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To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1993

Mr. ROTH introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

A BILL

To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Product Liability Fair-
5 ness Act”.

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

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TITLE I

2 **SEC. 101. DEFINITIONS.**

3 As used in this Act—

4 (1) the term “claimant” means any person who
5 brings a civil action pursuant to this Act, and any
6 person on whose behalf such an action is brought;
7 if such an action is brought through or on behalf of
8 an estate, the term includes the claimant’s decedent,
9 or if it is brought through or on behalf of a minor
10 or incompetent, the term includes the claimant’s
11 parent or guardian;

12 (2) the term “clear and convincing evidence” is
13 that measure or degree of proof that will produce in
14 the mind of the trier of fact a firm belief or conviction
15 as to the truth of the allegations sought to be
16 established; the level of proof required to satisfy
17 such standard is more than that required under pre-
18 ponderance of the evidence, but less than that re-
19 quired for proof beyond a reasonable doubt;

1 (3) the term “collateral benefits” means all
2 benefits and advantages received or entitled to be re-
3 ceived (regardless of any right any other person has
4 or is entitled to assert for recoupment through sub-
5 rogation, trust agreement, lien, or otherwise) by any
6 claimant harmed by a product or by any other per-
7 son as reimbursement of loss because of harm to
8 person or property payable or required to be paid to
9 the claimant, under—

10 (A) any Federal law or the laws of any
11 State (other than through a claim for breach of
12 an obligation or duty); or

13 (B) any life, health, or accident insurance
14 or plan, wage or salary continuation plan, or
15 disability income or replacement service insur-
16 ance, or any benefit received or to be received
17 as a result of participation in any pre-paid med-
18 ical plan or health maintenance organization;

19 (4) the term “commerce” means trade, traffic,
20 commerce, or transportation (A) between a place in
21 a State and any place outside of that State; or (B)
22 which affects trade, traffic, commerce, or transpor-
23 tation described in clause (A);

24 (5) the term “commercial loss” means economic
25 injury, whether direct, incidental, or consequential,

1 including property damage and damage to the prod-
2 uct itself;

3 (6) the term “economic loss” means any pecu-
4 niary loss resulting from harm which is allowed
5 under State law;

6 (7) the term “exercise of reasonable care”
7 means conduct of a person of ordinary prudence and
8 intelligence using the attention, precaution, and
9 judgment that society expects of its members for the
10 protection of their own interests and the interests of
11 others;

12 (8) the term “harm” means any harm recog-
13 nized under the law of the State in which the civil
14 action is maintained, other than loss or damage
15 caused to a product itself, or commercial loss;

16 (9) the term “manufacturer” means (A) any
17 person who is engaged in a business to produce, cre-
18 ate, make, or construct any product (or component
19 part of a product) and who designs or formulates
20 the product (or component part of the product) or
21 has engaged another person to design or formulate
22 the product (or component part of the product); (B)
23 a product seller with respect to all aspects of a prod-
24 uct (or component part of a product) which are cre-
25 ated or affected when, before placing the product in

1 the stream of commerce, the product seller produces,
2 creates, makes, or constructs and designs or formu-
3 lates, or has engaged another person to design or
4 formulate, an aspect of a product (or component
5 part of a product) made by another; or (C) any
6 product seller not described in clause (B) which
7 holds itself out as a manufacturer to the user of a
8 product;

9 (10) the term “noneconomic loss” means loss
10 caused by a product other than economic loss or
11 commercial loss;

12 (11) the term “person” includes any govern-
13 mental entity;

14 (12) the term “preponderance of the evidence”
15 is that measure or degree of proof which, by the
16 weight, credit, and value of the aggregate evidence
17 on either side, establishes that it is more probable
18 than not that a fact occurred or did not occur;

19 (13) the term “product” means any object, sub-
20 stance, mixture, or raw material in a gaseous, liquid,
21 or solid state (A) which is capable of delivery itself
22 or as an assembled whole, in a mixed or combined
23 state, or as a component part or ingredient; (B)
24 which is produced for introduction into trade or
25 commerce; (C) which has intrinsic economic value;

