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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

MARCH 22, 2004

Read the second time and placed on the calendar

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".

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

2 (a) IN GENERAL.—Except as otherwise provided for
3 in this section, the time for the commencement of a health
4 care lawsuit shall be 3 years after the date of manifesta-
5 tion of injury or 1 year after the claimant discovers, or
6 through the use of reasonable diligence should have discov-
7 ered, the injury, whichever occurs first.

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

12 (1) fraud;

13 (2) intentional concealment; or

14 (3) the presence of a foreign body, which has no
15 therapeutic or diagnostic purpose or effect, in the
16 person of the injured person.

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

1 fraud or collusion in the failure to bring an action on be-
2 half of the injured minor.

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

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

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

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

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

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

24 (3) an award for noneconomic damages in ex-
25 cess of \$250,000 shall be reduced either before the

1 entry of judgment, or by amendment of the judg-
2 ment after entry of judgment, and such reduction
3 shall be made before accounting for any other reduc-
4 tion in damages required by law; and

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

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

19 **SEC. 4. MAXIMIZING PATIENT RECOVERY.**

20 (a) COURT SUPERVISION OF SHARE OF DAMAGES
21 ACTUALLY PAID TO CLAIMANTS.—

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

1 amount of damages awarded that are actually paid
2 to claimants.

3 (2) CONTINGENCY FEES.—

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

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

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

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

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

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

25 (b) APPLICABILITY.—

1 (1) IN GENERAL.—The limitations in subsection
2 (a) shall apply whether the recovery is by judgment,
3 settlement, mediation, arbitration, or any other form
4 of alternative dispute resolution.

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

9 (c) EXPERT WITNESSES.—

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

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

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

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

22 (B) can demonstrate by competent evi-
23 dence that, as a result of training, education,
24 knowledge, and experience in the evaluation, di-
25 agnosis, and treatment of the disease or injury

1 which is the subject matter of the lawsuit
2 against the defendant, the individual was sub-
3 stantially familiar with applicable standards of
4 care and practice as they relate to the act or
5 omission which is the subject of the lawsuit on
6 the date of the incident.

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

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

24 (4) LIMITATION.—The limitations in this sub-
25 section shall not apply to expert witnesses testifying

1 as to the degree or permanency of medical or phys-
2 ical impairment.

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

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

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

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

21 **SEC. 6. PUNITIVE DAMAGES.**

22 (a) PUNITIVE DAMAGES PERMITTED.—

23 (1) IN GENERAL.—Punitive damages may, if
24 otherwise available under applicable State or Federal
25 law, be awarded against any person in a health care

1 lawsuit only if it is proven by clear and convincing
2 evidence that such person acted with malicious in-
3 tent to injure the claimant, or that such person de-
4 liberately failed to avoid unnecessary injury that
5 such person knew the claimant was substantially
6 certain to suffer.

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

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

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

22 (B) the amount of punitive damages fol-
23 lowing a determination of punitive liability.

24 If a separate proceeding is requested, evidence rel-
25 evant only to the claim for punitive damages, as de-

1 terminated by applicable State law, shall be inadmis-
2 sible in any proceeding to determine whether com-
3 pensatory damages are to be awarded.

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

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

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

15 (A) the severity of the harm caused by the
16 conduct of such party;

17 (B) the duration of the conduct or any
18 concealment of it by such party;

19 (C) the profitability of the conduct to such
20 party;

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

1 (E) any criminal penalties imposed on such
2 party, as a result of the conduct complained of
3 by the claimant; and

4 (F) the amount of any civil fines assessed
5 against such party as a result of the conduct
6 complained of by the claimant.

7 (2) MAXIMUM AWARD.—The amount of punitive
8 damages awarded in a health care lawsuit may not
9 exceed an amount equal to two times the amount of
10 economic damages awarded in the lawsuit or
11 \$250,000, whichever is greater. The jury shall not
12 be informed of the limitation under the preceding
13 sentence.

