104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–72

PROVIDING FOR THE CONSIDERATION OF H.R. 956, THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

MARCH 8, 1995.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 109]

The Committee on Rules, having had under consideration House Resolution 109, by a record vote of 8 to 4, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the further consideration of H.R. 956, the "Common Sense Legal Standards Reform Act of 1995," under a modified closed rule. The rule makes in order the text of H.R. 1075, the "Common Sense Product Liability and Legal Reform Act of 1995," as an original bill for amendment purposes. Only amendments printed in this report are in order. The amendments are considered as read. Amendments may only be offered in the order specified in the report and only by the Member designated in this report. The amendments are not subject to amendment or to a demand for a division of the question in the House or the Committee of the Whole. The amendments are debatable for the time specified in this report, equally divided between the proponent and an opponent.

Finally, the rule provides for one motion to recommit, with or without instructions.

COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below (the amendment number referred to in the motions are the numbers as-

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signed to amendments in the order in which they were filed with the Rules Committee):

RULES COMMITTEE ROLLCALL NO. 64

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Moakley.
Summary of Motion: Substitute an open rule.
Results: Rejected, 4 to 9.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 65

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Moakley.
Summary of Motion: Make in order Markey amendment No. 22.
Results: Rejected, 4 to 9.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 66

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Moakley.
Summary of Motion: Make in order Schroeder amendment No. 49.
Results: Rejected, 4 to 9.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 67

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Moakley.
Summary of Motion: Make in order Scott amendment No. 70 (as substitute for Gekas amendment No. 45).
Results: Rejected, 4 to 9.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 68

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Moakley.
Summary of Motion: Make in order Frank amendment No. 24.
Results: Rejected, 4 to 8.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 69

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Beilenson.
Summary of Motion: Make in order Berman amendment No. 14.
Results: Rejected, 4 to 8.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 70

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Beilenson.
Summary of Motion: Make in order Eshoo amendments No. 46 and No. 47 (en bloc).
Results: Rejected, 4 to 8.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 71

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Nadler amendment No. 76.
Results: Rejected, 5 to 7.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 72

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Oxley-Gordon amendment No. 77.
Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Yea; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 73

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Bryant (TX) amendment No. 5.
Results: Rejected, 4 to 8.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 74

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Bryant (TX) amendment No. 4.
Results: Rejected, 5 to 7.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 75

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Bryant (TX) amendment No. 30.
Results: Rejected, 5 to 7.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Yea; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 76

Date: March 8, 1995.
Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.
Motion By: Mr. Frost.
Summary of Motion: Make in order Waters amendment No. 11.
Results: Rejected, 4 to 8.
Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 77

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Hall.

Summary of Motion: Make in order Conyers amendment No. 65.

Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.I89rules committee rollcall no. 78

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Hall.

Summary of Motion: Make in order Deutch amendment No. 9.

Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 79

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Hall.

Summary of Motion: Make in order following amendments en bloc: Kaptur No. 64, Nadler No. 74.

Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 80

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Moakley.

Summary of Motion: Make in order following amendments: Stupak No. 6 and No. 7; Watt (NC) No. 15, No. 16, No. 18, No. 19, and No. 20; Collins (IL) No. 31; Jackson-Lee No. 56 and No. 58; Nadler No. 72 and No. 73; and Scott No. 61.

Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 81

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Moakley.

Summary of Motion: Make in order following amendments: Traficant No. 1; Waters No. 10; Furse No. 26; Schumer No. 34; Jackson-Lee No. 57; Conyers No. 59; Nadler No. 71; and Stupak No. 8.

Results: Rejected, 4 to 8.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLLCALL NO. 82

Date: March 8, 1995.

Measure: H.R. 956, The Common Sense Legal Standards Reform Act of 1995.

Motion By: Mr. Quillen.

Summary of Motion: Report the rule favorably.

Results: Adopted, 8 to 4.

Vote by Member: Quillen—Yea; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Beilenson—Nay; Frost—Nay; Hall—Nay; Solomon—Yea.

AMENDMENTS MADE IN ORDER BY THE RULE

1. The Amendment To Be Offered by Representative Geren of Texas or a Designee, To Be Debatable for Not To Exceed 10 Minutes

Page 7, insert after line 3 the following:

(c) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product shall be subject to liability under subsection (a) but shall not liable to a claimant for the tortious act of another involving a product solely by reason of ownership of such product.