1 and (D) which is intended for sale or lease to per-
2 sons for commercial or personal use; the term does
3 not include human tissue, blood and blood products,
4 or organs unless specifically recognized as a product
5 pursuant to State law;

6 (14) the term “product seller” means a person
7 who, in the course of a business conducted for that
8 purpose, sells, distributes, leases, prepares, blends,
9 packages, labels, or otherwise is involved in placing
10 a product in the stream of commerce, or who in-
11 stalls, repairs, or maintains the harm-causing aspect
12 of a product; the term does not include—

13 (A) a seller or lessor of real property;

14 (B) a provider of professional services in
15 any case in which the sale or use of a product
16 is incidental to the transaction and the essence
17 of the transaction is the furnishing of judg-
18 ment, skill, or services; or

19 (C) any person who—

20 (i) acts in only a financial capacity
21 with respect to the sale of a product; and

22 (ii) leases a product under a lease ar-
23 rangement in which the selection, posses-
24 sion, maintenance, and operation of the

1 product are controlled by a person other
2 than the lessor; and

3 (15) the term “State” means any State of the
4 United States, the District of Columbia, the Com-
5 monwealth of Puerto Rico, the Commonwealth of the
6 Northern Mariana Islands, the Virgin Islands,
7 Guam, American Samoa, and any other territory or
8 possession of the United States, or any political sub-
9 division thereof.

10 **SEC. 102. PREEMPTION.**

11 (a) IN GENERAL.—This Act governs any civil action
12 brought against a manufacturer or product seller, on any
13 theory, for harm caused by a product. A civil action
14 brought against a manufacturer or product seller for loss
15 or damage to a product itself or for commercial loss is
16 not subject to this Act and shall be governed by applicable
17 commercial or contract law.

18 (b) STATE LAW.—This Act supersedes any State law
19 regarding recovery for harm caused by a product only to
20 the extent that this Act establishes a rule of law applicable
21 to any such recovery. Any issue arising under this Act that
22 is not governed by any such rule of law shall be governed
23 by applicable State or Federal law.

24 (c) CONSTRUCTION.—Nothing in this Act shall be
25 construed to—

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

4 (2) supersede any Federal law, except the Fed-
5 eral Employees Compensation Act and the Long-
6 shoremen's and Harbor Workers' Compensation Act;

7 (3) waive or affect any defense of sovereign im-
8 munity asserted by the United States;

9 (4) affect the applicability of any provision of
10 chapter 97 of title 28, United States Code;

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

14 (6) affect the right of any court to transfer
15 venue or to apply the law of a foreign nation or to
16 dismiss a claim of a foreign nation or of a citizen
17 of a foreign nation on the ground of inconvenient
18 forum; or

19 (7) supersede any statutory or common law, in-
20 cluding an action to abate a nuisance, that author-
21 izes a State or person to institute an action for civil
22 damages or civil penalties, cleanup costs, injunc-
23 tions, restitution, cost recovery, punitive damages, or
24 any other form of relief resulting from contamina-

1 tion or pollution of the environment, or the threat of
2 such contamination or pollution.

3 (d) DEFINITION.—As used in paragraph (7), the
4 term “environment” has the meaning given to such term
5 in section 101(8) of the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9601(8)).

8 (e) LEGISLATIVE HISTORY.—This Act shall be con-
9 strued and applied after consideration of its legislative his-
10 tory to promote uniformity of law in the various jurisdic-
11 tions.

12 **SEC. 103. JURISDICTION OF FEDERAL COURTS.**

13 The district courts of the United States shall not
14 have jurisdiction over any civil action pursuant to this Act,
15 based on section 1331 or 1337 of title 28, United States
16 Code.

17 **SEC. 104. EFFECTIVE DATE.**

18 (a) IN GENERAL.—This Act shall take effect on the
19 date of its enactment and shall apply to all civil actions
20 pursuant to this Act commenced on or after such date,
21 including any action in which the harm or the conduct
22 which caused the harm occurred before the effective date
23 of this Act.

