or li-
15 censed in 1 or more States to deliver
16 health care services; and

17 (ii) typically treats the diagnosis or
18 condition or provides the type of treatment
19 under review; and

20 (B) can demonstrate by competent evi-
21 dence that, as a result of training, education,
22 knowledge, and experience in the evaluation, di-
23 agnosis, and treatment of the disease or injury
24 which is the subject matter of the lawsuit
25 against the defendant, the individual was sub-

1 stantially familiar with applicable standards of
2 care and practice as they relate to the act or
3 omission which is the subject of the lawsuit on
4 the date of the incident.

5 (2) PHYSICIAN REVIEW.—In a health care law-
6 suit, if the claim of the plaintiff involved treatment
7 that is recommended or provided by a physician
8 (allopathic or osteopathic), an individual shall not be
9 qualified to be an expert witness under this sub-
10 section with respect to issues of negligence con-
11 cerning such treatment unless such individual is a
12 physician.

13 (3) OTHER HEALTH CARE PROVIDERS.—With
14 respect to a lawsuit described in paragraph (1), a
15 court shall not permit an expert in one health care
16 provider field to testify against a defendant in an-
17 other health care provider field unless, in addition to
18 a showing of substantial familiarity in accordance
19 with paragraph (1)(B), there is a showing that the
20 standards of care and practice in the two health care
21 provider fields are similar.

22 (4) LIMITATION.—The limitations in this sub-
23 section shall not apply to expert witnesses testifying
24 as to the degree or permanency of medical or phys-
25 ical impairment.

1 **SEC. 5. PROMOTING FAIRNESS IN RECOVERING HEALTH**
 2 **BENEFITS AND PREVENTING DOUBLE RECOV-**
 3 **ERIES.**

4 (a) IN GENERAL.—The amount of any damages re-
 5 ceived by a claimant in any health care lawsuit shall be
 6 reduced by the court by the amount of any collateral
 7 source benefits to which the claimant is entitled, less any
 8 insurance premiums or other payments made by the claim-
 9 ant (or by the spouse, parent, child, or legal guardian of
 10 the claimant) to obtain or secure such benefits.

11 (b) PRESERVATION OF CURRENT LAW.—Where a
 12 payor of collateral source benefits has a right of recovery
 13 by reimbursement or subrogation and such right is per-
 14 mitted under Federal or State law, subsection (a) shall
 15 not apply.

16 (c) APPLICATION OF PROVISION.—This section shall
 17 apply to any health care lawsuit that is settled or resolved
 18 by a fact finder.

19 **SEC. 6. PUNITIVE DAMAGES.**

20 (a) PUNITIVE DAMAGES PERMITTED.—

21 (1) IN GENERAL.—Punitive damages may, if
 22 otherwise available under applicable State or Federal
 23 law, be awarded against any person in a health care
 24 lawsuit only if it is proven by clear and convincing
 25 evidence that such person acted with malicious in-
 26 tent to injure the claimant, or that such person de-

1 liberately failed to avoid unnecessary injury that
2 such person knew the claimant was substantially
3 certain to suffer.

4 (2) FILING OF LAWSUIT.—No demand for puni-
5 tive damages shall be included in a health care law-
6 suit as initially filed. A court may allow a claimant
7 to file an amended pleading for punitive damages
8 only upon a motion by the claimant and after a find-
9 ing by the court, upon review of supporting and op-
10 posing affidavits or after a hearing, after weighing
11 the evidence, that the claimant has established by a
12 substantial probability that the claimant will prevail
13 on the claim for punitive damages.

14 (3) SEPARATE PROCEEDING.—At the request of
15 any party in a health care lawsuit, the trier of fact
16 shall consider in a separate proceeding—

17 (A) whether punitive damages are to be
18 awarded and the amount of such award; and

19 (B) the amount of punitive damages fol-
20 lowing a determination of punitive liability.

21 If a separate proceeding is requested, evidence rel-
22 evant only to the claim for punitive damages, as de-
23 termined by applicable State law, shall be inadmis-
24 sible in any proceeding to determine whether com-
25 pensatory damages are to be awarded.