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2. The Amendment To Be Offered by Representative Schroeder of Colorado or a Designee, To Be Debatable for Not To Exceed 20 Minutes

Page 11, strike lines 17 through 24, and redesignate succeeding sections accordingly.

Page 17, line 25, insert "and noneconomic" before "loss".

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3. The Amendment To Be Offered by Representative Hyde of Illinois or a Designee, To Be Debatable for Not To Exceed 20 Minutes

Page 12, strike lines 8 through 11.

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4. The Amendment To Be Offered by Representative Schumer of New York or a Designee, To Be Debatable for Not To Exceed 20 Minutes

Page 13, redesignate section 110 as section 111 and insert after line 3 the following:

SEC. 110. SUNSHINE, ANTI-SECRECY, CONSUMER EMPOWERMENT, AND LITIGATION AVOIDANCE.

(a) IN GENERAL.—To empower individual consumers with the information to avoid defective products, court records in all product liability actions are presumed to be open to the general public. No court order or opinion in the adjudication of a product liability action may be sealed. No court record, including records obtained through discovery, whether or not formally filed with the court, may be sealed, subjected to a protective order, or otherwise have access restricted except through a court order based upon particularized findings of fact that—

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

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

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

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

(b) BURDEN.—The party who is the proponent for the entry of an order, as provided under subsection (a), shall have the burden of proof in obtaining such an order.

(c) AGREEMENT.—No agreement between or among parties in a product liability action filed in a State or Federal court may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such product liability action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(d) INTERVENTION.—Any person may intervene as a matter of right in a product liability action for the limited purpose of participating in proceedings considering limitation of access to records upon payment of the fee required for filing a plea in intervention.

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5. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS OF MICHIGAN OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 13, redesignate section 110 as section 111, and insert after line 2 the following:

SEC. 110. FOREIGN PRODUCTS.

(a) GENERAL RULE.—In any product liability action for injury that was sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal court in which such action is brought shall have jurisdiction over such manufacturer if the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(b) ADMISSION.—If in any product liability action a foreign manufacturer of the product involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery

order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign manufacturer is located, has an agent, or transacts business.

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6. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT OF NORTH CAROLINA OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 20 MINUTES

Page 17, lines 16–17, strike "by clear and convincing evidence".

Page 20, lines 4–11, strike the section in its entirety and renumber the subsequent sections accordingly.

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7. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE FURSE OF OREGON OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 30 MINUTES

Page 17, strike line 22 and all that follows through line 2 on page 18 and redesignate the succeeding subsections accordingly.

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8. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVES HYDE OF ILLINOIS OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 3, line 12, strike "are" and insert "is".

Page 3, line 15, strike "protect" and insert "project".

Page 3, line 23, strike "and is costing" and insert "causing".

Page 4, line 18, strike "transactions" and insert "transaction".

Page 8, beginning in line 2, strike "Except as provided in subsection (c), in" and insert "In".

Page 8, line 11, strike "the" and insert "a".

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitive damages may not be awarded in a product liability action unless damages for economic or noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike "CONSIDERATION" and insert "CONSIDERATIONS".

Page 29, in lines 8 and 12, strike "has" and insert "has or should have".

9. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE OXLEY OF OHIO OR REPRESENTATIVE BURR OF NORTH CAROLINA OR REPRESENTATIVE TAUZIN OF LOUISIANA OR REPRESENTATIVE BREWSTER OF OKLAHOMA OR REPRESENTATIVE COBURN OF OKLAHOMA OR REPRESENTATIVE STENHOLM OF TEXAS OR THEIR DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 40 MINUTES

Page 19, insert after line 19 the following:

(f) DRUGS AND DEVICES.—

(1)(A) Punitive damages shall not be awarded against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(i) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(ii) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) Subparagraph (A) shall not apply in any case in which the defendant, before or after premarket approval of a drug or device—

(i) intentionally and wrongfully withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and relevant to the harm suffered by the claimant, or

(ii) made an illegal payment to an official or employee of the Food and Drug Administration for the purpose of securing or maintaining approval of such drug or device.

(2) PACKAGING.—In a product liability action for harm which is alleged to relate to the adequacy of the packaging (or labeling relating to such packaging) of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer of the drug shall not be held liable for punitive damages unless the drug is found by the court by clear and convincing evidence to be substantially out of compliance with such regulations.

10. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOKE OF OHIO OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 20 MINUTES

Page 19, redesignate section 202 as section 203 and insert after line 19 the following:

SEC. 202. DEPOSIT OF DAMAGES.