24 (b) SHORTER PERIOD.—If any provision of this Act
25 would shorten the period during which a manufacturer or

1 product seller would otherwise be exposed to liability, the
2 claimant may, notwithstanding the otherwise applicable
3 time period, bring any civil action pursuant to this Act
4 within one year after the effective date of this Act.

5 TITLE II

6 **SEC. 201. EXPEDITED PRODUCT LIABILITY SETTLEMENTS.**

7 (a) IN GENERAL.—Any claimant may bring a civil
8 action for damages against a person for harm caused by
9 a product pursuant to applicable State law, except to the
10 extent such law is superseded by this title.

11 (b) SETTLEMENT.—

12 (1) CLAIMANT.—Any claimant may, in addition
13 to any claim for relief made in accordance with
14 State law, include in such claimant’s complaint an
15 offer of settlement for a specific dollar amount.

16 (2) DEFENDANT.—The defendant may make an
17 offer of settlement for a specific dollar amount with-
18 in sixty days after service of the claimant’s com-
19 plaint or within the time permitted pursuant to
20 State law for a responsive pleading, whichever is
21 longer, except that if such pleading includes a mo-
22 tion to dismiss in accordance with applicable law,
23 the defendant may tender such relief to the claimant
24 within ten days after the court’s determination re-
25 garding such motion.

1 (3) COURT ACTION.—

2 (A) EXTENSION ORDER.—In any case in
3 which an offer of settlement is made pursuant
4 to paragraph (1) or (2), the court may, upon
5 motion made prior to the expiration of the ap-
6 plicable period for response, enter an order ex-
7 tending such period. Any such order shall con-
8 tain a schedule for discovery of evidence mate-
9 rial to the issue of the appropriate amount of
10 relief, and shall not extend such period for more
11 than sixty days. Any such motion shall be ac-
12 companied by a supporting affidavit of the mov-
13 ing party setting forth the reasons why such ex-
14 tension is necessary to promote the interests of
15 justice and stating that the information likely
16 to be discovered is material, and is not, after
17 reasonable inquiry, otherwise available to the
18 moving party.

19 (B) DEFENDANT NOT ACCEPTING.—If the
20 defendant, as offeree, does not accept the offer
21 of settlement made by a claimant within the
22 time permitted pursuant to State law for a re-
23 sponsive pleading or, if such pleading includes
24 a motion to dismiss in accordance with applica-
25 ble law, within thirty days after the court's de-

1 termination regarding such motion, and a ver-
2 dict is entered in such action equal to or great-
3 er than the specific dollar amount of such offer
4 of settlement, the court shall enter judgment
5 against the defendant and shall include in such
6 judgment an amount for the claimant's reason-
7 able attorney's fees and costs. Such fees shall
8 be offset against any fees owed by the claimant
9 to the claimant's attorney by reason of the
10 verdict.

11 (C) CLAIMANT NOT ACCEPTING.—If the
12 claimant, as offeree, does not accept the offer
13 of settlement made by a defendant in accord-
14 ance with subsection (c) of this section within
15 thirty days after the date on which such offer
16 is made and a verdict is entered in such action
17 equal to or less than the specific dollar amount
18 of such offer of settlement, the court shall re-
19 duce the amount of the verdict in such action
20 by an amount equal to the reasonable attorney's
21 fees and costs owed by the defendant to the de-
22 fendant's attorney by reason of the verdict, ex-
23 cept that the amount of such reduction shall
24 not exceed that portion of the verdict which is
25 allocable to noneconomic loss and economic loss

1 unreasonable or not in good faith, the court shall assess
2 reasonable attorney's fees and costs against the offeree.

3 (c) REBUTTABLE PRESUMPTION.—For the purposes
4 of this section, there shall be created a rebuttable pre-
5 sumption that a refusal by an offeree to proceed pursuant
6 to such alternative dispute resolution procedure was un-
7 reasonable or not in good faith, if a verdict is rendered
8 in favor of the offeror.