14 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
15 COMPLY WITH FDA STANDARDS.—

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

23 (A)(i) such medical product was subject to
24 premarket approval or clearance by the Food
25 and Drug Administration with respect to the

1 safety of the formulation or performance of the
2 aspect of such medical product which caused
3 the claimant's harm or the adequacy of the
4 packaging or labeling of such medical product;
5 and

6 (ii) such medical product was so approved
7 or cleared; or

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

20 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

21 A health care provider who prescribes, or who dis-
22 penses pursuant to a prescription, a drug or device
23 (including blood products) approved by the Food
24 and Drug Administration for use in direct connec-
25 tion with the provision of obstetrical or gynecological

1 services, or emergency or trauma care services shall
2 not be named as a party to a product liability law-
3 suit invoking such drug or device and shall not be
4 liable to a claimant in a class action lawsuit against
5 the manufacturer, distributor, supplier, marketer,
6 promoter, or seller of such drug or device.

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

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

21 (A) a person, before or after premarket ap-
22 proval or clearance of such medical product,
23 knowingly misrepresented to or withheld from
24 the Food and Drug Administration information
25 that is required to be submitted under the Fed-

1 eral Food, Drug, and Cosmetic Act (21 U.S.C.
2 301 et seq.) or section 351 of the Public Health
3 Service Act (42 U.S.C. 262) that is material
4 and is causally related to the harm which the
5 claimant allegedly suffered; or

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

11 **SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
12 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
13 **SUITS.**

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

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

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

5 (a) GENERAL VACCINE INJURY.—

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

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

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

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

22 (b) SMALLPOX VACCINE INJURY.—

23 (1) IN GENERAL.—To the extent that part C of
24 title II of the Public Health Service Act establishes
25 a Federal rule of law applicable to a civil action

1 brought for a smallpox vaccine-related injury or
2 death—

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

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

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

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

19 **SEC. 9. STATE FLEXIBILITY AND PROTECTION OF STATES**
20 **RIGHTS.**

21 (a) HEALTH CARE LAWSUITS.—The provisions gov-
22 erning health care lawsuits set forth in this Act shall pre-
23 empt, subject to subsections (b) and (c), State law to the
24 extent that State law prevents the application of any pro-
25 visions of law established by or under this Act. The provi-

1 sions governing health care lawsuits set forth in this Act
2 supersede chapter 171 of title 28, United States Code, to
3 the extent that such chapter—

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

9 (2) prohibits the introduction of evidence re-
10 garding collateral source benefits.

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

20 (c) PROTECTION OF STATE'S RIGHTS AND OTHER
21 LAWS.—

22 (1) IN GENERAL.—Any issue that is not gov-
23 erned by a provision of law established by or under
24 this Act (including the State standards of neg-

1 ligence) shall be governed by otherwise applicable
2 Federal or State law.

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

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

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

21 (C) create a cause of action that is not
22 otherwise available under Federal or State law;
23 or

24 (D) affect the scope of preemption of any
25 other Federal law.

1 **SEC. 10. DEFINITIONS.**

2 In this Act:

3 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
4 TEM; ADR.—The term “alternative dispute resolution
5 system” or “ADR” means a system that provides
6 for the resolution of health care lawsuits in a man-
7 ner other than through a civil action brought in a
8 State or Federal court.

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

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

1 (A) any State or Federal health, sickness,
2 income-disability, accident, or workers' com-
3 pensation law;

4 (B) any health, sickness, income-disability,
5 or accident insurance that provides health bene-
6 fits or income-disability coverage;

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

12 (D) any other publicly or privately funded
13 program.

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

1 ety and companionship, loss of consortium (other
2 than loss of domestic service), hedonic damages, in-
3 jury to reputation, and all other nonpecuniary losses
4 of any kind or nature. Such term includes economic
5 damages and noneconomic damages, as such terms
6 are defined in this section.

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

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

20 (7) EMERGENCY MEDICAL CONDITION.—The
21 term “emergency medical condition” means a med-
22 ical condition manifesting itself by acute symptoms
23 of sufficient severity (including severe pain) such
24 that the absence of immediate medical attention
25 could reasonably be expected to result in placing the

1 health of the individual (or, with respect to a preg-
2 nant woman, the health of the woman or her unborn
3 child) in serious jeopardy, serious impairment to
4 bodily functions, or serious dysfunction of any bodily
5 organ or part.

6 (8) EMERGENCY OR TRAUMA CARE SERVICES.—
7 The term “emergency or trauma care services”
8 means health care goods and services that are fur-
9 nished to an individual with an emergency medical
10 condition, including the response to the emergency
11 medical condition, screening, stabilization and treat-
12 ment of the emergency medical condition.