1 (4) LIMITATION WHERE NO COMPENSATORY
2 DAMAGES ARE AWARDED.—In any health care law-
3 suit where no judgment for compensatory damages
4 is rendered against a person, no punitive damages
5 may be awarded with respect to the claim in such
6 lawsuit against such person.

7 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
8 AGES.—

9 (1) FACTORS CONSIDERED.—In determining
10 the amount of punitive damages under this section,
11 the trier of fact shall consider only the following:

12 (A) the severity of the harm caused by the
13 conduct of such party;

14 (B) the duration of the conduct or any
15 concealment of it by such party;

16 (C) the profitability of the conduct to such
17 party;

18 (D) the number of products sold or med-
19 ical procedures rendered for compensation, as
20 the case may be, by such party, of the kind
21 causing the harm complained of by the claim-
22 ant;

23 (E) any criminal penalties imposed on such
24 party, as a result of the conduct complained of
25 by the claimant; and

1 (F) the amount of any civil fines assessed
2 against such party as a result of the conduct
3 complained of by the claimant.

4 (2) MAXIMUM AWARD.—The amount of punitive
5 damages awarded in a health care lawsuit may not
6 exceed an amount equal to two times the amount of
7 economic damages awarded in the lawsuit or
8 \$250,000, whichever is greater. The jury shall not
9 be informed of the limitation under the preceding
10 sentence.

11 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
12 COMPLY WITH FDA STANDARDS.—

13 (1) IN GENERAL.—No punitive damages may be
14 awarded against the manufacturer, distributor, sup-
15 plier, marketer, promoter, or seller of a medical
16 product used in direct connection with the provision
17 of obstetrical or gynecological services, or emergency
18 or trauma care services based on a claim that such
19 product caused the claimant's harm where—

20 (A)(i) such medical product was subject to
21 premarket approval or clearance by the Food
22 and Drug Administration with respect to the
23 safety of the formulation or performance of the
24 aspect of such medical product which caused
25 the claimant's harm or the adequacy of the

1 packaging or labeling of such medical product;
2 and

3 (ii) such medical product was so approved
4 or cleared; or

5 (B) such medical product is generally rec-
6 ognized among qualified experts as safe and ef-
7 fective pursuant to conditions established by the
8 Food and Drug Administration and applicable
9 Food and Drug Administration regulations, in-
10 cluding without limitation those related to pack-
11 aging and labeling, unless the Food and Drug
12 Administration has determined that such med-
13 ical product was not manufactured or distrib-
14 uted in substantial compliance with applicable
15 Food and Drug Administration statutes and
16 regulations.

17 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

18 A health care provider who prescribes, or who dis-
19 penses pursuant to a prescription, a drug or device
20 (including blood products) approved by the Food
21 and Drug Administration for use in direct connec-
22 tion with the provision of obstetrical or gynecological
23 services, or emergency or trauma care services shall
24 not be named as a party to a product liability law-
25 suit invoking such drug or device and shall not be

1 liable to a claimant in a class action lawsuit against
2 the manufacturer, distributor, supplier, marketer,
3 promoter, or seller of such drug or device.

4 (3) PACKAGING.—In a health care lawsuit for
5 harm which is alleged to relate to the adequacy of
6 the packaging or labeling of a drug which is required
7 to have tamper-resistant packaging under regula-
8 tions of the Secretary (including labeling regulations
9 related to such packaging), the manufacturer, dis-
10 tributor, supplier, marketer, promoter, or seller of
11 the drug shall not be held liable for punitive dam-
12 ages unless such packaging or labeling is found by
13 the trier of fact by clear and convincing evidence to
14 be substantially out of compliance with such regula-
15 tions.