9 TITLE III

10 **SEC. 301. CIVIL ACTIONS.**

11 A person seeking to recover for harm caused by a
12 product may bring a civil action against the product's
13 manufacturer or product seller pursuant to applicable
14 State or Federal law, except to the extent such law is su-
15 perseded by this Act.

16 **SEC. 302. UNIFORM STANDARDS OF PRODUCT SELLER LI-** 17 **ABILITY.**

18 (a) GENERAL RULE.—Notwithstanding section 301,
19 in any civil action for harm caused by a product, a product
20 seller other than a manufacturer is liable to a claimant,
21 only if the claimant establishes by a preponderance of the
22 evidence that—

23 (1)(A) the individual product unit which alleg-
24 edly caused the harm complained of was sold by the
25 defendant;

1 (B) the product seller failed to exercise reason-
2 able care with respect to the product; and

3 (C) such failure to exercise reasonable care was
4 a proximate cause of the claimant's harm; or

5 (2)(A) the product seller made an express war-
6 ranty, independent of any express warranty made by
7 a manufacturer as to the same product;

8 (B) the product failed to conform to the war-
9 ranty; and

10 (C) the failure of the product to conform to the
11 warranty caused the claimant's harm.

12 (b) DETERMINING PRODUCT SELLER'S LIABILITY.—

13 (1) TRIER OF FACT.—In determining whether a
14 product seller is subject to liability under subsection
15 (a)(1), the trier of fact may consider the effect of
16 the conduct of the product seller with respect to the
17 construction, inspection, or condition of the product,
18 and any failure of the product seller to pass on ade-
19 quate warnings or instructions from the product's
20 manufacturer about the dangers and proper use of
21 the product.

22 (2) WARNING OR INSTRUCTIONS.—A product
23 seller shall not be liable in a civil action subject to
24 this title based upon an alleged failure to provide
25 warnings or instructions unless the claimant estab-

1 lishes that, when the product left the possession and
2 control of the product seller, the product seller
3 failed—

4 (A) to provide to the person to whom the
5 product seller relinquished possession and con-
6 trol of the product any pamphlets, booklets, la-
7 bels, inserts, or other written warnings or in-
8 structions received while the product was in the
9 product seller's possession and control; or

10 (B) to make reasonable efforts to provide
11 users with those warnings and instructions
12 which it received after the product left its pos-
13 session and control.

14 (3) BREACH OF EXPRESS WARRANTY.—A prod-
15 uct seller shall not be liable in a civil action subject
16 to this title except for breach of express warranty
17 where there was no reasonable opportunity to in-
18 spect the product in a manner which would or
19 should, in the exercise of reasonable care, have re-
20 vealed the aspect of the product which allegedly
21 caused the claimant's harm.

22 (c) TREATED AS A MANUFACTURER.—A product sell-
23 er shall be treated as the manufacturer of a product and
24 shall be liable for harm to the claimant caused by a prod-
25 uct as if it were the manufacturer of the product if—

1 (1) the manufacturer is not subject to service of
2 process under the laws of any State in which the ac-
3 tion might have been brought; or

4 (2) the court determines that the claimant
5 would be unable to enforce a judgment against the
6 manufacturer.

7 **SEC. 303. UNIFORM STANDARDS FOR AWARD OF PUNITIVE**
8 **DAMAGES.**

9 (a) GENERAL RULE.—Punitive damages may, if oth-
10 erwise permitted by applicable law, be awarded in any
11 product liability action to any claimant who establishes by
12 clear and convincing evidence that the harm suffered was
13 the result of conduct manifesting a manufacturer's or
14 product seller's conscious, flagrant indifference to the
15 safety of those persons who might be harmed by a product.
16 A failure to exercise reasonable care in choosing among
17 alternative product designs, formulations, instructions, or
18 warnings is not of itself such conduct. Except as provided
19 in subsection (b), punitive damages may not be awarded
20 in the absence of a compensatory award.