13 (9) HEALTH CARE GOODS OR SERVICES.—The
14 term “health care goods or services” means—

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

23 (B) any goods or services provided by a
24 health care organization, provider, or by any in-
25 dividual working under the supervision of a

1 health care provider, that are involved in the
2 provision of emergency or trauma care services.

3 (10) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit” means any health care liability
5 claim concerning the provision of obstetrical or gynecological
6 goods or services affecting interstate commerce, or emergency or trauma care goods or services
7 affecting interstate commerce, or any health
8 care liability action concerning the provision of (or
9 the failure to provide) obstetrical or gynecological
10 goods or services affecting interstate commerce, or
11 emergency or trauma care goods or services affect-
12 ing interstate commerce, brought in a State or Federal
13 court or pursuant to an alternative dispute reso-
14 lution system, against a physician or other health
15 care provider who delivers obstetrical or gynecological
16 services, or emergency or trauma care services,
17 a health care organization (only with respect to
18 obstetrical or gynecological services or emergency or
19 trauma care services), or the manufacturer, distributor,
20 supplier, marketer, promoter, or seller of a
21 medical product (only with respect to a medical
22 product used in connection with obstetrical or gynecological
23 services or emergency or trauma care services),
24 regardless of the theory of liability on which
25

1 the claim is based, or the number of claimants,
2 plaintiffs, defendants, or other parties, or the num-
3 ber of claims or causes of action, in which the claim-
4 ant alleges a health care liability claim.

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

23 (12) HEALTH CARE LIABILITY CLAIM.—The
24 term “health care liability claim” means a demand
25 by any person, whether or not pursuant to ADR,

1 against a physician or other health care provider
2 who delivers obstetrical or gynecological services or
3 emergency or trauma care services, a health care or-
4 ganization (only with respect to obstetrical or gynecological services or emergency or trauma care services), or the manufacturer, distributor, supplier,
5 ices), or the manufacturer, distributor, supplier,
6 marketer, promoter, or seller of a medical product
7 (only with respect to a medical product used in con-
8 nection with obstetrical or gynecological services or
9 emergency or trauma care services), including third-
10 party claims, cross-claims, counter-claims, or con-
11 tribution claims, which are based upon the provision
12 of, use of, or payment for (or the failure to provide,
13 use, or pay for) obstetrical or gynecological services
14 or emergency or trauma care services, regardless of
15 the theory of liability on which the claim is based,
16 or the number of plaintiffs, defendants, or other par-
17 ties, or the number of causes of action.

19 (13) HEALTH CARE ORGANIZATION.—The term
20 “health care organization” means any person or en-
21 tity which is obligated to provide or pay for health
22 benefits under any health plan, including any person
23 or entity acting under a contract or arrangement
24 with a health care organization to provide or admin-
25 ister any health benefit.

1 (14) HEALTH CARE PROVIDER.—The term
2 “health care provider” means any person or entity
3 required by State or Federal laws or regulations to
4 be licensed, registered, or certified to provide health
5 care services, and being either so licensed, reg-
6 istered, or certified, or exempted from such require-
7 ment by other statute or regulation.

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

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

21 (17) NONECONOMIC DAMAGES.—The term
22 “noneconomic damages” means damages for phys-
23 ical and emotional pain, suffering, inconvenience,
24 physical impairment, mental anguish, disfigurement,
25 loss of enjoyment of life, loss of society and compan-

1 ionship, loss of consortium (other than loss of do-
2 mestic service), hedonic damages, injury to reputa-
3 tion, and all other nonpecuniary losses of any kind
4 or nature.

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

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

22 (20) RECOVERY.—The term “recovery” means
23 the net sum recovered after deducting any disburse-
24 ments or costs incurred in connection with prosecu-
25 tion or settlement of the claim, including all costs

1 paid or advanced by any person. Costs of health care
2 incurred by the plaintiff and the attorneys' office
3 overhead costs or charges for legal services are not
4 deductible disbursements or costs for such purpose.

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

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

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

Calendar No. 462

108TH CONGRESS
2^D SESSION

S. 2207

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.

MARCH 22, 2004

Read the second time and placed on the calendar