16 (4) EXCEPTION.—Paragraph (1) shall not
17 apply in any health care lawsuit in which—

18 (A) a person, before or after premarket ap-
19 proval or clearance of such medical product,
20 knowingly misrepresented to or withheld from
21 the Food and Drug Administration information
22 that is required to be submitted under the Fed-
23 eral Food, Drug, and Cosmetic Act (21 U.S.C.
24 301 et seq.) or section 351 of the Public Health
25 Service Act (42 U.S.C. 262) that is material

1 and is causally related to the harm which the
2 claimant allegedly suffered; or

3 (B) a person made an illegal payment to
4 an official of the Food and Drug Administra-
5 tion for the purpose of either securing or main-
6 taining approval or clearance of such medical
7 product.

8 **SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
9 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
10 **SUITS.**

11 (a) IN GENERAL.—In any health care lawsuit, if an
12 award of future damages, without reduction to present
13 value, equaling or exceeding \$50,000 is made against a
14 party with sufficient insurance or other assets to fund a
15 periodic payment of such a judgment, the court shall, at
16 the request of any party, enter a judgment ordering that
17 the future damages be paid by periodic payments. In any
18 health care lawsuit, the court may be guided by the Uni-
19 form Periodic Payment of Judgments Act promulgated by
20 the National Conference of Commissioners on Uniform
21 State Laws.

22 (b) APPLICABILITY.—This section applies to all ac-
23 tions which have not been first set for trial or retrial be-
24 fore the effective date of this Act.

1 **SEC. 8. EFFECT ON OTHER LAWS.**

2 (a) GENERAL VACCINE INJURY.—

3 (1) IN GENERAL.—To the extent that title XXI
4 of the Public Health Service Act establishes a Fed-
5 eral rule of law applicable to a civil action brought
6 for a vaccine-related injury or death—

7 (A) this Act shall not affect the application
8 of the rule of law to such an action; and

9 (B) any rule of law prescribed by this Act
10 in conflict with a rule of law of such title XXI
11 shall not apply to such action.

12 (2) EXCEPTION.—If there is an aspect of a civil
13 action brought for a vaccine-related injury or death
14 to which a Federal rule of law under title XXI of
15 the Public Health Service Act does not apply, then
16 this Act or otherwise applicable law (as determined
17 under this Act) will apply to such aspect of such ac-
18 tion.

19 (b) SMALLPOX VACCINE INJURY.—

20 (1) IN GENERAL.—To the extent that part C of
21 title II of the Public Health Service Act establishes
22 a Federal rule of law applicable to a civil action
23 brought for a smallpox vaccine-related injury or
24 death—

25 (A) this Act shall not affect the application
26 of the rule of law to such an action; and

1 (B) any rule of law prescribed by this Act
2 in conflict with a rule of law of such part C
3 shall not apply to such action.

4 (2) EXCEPTION.—If there is an aspect of a civil
5 action brought for a smallpox vaccine-related injury
6 or death to which a Federal rule of law under part
7 C of title II of the Public Health Service Act does
8 not apply, then this Act or otherwise applicable law
9 (as determined under this Act) will apply to such as-
10 pect of such action.

11 (c) OTHER FEDERAL LAW.—Except as provided in
12 this section, nothing in this Act shall be deemed to affect
13 any defense available to a defendant in a health care law-
14 suit or action under any other provision of Federal law.

15 **SEC. 9. STATE FLEXIBILITY AND PROTECTION OF STATES**
16 **RIGHTS.**

17 (a) HEALTH CARE LAWSUITS.—The provisions gov-
18 erning health care lawsuits set forth in this Act shall pre-
19 empt, subject to subsections (b) and (c), State law to the
20 extent that State law prevents the application of any pro-
21 visions of law established by or under this Act. The provi-
22 sions governing health care lawsuits set forth in this Act
23 supersede chapter 171 of title 28, United States Code, to
24 the extent that such chapter—

1 (1) provides for a greater amount of damages
2 or contingent fees, a longer period in which a health
3 care lawsuit may be commenced, or a reduced appli-
4 cability or scope of periodic payment of future dam-
5 ages, than provided in this Act; or

6 (2) prohibits the introduction of evidence re-
7 garding collateral source benefits.