21 (b) DEATH.—In any civil action in which the alleged
22 harm to the claimant is death and the applicable State
23 law provides, or has been construed to provide, for dam-
24 ages only punitive in nature, a defendant may be liable
25 for any such damages regardless of whether a claim is as-

1 sserted under this section. The recovery of any such dam-
2 ages shall not bar a claim under this section.

3 (c) PUNITIVE DAMAGES NOT TO BE AWARDED.—

4 (1) DRUGS AND DEVICES.—

5 (A) GENERAL RULE.—Punitive damages
6 shall not be awarded pursuant to this section
7 against a manufacturer or product seller of a
8 drug (as defined in section 201(g)(1) of the
9 Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. 321(g)(1)) or device (as defined under
11 section 201(h) of the Federal Food, Drug, and
12 Cosmetic Act (21 U.S.C. 321(h)) which caused
13 the claimant's harm where—

14 (i) such drug or device was subject to
15 pre-market approval by the Food and
16 Drug Administration with respect to the
17 safety of the formulation or performance of
18 the aspect of such drug or device which
19 caused the claimant's harm or the ade-
20 quacy of the packaging or labeling of such
21 drug or device, and such drug was ap-
22 proved by the Food and Drug Administra-
23 tion; or

24 (ii) the drug is generally recognized as
25 safe and effective pursuant to conditions

1 established by the Food and Drug Admin-
2 istration and applicable regulations, includ-
3 ing packaging and labeling regulations.

4 (B) EXCEPTION.—The subparagraph (A)
5 shall not apply in any case in which the defend-
6 ant withheld from or misrepresented to the
7 Food and Drug Administration or any other
8 agency or official of the Federal Government in-
9 formation that is material and relevant to the
10 performance of such drug or device, or in any
11 case in which the defendant made an illegal
12 payment to an official of the Food and Drug
13 Administration for the purpose of securing ap-
14 proval of such drug or device.

15 (2) AIRCRAFT.—Punitive damages shall not be
16 awarded pursuant to this section against a manufac-
17 turer of an aircraft which caused the claimant's
18 harm where—

19 (A) such aircraft was subject to pare-mar-
20 ket certification by the Federal Aviation Admin-
21 istration with respect to the safety of the design
22 or performance of the aspect of such aircraft
23 which caused the claimant's harm or the ade-
24 quacy of the warnings regarding the operation
25 or maintenance of such aircraft;

1 (B) the aircraft was certified by the Fed-
2 eral Aviation Administration under the Federal
3 Aviation Act of 1958 (49 App. U.S.C. 1301 et
4 seq.); and

5 (C) the manufacturer of the aircraft com-
6 plied, after delivery of the aircraft to a user,
7 with Federal Aviation Administration require-
8 ments and obligations with respect to continu-
9 ing airworthiness, including the requirement to
10 provide maintenance and service information re-
11 lated to airworthiness whether or not such in-
12 formation is used by the Federal Aviation Ad-
13 ministration in the preparation of mandatory
14 maintenance, inspection, or repair directives.

15 This paragraph shall not apply in any case in which
16 the defendant withheld from or misrepresented to
17 the Federal Aviation Administration information
18 that is material and relevant to the performance or
19 the maintenance or operation of such aircraft.

20 (d) SEPARATE PROCEEDING.—At the request of the
21 manufacturer or product seller, the trier of fact shall con-
22 sider in a separate proceeding (1) whether punitive dam-
23 ages are to be awarded and the amount of such award,
24 or (2) the amount of punitive damages following a deter-
25 mination of punitive liability. If a separate proceeding is

1 requested, evidence relevant only to the claim of punitive
2 damages, as determined by applicable State law, shall be
3 inadmissible in any proceeding to determine whether com-
4 pensatory damages are to be awarded.