If punitive damages of more than $250,000 are awarded in a civil liability action, 75 percent of the amount of such damages in excess of $250,000 shall be deposited—

(1) if the action was in a Federal court, in the treasury of the State in which such court sits, and

(2) if the action was in a State court, in the treasury of the State in which such court sits.

This section shall be applied by the court and shall not be disclosed to the jury.

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11. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE COX OF CALIFORNIA OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 40 MINUTES

Page 1, strike line 7 and all that follows through the matter that precedes line 1 on page 2, and insert the following:

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

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Applicability.
Sec. 102. Liability rules applicable to product sellers.
Sec. 103. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 104. Misuse or alteration.
Sec. 105. Frivolous pleadings.
Sec. 106. Several liability for noneconomic loss.
Sec. 107. Statute of repose.
Sec. 108. Definitions.

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

Sec. 201. Treble damages as penalty in civil actions.
Sec. 202. Limitation on additional payments beyond actual damages.
Sec. 203. Fair share rule for noneconomic damage awards.
Sec. 204. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 401. Application limited to interstate commerce.
Sec. 402. Effect on other law.
Sec. 403. Federal cause of action precluded.
Sec. 404. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the civil justice system, which is designed to safeguard our most cherished rights, to remedy injustices, and to defend

our liberty, is increasingly being deployed to abridge our rights, create injustice, and destroy our liberty;

(2) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly, and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(3) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(4) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the several States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(5) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the national market, and from excessive liability costs passed on to them through higher prices;

(6) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses, and adversely affects governments, taxpayers, nonprofit entities and volunteer organizations;

(7) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(8) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, and individuals to protect their liability with any degree of confidence and at a reasonable cost;

(9) because of the national scope of the problems crated by the defects in the civil justice system, it is not possible for the several States to enact laws that fully and effectively respond to those problems;

(10) it is the constitutional role of the national government to remove barriers to interstate commerce; and

(11) there is a need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

Page 2, strike line 3 and all that follows through line 24, on page 4 (and redesignate subsequent sections accordingly).

Page 11, strike lines 17 through 24 (and redesignate subsequent sections accordingly).

Page 12, strike line 24 and all that follows through line 2 on page 13 (and redesignate the subsequent section accordingly).

Page 17, strike lines 10 through 12 and insert the following:

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

SEC. 201. TREBLE DAMAGES AS PENALTY IN CIVIL ACTIONS.

Page 17, line 21, insert "rights or" before "safety".

Page 17, beginning in line 25, strike "for the economic loss on which the claimant's action is based" and insert "for economic loss".

Page 18, insert after the period in line 2 the following: "This section shall be applied by the court and shall not be disclosed to the jury.".

Page 18, line 3, strike "AND PREEMPTION".

Page 18, strike "title" in lines 4 and 6 and insert "section".

Page 18, beginning in line 7, strike "in any jurisdiction that does not authorize such actions" and insert after the period in line 8 the following: "This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.".

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. FAIR SHARE RULE FOR NONECONOMIC DAMAGE AWARDS.

(a) FAIR SHARE OF LIABILITY IMPOSED ACCORDING TO SHARE OF FAULT.—In any product liability or other civil action brought in State or Federal court, a defendant shall be liable only for the amount of noneconomic damages attributable to such defendant in direct proportion to such defendant's share of fault or responsibility for the claimant's actual damages, as determined by the trier of fact. In all such cases, the liability of a defendant for noneconomic damages shall be several and not joint.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not preempt or supersede any State or Federal law to the extent that such law would further

limit the application of the theory of joint liability to any kind of damages.

Page 19, after line 21, insert the following new paragraph:

(1) The term "actual damages" means damages awarded to pay for economic loss.

Page 19, line 22, strike "(1)" and insert "(2)".
Page 20, line 4, strike "(2)" and insert "(3)".
Page 20, line 12, strike "(3)" and insert "(4)".
Page 20, line 18, strike "(4)" and insert "(5)".
Page 20, after line 20, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(6) The term "noneconomic damages" means damages other than punitive damages or actual damages.

Page 20, line 21, strike "(5)" and insert "(7)".
Page 21, line 1, strike "(6)" and insert "(8)".
Page 30, strike lines 6 and 7, and insert the following:

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 401. APPLICATION LIMITED TO INTERSTATE COMMERCE.