8 (b) PREEMPTION OF CERTAIN STATE LAWS.—No
9 provision of this Act shall be construed to preempt any
10 State law (whether effective before, on, or after the date
11 of the enactment of this Act) that specifies a particular
12 monetary amount of compensatory or punitive damages
13 (or the total amount of damages) that may be awarded
14 in a health care lawsuit, regardless of whether such mone-
15 tary amount is greater or lesser than is provided for under
16 this Act, notwithstanding section 3(b).

17 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
18 LAWS.—

19 (1) IN GENERAL.—Any issue that is not gov-
20 erned by a provision of law established by or under
21 this Act (including the State standards of neg-
22 ligence) shall be governed by otherwise applicable
23 Federal or State law.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 Act shall be construed to—

1 (A) preempt or supersede any Federal or
2 State law that imposes greater procedural or
3 substantive protections for a health care pro-
4 vider, health care organization, or the manufac-
5 turer, distributor, supplier, marketer, promoter,
6 or seller of a medical product from liability,
7 loss, or damages than those provided by this
8 Act;

9 (B) notwithstanding any other provision of
10 this section, preempt or supercede any State
11 law that provides for a specific monetary limit
12 on total damages (including compensatory dam-
13 ages) that may be awarded in a health care
14 lawsuit regardless of whether such monetary
15 limit is greater or lesser than is provided for
16 under this Act;

17 (C) create a cause of action that is not
18 otherwise available under Federal or State law;
19 or

20 (D) affect the scope of preemption of any
21 other Federal law.

22 **SEC. 10. DEFINITIONS.**

23 In this Act:

24 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
25 TEM; ADR.—The term “alternative dispute resolution

1 system” or “ADR” means a system that provides
2 for the resolution of health care lawsuits in a man-
3 ner other than through a civil action brought in a
4 State or Federal court.

5 (2) CLAIMANT.—The term “claimant” means
6 any person who brings a health care lawsuit, includ-
7 ing a person who asserts or claims a right to legal
8 or equitable contribution, indemnity or subrogation,
9 arising out of a health care liability claim or action,
10 and any person on whose behalf such a claim is as-
11 serted or such an action is brought, whether de-
12 ceased, incompetent, or a minor.

13 (3) COLLATERAL SOURCE BENEFITS.—The
14 term “collateral source benefits” means any amount
15 paid or reasonably likely to be paid in the future to
16 or on behalf of the claimant, or any service, product
17 or other benefit provided or reasonably likely to be
18 provided in the future to or on behalf of the claim-
19 ant, as a result of the injury or wrongful death, pur-
20 suant to—

21 (A) any State or Federal health, sickness,
22 income-disability, accident, or workers’ com-
23 pensation law;

1 (B) any health, sickness, income-disability,
2 or accident insurance that provides health bene-
3 fits or income-disability coverage;

4 (C) any contract or agreement of any
5 group, organization, partnership, or corporation
6 to provide, pay for, or reimburse the cost of
7 medical, hospital, dental, or income disability
8 benefits; and

9 (D) any other publicly or privately funded
10 program.

11 (4) COMPENSATORY DAMAGES.—The term
12 “compensatory damages” means objectively
13 verifiable monetary losses incurred as a result of the
14 provision of, use of, or payment for (or failure to
15 provide, use, or pay for) health care services or med-
16 ical products, such as past and future medical ex-
17 penses, loss of past and future earnings, cost of ob-
18 taining domestic services, loss of employment, and
19 loss of business or employment opportunities, dam-
20 ages for physical and emotional pain, suffering, in-
21 convenience, physical impairment, mental anguish,
22 disfigurement, loss of enjoyment of life, loss of soci-
23 ety and companionship, loss of consortium (other
24 than loss of domestic service), hedonic damages, in-
25 jury to reputation, and all other nonpecuniary losses

1 of any kind or nature. Such term includes economic
2 damages and noneconomic damages, as such terms
3 are defined in this section.

4 (5) CONTINGENT FEE.—The term “contingent
5 fee” includes all compensation to any person or per-
6 sons which is payable only if a recovery is effected
7 on behalf of one or more claimants.