5 (e) AMOUNT.—In determining the amount of punitive
6 damages, the trier of fact shall consider all relevant evi-
7 dence, including—

8 (1) the financial condition of the manufacturer
9 or product seller;

10 (2) the severity of the harm caused by the con-
11 duct of the manufacturer or product seller;

12 (3) the duration of the conduct or any conceal-
13 ment of it by manufacturer or product seller;

14 (4) the profitability of the conduct to the manu-
15 facturer or product seller;

16 (5) the number of products sold by the manu-
17 facturer or product seller of the kind causing the
18 harm complained of by the claimant;

19 (6) awards of punitive or exemplary damages to
20 persons similarly situated to the claimant;

21 (7) prospective awards of compensatory dam-
22 ages to persons similarly situated to the claimant;

23 (8) any criminal penalties imposed on the man-
24 ufacturer or product seller as a result of the conduct
25 complained of by the claimant; and

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

4 **SEC. 304. UNIFORM TIME LIMITATIONS ON LIABILITY.**

5 (a) GENERAL RULE.—Any civil action subject to this
6 title shall be barred unless the complaint is filed within
7 two years of the time the claimant discovered or, in the
8 exercise of reasonable care, should have discovered the
9 harm and its cause, except that any such action of a per-
10 son under legal disability may be filed within two years
11 after the disability ceases. If the commencement of such
12 an action is stayed or enjoined, the running of the statute
13 of limitations under this section shall be suspended for the
14 period of the stay or injunction.

15 (b) SPECIFIC LIMITATIONS.—

16 (1) 25 YEARS.—Any civil action subject to this
17 title shall be barred if a product which is a capital
18 good is alleged to have caused harm which is not a
19 toxic harm unless the complaint is served and filed
20 within twenty-five years after the time of delivery of
21 the product. This subsection shall apply only if the
22 court determines that the claimant has received or
23 would be eligible to receive compensation under any
24 State or Federal workers' compensation law for
25 harm caused by the product.

1 (2) TRANSPORTATION.—A motor vehicle, vessel,
2 aircraft, or railroad used primarily to transport pas-
3 sengers for hire shall not be subject to this sub-
4 section.

5 (3) DEFINITIONS.—As used in this section—

6 (A) the term “time of delivery” means the
7 time when a product is delivered to its first
8 purchaser or lessee who was not involved in the
9 business of manufacturing or selling such prod-
10 uct or using it as a component part of another
11 product to be sold;

12 (B) the term “capital good” means any
13 product, or any component of any such product,
14 which is of a character subject to allowance for
15 depreciation under the Internal Revenue Code
16 of 1986, and which was—

17 (i) used in a trade or business;

18 (ii) held for the production of income;

19 or

20 (iii) sold or donated to a governmental
21 or private entity for the production of
22 goods, for training, for demonstration, or
23 for other similar purposes; and

24 (C) the term “toxic harm” means harm
25 which is functional impairment, illness, or death

1 of a human being resulting from exposure to an
2 object, substance, mixture, raw material, or
3 physical agent of particular chemical composi-
4 tion.

5 (c) CONTRIBUTION AND INDEMNITY.—Nothing in
6 this section shall affect the right of any person who is sub-
7 ject to liability for harm under this Act to seek and obtain
8 contribution or indemnity from any other person who is
9 responsible for such harm.

10 **SEC. 305. UNIFORM STANDARDS FOR OFFSET OF WORKERS'**
11 **COMPENSATION BENEFITS.**

12 (a) GENERAL RULE.—In any civil action subject to
13 this title in which damages are sought for harm for which
14 the person injured is or would have been entitled to receive
15 compensation under any State or Federal workers' com-
16 pensation law, any damages awarded shall be reduced by
17 the sum of the amount paid as workers' compensation ben-
18 efits for such harm and the present value of all workers'
19 compensation benefits to which the employee is or would
20 be entitled for such harm. The determination of workers'
21 compensation benefits by the trier of fact in a civil action
22 subject to this title shall have no binding effect on and
23 shall not be used as evidence in any other proceeding.