Titles I, II, and III shall apply only to product liability or other civil actions affecting interstate commerce. For purposes of the preceding sentence, the term "interstate commerce" means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation.

Redesignate subsequent sections accordingly.

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12. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE COX OF CALIFORNIA OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 40 MINUTES

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. LIMITATION ON ADDITIONAL PAYMENTS BEYOND ACTUAL DAMAGES.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as "pain and suffering" and "emotional distress", as described in this section. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic

damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provide in section 401, this section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages.

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13. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE DINGELL OF MICHIGAN OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 21, strike line 8 and all that follows through line 5 on page 30 and insert the following:

TITLE III—BIOMATERIALS SUPPLIERS

SEC. 301. LIABILITY OF BIOMATERIALS SUPPLIERS.

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by a medical device, only if the claimant in a product liability action shows by a preponderance of evidence that the conduct of the biomaterials supplier was an actual and proximate cause of the harm to the claimant and—

(1) the raw materials or component parts delivered by the biomaterials supplier—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) provided to the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary of Health and Human Services and that is currently maintained by the biomaterials supplier for purposes of premarket approval or review of medical devices; or

(iii)(I) included in submissions for the purposes of premarket approval or review by the Secretary of Health and Human Services under section 510, 513,

515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary of Health and Human Services, if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the raw materials or component parts; or

(2) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(3) the biomaterials supplier had actual knowledge of fraudulent or malicious activities in the use of its supplies are relevant to the harm suffered by the claimant.

SEC. 302. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—

(1) GENERAL RULE.—Any biomaterials supplier who is a defendant in any product liability action involving a medical device which allegedly caused the harm for which the action is brought and who is not the manufacturer or the product seller of such medical device may, at any time during which a motion to dismiss may be filed under applicable law, move to dismiss the action on the grounds that—

(A) the claimant has failed to establish that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier; or

(B) the claimant has failed to comply with the requirements of subsection (b).

(2) EXCEPTION.—The biomaterials supplier may not move to dismiss the action under paragraph (1) if—

(A) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(B) the biomaterials supplier had actual knowledge of fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(b) MANUFACTURER OF MEDICAL DEVICE SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the medical device to which the biomaterials supplier furnished raw materials or component parts as a party to the product liability action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDINGS ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO STATUS OF DEFENDANT.—

(A) DEFENDANT AFFIDAVIT.—A defendant in the action shall support a motion to dismiss described in this section by filing an affidavit demonstrating that the person filing the motion is a biomaterials supplier and that it is neither the manufacturer nor the product seller of the medical device which caused the harm alleged by the claimant.

(B) RESPONSE TO MOTION TO DISMISS.—In response to a motion to dismiss described in this section, the claimant may submit an affidavit demonstrating on what basis it asserts that—

(i) the defendant who filed the motion to dismiss is not a biomaterials supplier with respect to the medical device which caused the harm alleged by the claimant;

(ii) on what basis it asserts that the biomaterials supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(iii) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(iv) the biomaterials supplier had actual knowledge of fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—If a defendant files a motion to dismiss under subsection (a) and the affidavits submitted in accordance with this section raise material issues of fact concerning whether—

(A) the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(B) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(C) the biomaterials supplier had actual knowledge of fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant,

discovery in the action shall be limited solely to such material facts until the motion to dismiss is disposed of by the court.

(3) RESPONSE TO MOTION TO DISMISS.—The court shall rule on the motion to dismiss solely on the basis of the affidavits filed under this section and on the basis of any evidence developed in the course of discovery under paragraph (2) and submitted to the court in accordance with applicable rules of evidence.

(d) ATTORNEY FEES.—The court shall require the claimant to compensate a biomaterials supplier for reasonable attorney fees and costs if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 303. DEFINITIONS.

For purposes of this title:

(1) The term "biomaterials supplier" means a person that directly or indirectly supplies, or licenses another person to supply, a component part or raw material for use in the manufacture of a medical device—

(A) that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids of internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(2) Notwithstanding paragraph (1), the term "biomaterials supplier" excludes any person, with respect to a medical device which is the subject of a product liability action—

(A) who is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the medical device, and has registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section, and has included the medical device on a list of devices filed with the Secretary of Health and Human Services pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) who, in the course of a business conducted for that purpose, has sold, distributed, leased, packaged, labeled, or otherwise placed the medical device in the stream of commerce after it was manufactured.