8 (6) ECONOMIC DAMAGES.—The term “economic
9 damages” means objectively verifiable monetary
10 losses incurred as a result of the provision of, use
11 of, or payment for (or failure to provide, use, or pay
12 for) health care services or medical products, such as
13 past and future medical expenses, loss of past and
14 future earnings, cost of obtaining domestic services,
15 loss of employment, and loss of business or employ-
16 ment opportunities.

17 (7) EMERGENCY MEDICAL CONDITION.—The
18 term “emergency medical condition” means a med-
19 ical condition manifesting itself by acute symptoms
20 of sufficient severity (including severe pain) such
21 that the absence of immediate medical attention
22 could reasonably be expected to result in placing the
23 health of the individual (or, with respect to a preg-
24 nant woman, the health of the woman or her unborn
25 child) in serious jeopardy, serious impairment to

1 bodily functions, or serious dysfunction of any bodily
2 organ or part.

3 (8) EMERGENCY OR TRAUMA CARE SERVICES.—

4 The term “emergency or trauma care services”
5 means health care goods and services that are fur-
6 nished to an individual with an emergency medical
7 condition, including the response to the emergency
8 medical condition, screening, stabilization and treat-
9 ment of the emergency medical condition.

10 (9) HEALTH CARE GOODS OR SERVICES.—The

11 term “health care goods or services” means—

12 (A) any obstetrical or gynecological goods
13 or services provided by a health care organiza-
14 tion, provider, or by any individual working
15 under the supervision of a health care provider,
16 that relates to the diagnosis, prevention, care,
17 or treatment of any obstetrical or gynecological-
18 related human disease or impairment, or the as-
19 sessment of the health of human beings; and

20 (B) any goods or services provided by a
21 health care organization, provider, or by any in-
22 dividual working under the supervision of a
23 health care provider, that are involved in the
24 provision of emergency or trauma care services.

1 (10) HEALTH CARE LAWSUIT.—The term
2 “health care lawsuit” means any health care liability
3 claim concerning the provision of obstetrical or gynecological
4 goods or services affecting interstate commerce, or emergency or trauma care goods or services
5 affecting interstate commerce, or any health care liability action concerning the provision of (or
6 the failure to provide) obstetrical or gynecological goods or services affecting interstate commerce, or
7 emergency or trauma care goods or services affecting interstate commerce, brought in a State or Federal
8 court or pursuant to an alternative dispute resolution system, against a physician or other health
9 care provider who delivers obstetrical or gynecological services, or emergency or trauma care services,
10 a health care organization (only with respect to obstetrical or gynecological services or emergency or
11 trauma care services), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a
12 medical product (only with respect to a medical product used in connection with obstetrical or gynecological
13 services or emergency or trauma care services), regardless of the theory of liability on which
14 the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the num-

1 ber of claims or causes of action, in which the claim-
2 ant alleges a health care liability claim.

3 (11) HEALTH CARE LIABILITY ACTION.—The
4 term “health care liability action” means a civil ac-
5 tion brought in a State or Federal Court or pursu-
6 ant to an alternative dispute resolution system,
7 against a physician or other health care provider
8 who provides obstetrical or gynecological services or
9 emergency or trauma care services, a health care or-
10 ganization (only with respect to obstetrical or gyne-
11 cological services or emergency or trauma care serv-
12 ices), or the manufacturer, distributor, supplier,
13 marketer, promoter, or seller of a medical product
14 (only with respect to a medical product used in con-
15 nection with obstetrical or gynecological services or
16 emergency or trauma care services), regardless of
17 the theory of liability on which the claim is based,
18 or the number of plaintiffs, defendants, or other par-
19 ties, or the number of causes of action, in which the
20 claimant alleges a health care liability claim.