24 (b) NOTICE.—A claimant in a civil action subject to
25 this title who is or may be eligible to receive compensation

1 under any State or Federal workers' compensation law
2 must provide written notice of the filing of the civil action
3 to the claimant's employer within 30 days of the filing.
4 The written notice shall include information regarding the
5 date and court in which the civil action was filed, the
6 names and addresses of all plaintiffs and defendants ap-
7 pearing on the complaint, the court docket number if
8 available, and a copy of the complaint which was filed in
9 the civil action. A copy of such written notice shall be filed
10 with the court and served upon all parties to the action.
11 A claimant's failure to comply with the requirements of
12 this subsection shall suspend the deadlines for filing re-
13 sponsive pleadings and commencing discovery in the civil
14 action, until the claimant complies with the requirements
15 of this subsection.

16 (c) STAY OF ACTION.—In any civil action subject to
17 this title in which damages are sought for harm for which
18 the person injured is entitled to receive compensation
19 under any State or Federal workers' compensation law,
20 the action shall, on application of the claimant made at
21 claimant's sole discretion, be stayed until such time as the
22 full amount payable as workers' compensation benefits has
23 been finally determined under such workers' compensation
24 law.

1 (d) EMPLOYER AND WORKERS' COMPENSATION CAR-
2 RIER.—

3 (1) SUBROGATION, CONTRIBUTION, OR IMPLIED
4 INDEMNITY.—Except as provided in paragraph (2),
5 unless the manufacturer or product seller has ex-
6 pressly agreed to indemnify or hold an employer
7 harmless for harm to an employee caused by a prod-
8 uct, neither the employer nor the workers' com-
9 pensation insurance carrier of the employer shall
10 have a right of subrogation, contribution or implied
11 indemnity against the manufacturer or product sell-
12 er or a lien against the claimant's recovery from the
13 manufacturer or product seller if the harm is one for
14 which a civil action for harm caused by a product
15 may be brought pursuant to this Act.

16 (2) FAULT NOT THE CAUSE OF EMPLOYER OR
17 CO-EMPLOYEES.—Paragraph (1) shall not apply if
18 the employer or the workers' compensation insurer
19 of the employer establishes, and the trier of fact de-
20 termines, that the claimant's harm was not in any
21 way caused by the fault of the claimant's employer
22 or coemployees. In order to establish this fact an
23 employer or the workers' compensation insurer of
24 the employer may intervene in a civil action filed by
25 an employee at any time after the filing of a com-

1 plaint. In the event that the civil action is resolved
2 prior to obtaining a verdict by the trier of fact, any
3 resolution of the action by settlement or other means
4 shall afford the employer or the workers' compensa-
5 tion insurer of the employer an opportunity to par-
6 ticipate and to assert a right of subrogation, con-
7 tribution, or implied indemnity if the claimant's
8 harm was not in any way caused by the fault of the
9 claimant's employer or coemployees.

10 (e) MISCELLANEOUS RULES.—

11 (1) THIRD-PARTY TORTFEASOR.—Except as
12 provided in paragraph (3), in any civil action subject
13 to this title in which damages are sought for harm
14 for which the person injured is or would have been
15 entitled to receive compensation under any State or
16 Federal workers' compensation law, no third-party
17 tortfeasor may maintain any action for implied in-
18 demnity or contribution against the employer, any
19 coemployee, or the exclusive representative of the
20 person who was injured.

21 (2) CERTAIN ACTIONS.—Nothing in this Act
22 shall be construed to affect any provision of a State
23 or Federal workers' compensation law which pro-
24 hibits a person who is or would have been entitled
25 to receive compensation under any such law, or any

1 other person whose claim is or would have been de-
2 rivative from such a claim, from recovering for harm
3 caused by a product in any action other than a
4 workers' compensation claim against a present or
5 former employer or workers' compensation insurer of
6 the employer, any coemployee, or the exclusive rep-
7 resentative of the person who was injured. Any ac-
8 tion other than such a workers' compensation claim
9 shall be prohibited, except that nothing in this Act
10 shall be construed to affect any State or Federal
11 workers' compensation law which permits recovery
12 based on a claim of an intentional tort by the em-
13 ployer or coemployee, where the claimant's harm was
14 caused by such an intentional tort.