(3) The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(4) The term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

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14. The Amendment To Be Offered by Representative Gekas of Pennsylvania or a Designee, To Be Debatable for Not To Exceed 30 Minutes

Revisions to the heading of H.R. 1075:

Add the words "and civil" after the words "product liability" and before the word "litigation".

Revisions to the Table of Contents:

Page 2, redesignate title IV as title V and renumber sections 401, 402, and 403 as sections 501, 502, and 503, respectively, and after the words "**SEC. 303. DEFINITIONS.**" add the following title:

TITLE IV—COLLATERAL SOURCE RULE REFORM

Sec. 401. Findings.
Sec. 402. Applicability and preemption.
Sec. 403. Collateral source payments.
Sec. 404. Definitions.

Page 30, line 1, redesignate title IV as title V and redesignate sections 401, 402, and 403 as sections 501, 502, and 503, respectively, and insert on line 1 the following:

TITLE IV—COLLATERAL SOURCE RULE REFORM

SEC. 401. FINDINGS.

(1) The practice of not permitting the jury to weigh evidence of collateral source benefits in making its award of damages in health care liability actions burdens interstate commerce by leading to increased costs for health care consumers, decreased efficiency for the legal system, and double recovery for plaintiffs which, in turn, encourages fraud, abuse, and wasteful litigation; and

(2) there is a need to restore rationality, certainty, and fairness to the legal system in order to protect against excessive damage awards and reduce the costs and delay of litigation.

SEC. 402. APPLICABILITY AND PREEMPTION.

This title governs any health care liability action brought in any State or Federal court and to any health care liability claim brought pursuant to an alternative dispute resolution process, by any claimant, based on any conduct, event, occurrence, relationship or transaction involving, affecting or relating to commerce, regardless of the theory of liability on which the claim is based, including claims for legal or equitable contribution, indemnity, or subrogation. The provisions of this title shall preempt State law, with respect to both procedural and substantive matters, only to the extent that such laws are inconsistent with this title and only to the extent that such law prohibits the introduction of collateral source evidence or mandates reimbursement from the claimant's recovery for the cost of collateral source benefits. The provisions of this title shall not preempt any State law that imposes greater restrictions on liability or damages than those provided herein.

SEC. 403. COLLATERAL SOURCE PAYMENTS.

In any civil liability action subject to this title, any defendant may introduce evidence of collateral source benefits. If any defendant elects to introduce such evidence, the claimant may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the claimant to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in any civil liability action subject to this title. This section shall apply whether a civil action is settled or resolved by a fact finder.

SEC. 404. DEFINITIONS.

(a) The term "claimant" means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity, or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term "economic loss" has the same meaning as defined in section 202(3) of this Act.

(c) The term "health care liability action" means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, an entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

(d) The term "health care liability claim" means a demand by any person, whether or not pursuant to an alternative dispute resolution process, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter or seller of a medical product, including, but not limited to, third-party claims, cross claims, counter-claims or contribution claims, which are based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or causes of action.

(e) The term "health care organization" means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement to provide or administer any health benefit.

(f) The term "health care provider" means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(g) The term "health care services" means any service provided by a health care provider, or by any individual working under the supervision of a health care provider, that relates to the diagnoses, prevention, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(h) The term "medical product" means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or a medical device as defined in section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)), including any component of raw material used therein, but excluding health care services, as defined in subsection (g) of this section.

(i) The term "noneconomic damages" means damages for physical and emotional pain, suffering, inconvenience, physical impairment,

mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses other than punitive damages.

(j) The term "punitive damages" has the same meaning as defined in section 202(5) of this Act.

(k) The term "State" has the same meaning as defined in section 202(6) of this Act.

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15. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHUMER OF NEW YORK OR A DESIGNEE, TO BE DEBATABLE FOR NOT TO EXCEED 20 MINUTES

Page 31, line 5, insert before the period the following: "**AND SUNSET**", in line 6, insert "(a) EFFECTIVE DATE.—" at the beginning of the line, and after line 8 insert the following:

(b) SUNSET.—Titles I, II, and III shall expire 5 years after the date of the enactment of this Act unless the Secretary of Commerce has certified to the Congress not less than 90 days before the expiration of such years—

(1) that insurance rates covering liabilities affected by such titles have declined by not less than 10 percent after taking into account changes in the Consumer Price Index, or

(2) that insurance rates have not declined by at least 10 percent because of extraordinary circumstances, has specifed such extraordinary circumstances, and has explained their impact on such insurance rates.

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