21 (12) HEALTH CARE LIABILITY CLAIM.—The
22 term “health care liability claim” means a demand
23 by any person, whether or not pursuant to ADR,
24 against a physician or other health care provider
25 who delivers obstetrical or gynecological services or

1 emergency or trauma care services, a health care or-
2 ganization (only with respect to obstetrical or gynecological services or emergency or trauma care services), or the manufacturer, distributor, supplier,
3 (only with respect to a medical product used in connection with obstetrical or gynecological services or emergency or trauma care services), including third-
4 party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision
5 of, use of, or payment for (or the failure to provide, use, or pay for) obstetrical or gynecological services
6 or emergency or trauma care services, regardless of the theory of liability on which the claim is based,
7 or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

17 (13) HEALTH CARE ORGANIZATION.—The term
18 “health care organization” means any person or entity which is obligated to provide or pay for health
19 benefits under any health plan, including any person or entity acting under a contract or arrangement
20 with a health care organization to provide or administer any health benefit.

24 (14) HEALTH CARE PROVIDER.—The term
25 “health care provider” means any person or entity

1 required by State or Federal laws or regulations to
2 be licensed, registered, or certified to provide health
3 care services, and being either so licensed, reg-
4 istered, or certified, or exempted from such require-
5 ment by other statute or regulation.

6 (15) MALICIOUS INTENT TO INJURE.—The
7 term “malicious intent to injure” means inten-
8 tionally causing or attempting to cause physical in-
9 jury other than providing health care goods or serv-
10 ices.

11 (16) MEDICAL PRODUCT.—The term “medical
12 product” means a drug or device intended for hu-
13 mans. The terms “drug” and “device” have the
14 meanings given such terms in sections 201(g)(1) and
15 201(h) of the Federal Food, Drug and Cosmetic Act
16 (21 U.S.C. 321), respectively, including any compo-
17 nent or raw material used therein, but excluding
18 health care services.

19 (17) NONECONOMIC DAMAGES.—The term
20 “noneconomic damages” means damages for phys-
21 ical and emotional pain, suffering, inconvenience,
22 physical impairment, mental anguish, disfigurement,
23 loss of enjoyment of life, loss of society and compan-
24 ionship, loss of consortium (other than loss of do-
25 mestic service), hedonic damages, injury to reputa-

1 tion, and all other nonpecuniary losses of any kind
2 or nature.

3 (18) OBSTETRICAL OR GYNECOLOGICAL SERV-
4 ICES.—The term “obstetrical or gynecological serv-
5 ices” means services for pre-natal care or labor and
6 delivery, including the immediate postpartum period
7 (as determined in accordance with the definition of
8 postpartum used for purposes of title XIX of the So-
9 cial Security Act (42 U.S.C. 1396 et seq.)).

10 (19) PUNITIVE DAMAGES.—The term “punitive
11 damages” means damages awarded, for the purpose
12 of punishment or deterrence, and not solely for com-
13 pensatory purposes, against a physician or other
14 health care provider who delivers obstetrical or gyne-
15 cological services or emergency or trauma care serv-
16 ices, or against a manufacturer, distributor, sup-
17 plier, marketer, promoter, or seller of a medical
18 product (subject to section 6(c)). Punitive damages
19 are neither economic nor noneconomic damages.

20 (20) RECOVERY.—The term “recovery” means
21 the net sum recovered after deducting any disburse-
22 ments or costs incurred in connection with prosecu-
23 tion or settlement of the claim, including all costs
24 paid or advanced by any person. Costs of health care
25 incurred by the plaintiff and the attorneys’ office

1 overhead costs or charges for legal services are not
2 deductible disbursements or costs for such purpose.

3 (21) STATE.—The term “State” means each of
4 the several States, the District of Columbia, the
5 Commonwealth of Puerto Rico, the Virgin Islands,
6 Guam, American Samoa, the Northern Mariana Is-
7 lands, the Trust Territory of the Pacific Islands, and
8 any other territory or possession of the United
9 States, or any political subdivision thereof.

10 **SEC. 11. APPLICABILITY; EFFECTIVE DATE.**

11 This Act shall apply to any health care lawsuit
12 brought in a Federal or State court, or subject to an alter-
13 native dispute resolution system, that is initiated on or
14 after the date of the enactment of this Act, except that
15 any health care lawsuit arising from an injury occurring
16 prior to the date of enactment of this Act shall be gov-
17 erned by the applicable statute of limitations provisions
18 in effect at the time the injury occurred.

○