15 (3) EXCEPTION.—Paragraph (1) shall not
16 apply and applicable State law shall control if the
17 employer or the workers' compensation insurer of
18 the employer, in a civil action subject to this title,
19 asserts or attempts to assert, because of subsection
20 (d), a right of subrogation, contribution, or implied
21 indemnity against the manufacturer or product sell-
22 er or a lien against the claimant's recovery from the
23 manufacturer or product seller.

1 **SEC. 306. SEVERAL LIABILITY FOR NONECONOMIC DAM-**
2 **AGES.**

3 (a) GENERAL RULE.—In any product liability action,
4 the liability of each defendant for noneconomic damages
5 shall be several only and shall not be joint. Each defendant
6 shall be liable only for the amount of noneconomic dam-
7 ages allocated to such defendant in direct proportion to
8 such defendant's percentage of responsibility as deter-
9 mined under subsection (b) of this section. A separate
10 judgment shall be rendered against such defendant for
11 that amount.

12 (b) ROLE OF TRIER OF FACT.—For purposes of this
13 section, the trier of fact shall determine the proportion of
14 responsibility of each party for the claimant's harm.

15 (c) DEFINITIONS.—As used in this section—

16 (1) the term “noneconomic damages” means
17 subjective, nonmonetary losses including, but not
18 limited to, pain, suffering, inconvenience, mental
19 suffering, emotional distress, loss of society and
20 companionship, loss of consortium, injury to reputa-
21 tion and humiliation; the term does not include ob-
22 jectively verifiable monetary losses including, but not
23 limited, medical expenses, loss of earnings, burial
24 costs, loss of use of property, costs of repair or re-
25 placement, costs of obtaining substitute domestic
26 services, rehabilitation and training expenses, loss of

1 employment, or loss of business or employment op-
2 portunities; and

3 (2) the term “product liability action” includes
4 any action involving a claim, third-party claim,
5 cross-claim, counterclaim, or contribution claim in a
6 civil action in which a manufacturer or product sell-
7 er is found liable for harm caused by a product.

8 **SEC. 307. DEFENSES INVOLVING INTOXICATING ALCOHOL**
9 **OR DRUGS.**

10 (a) **GENERAL RULE.**—In any civil action subject to
11 this Act in which all defendants are manufacturers or
12 product sellers, it shall be a complete defense to such ac-
13 tion that the claimant was intoxicated or was under the
14 influence of intoxicating alcohol or any drug and that as
15 a result of such intoxication or the influence of the alcohol
16 or drug the claimant was more than 50 percent respon-
17 sible for the accident or event which resulted in such
18 claimant’s harm.

19 (b) **UNDER THE INFLUENCE.**—In any civil action
20 subject to this Act in which not all defendants are manu-
21 facturers or product sellers and the trier of fact deter-
22 mines that no liability exists against those defendants who
23 are not manufacturers or product sellers, the court shall
24 enter a judgment notwithstanding the verdict in favor of
25 any defendant which is a manufacturer or product seller

1 if it is proved that the claimant was intoxicated or was
2 under the influence of intoxicating alcohol or any drug and
3 that as a result of such intoxication or the influence of
4 the alcohol or drug the claimant was more than 50 percent
5 responsible for the accident or event which resulted in
6 such claimant's harm.

7 (c) DETERMINATION.—

8 (1) STATE LAW.—For purposes of this section,
9 the determination of whether a person was intoxi-
10 cated or was under the influence of intoxicating alco-
11 hol or any drug shall be made pursuant to applicable
12 State law.

13 (2) DEFINITION.—As used in this section, the
14 term “drug” means any non-over-the-counter drug
15 which has not been prescribed by a physician for use
16 by the claimant.

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