A BILL

[Report No. 103-203]

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

Calendar No. 409

Passed:

Calendar No. 409

APRIL 11, 1994

Committee discharged; placed on calendar

A BILL

[Report No. 103-203]
To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.
A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Product Liability Fairness Act”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Applicability; preemption.
Sec. 5. Jurisdiction of Federal courts.
Sec. 6. Effective date.

TITLE I—EXPEDITED JUDGMENTS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Sec. 101. Expedited product liability judgments.
Sec. 102. Alternative dispute resolution procedures.

TITLE II—STANDARDS FOR CIVIL ACTIONS

Sec. 201. Civil actions.
Sec. 203. Uniform standards for award of punitive damages.
Sec. 204. Uniform time limitations on liability.
Sec. 205. Workers’ compensation subrogation standards.
Sec. 206. Several liability for noneconomic loss.
Sec. 207. Defenses involving intoxicating alcohol or drugs.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) “claimant” means any person who brings a civil action pursuant to this Act, and any person on
whose behalf such an action is brought; if such an
action is brought through or on behalf of an estate,
the term includes the claimant’s decedent, or if it is
brought through or on behalf of a minor or incom-
petent, the term includes the claimant’s parent or
guardian;

(2) “clear and convincing evidence” is that
measure or degree of proof that will produce in the
mind of the trier of fact a firm belief or conviction
as to the truth of the allegations sought to be estab-
lished; the level of proof required to satisfy such
standard is more than that required under prepon-
derance of the evidence, but less than that required
for proof beyond a reasonable doubt;

(3) “collateral benefits” means all benefits and
advantages received or entitled to be received (ex-
cluding any benefits any other person has or is enti-
tled to assert for recoupment through subrogation,
trust agreement, lien, or otherwise) by any claimant
harmed by a product or by any other person as re-
imbursement of loss because of harm to person or
property payable or required to be paid to the claim-
ant, under—
(A) any Federal law or the laws of any State (other than through a claim for breach of an obligation or duty); or

(B) any life, health, or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance, result of participation in any pre-paid medical plan or health maintenance organization;

(4) "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of that State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A);

(5) "commercial loss" means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation;

(6) "economic loss" means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent re-
covery for such loss is allowed under applicable State law;

(7) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) "harm" means any bodily injury to an individual sustained in an accident and any illness, disease, or death of that individual resulting from that injury; the term does not include commercial loss or loss or damage to a product itself;

(9) "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, cre-
ates, makes, or constructs and designs or formulatates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

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

(10) “noneconomic loss” means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(11) “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) “preponderance of the evidence” is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;
(13) “product” means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value;

and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) “product seller” means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product;

the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product
is incidental to the transaction and the essence
of the transaction is the furnishing of judg-
ment, skill, or services; or
(C) any person who—
(i) acts in only a financial capacity
with respect to the sale of a product; and
(ii) leases a product under a lease ar-
angement in which the selection, posses-
sion, maintenance, and operation of the
product are controlled by a person other
than the lessor; and
(15) “State” means any State of the United
States, the District of Columbia, Puerto Rico, the
Northern Mariana Islands, the Virgin Islands,
Guam, American Samoa, and any other territory or
possession of the United States, or any political sub-
division thereof.

SEC. 4. APPLICABILITY; PREEMPTION.
(a) Applicability to Product Liability Ac-
tions.—This Act applies to any civil action brought
against a manufacturer or product seller, on any theory,
for harm caused by a product. A civil action brought
against a manufacturer or product seller for loss or dam-
age to a product itself or for commercial loss is not subject
to this Act and shall be governed by applicable commercial
or contract law.

(b) Scope of Preemption.—(1) Except as provided
in paragraph (2), this Act supersedes any State law re-
garding recovery for harm caused by a product only to
the extent that this Act establishes a rule of law applicable
to any such recovery. Any issue arising under this Act that
is not governed by any such rule of law shall be governed
by applicable State or Federal law.

(2) The provisions of title I shall not supersede or
otherwise preempt any provision of applicable State or
Federal law.

(c) Effect on Other Law.—Nothing in this Act
shall be construed to—

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

(2) supersede any Federal law, except chapter
81 of title 5, United States Code (relating to Fed-
eral employees’ compensation for work injuries) and
the Longshore and Harbor Workers’ Compensation
Act (33 U.S.C. 901 et seq.);

(3) waive or affect any defense of sovereign im-
munity asserted by the United States;
(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

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

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(d) Construction.—This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.
(e) **Effect of Court of Appeals Decisions.**—Any decision of a United States court of appeals interpreting the provisions of this Act shall be considered a controlling precedent and followed by each Federal and State court within the geographical boundaries of the circuit in which such court of appeals sits, except to the extent that the decision is overruled or otherwise modified by the United States Supreme Court.

**Sec. 5. Jurisdiction of Federal Courts.**

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

**Sec. 6. Effective Date.**

This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act.

**Title I—Expedited Judgments and Alternative Dispute Resolution Procedures**

**Sec. 101. Expedited Product Liability Judgments.**

(a) **Claimant’s Offer of Judgment.**—Any claimant may, in addition to any claim for relief made in ac-
cordance with State law, include in the complaint an offer of judgment to be entered against a defendant for a specific dollar amount as complete satisfaction of the claim.

(b) DEFENDANT’S OFFER.—A defendant may serve an offer to allow judgment to be entered against that defendant for a specific dollar amount as complete satisfaction of the claim, within sixty days after service of the claimant’s complaint or within the time permitted pursuant to State law for a responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the defendant may serve such offer within 10 days after the court’s determination regarding such motion.

(c) EXTENSION OF RESPONSE PERIOD.—In any case in which an offer of judgment is served pursuant to subsection (a) or (b), the court may, upon motion by the offeree made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than sixty days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely
to be discovered is material and is not, after reasonable inquiry, otherwise available to the moving party.

(d) Defendant's Penalty for Rejection of Offer.—If a defendant, as offeree, does not serve on a claimant a written notification of acceptance of an offer of judgment served by a claimant in accordance with subsection (a) within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within thirty days after the court's determination regarding such motion, and a final judgment is entered in such action in an amount greater than the specific dollar amount of such offer of judgment, the court shall modify the judgment against that defendant by including in the judgment an amount for the claimant's reasonable attorney's fees and costs, not to exceed $50,000. Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the final judgment.

(e) Claimant's Penalty for Rejection of Offer.—If the claimant, as offeree, does not serve on the defendant a written notice of acceptance of an offer of judgment served by a defendant in accordance with subsection (b) within thirty days after such service and a final judgment is entered in such action in an amount less than the specific dollar amount of such offer of judgment, the
court shall reduce the amount of the final judgment in such action by that portion of the judgment which is allocable to economic loss for which the claimant has received or is entitled to receive collateral benefits. If the claimant is not the prevailing party in such action, the claimant’s refusal to accept an offer of judgment shall not result in the payment of any penalty under this subsection.

(f) Reasonable Attorney’s Fee.—For purposes of this section, a reasonable attorney’s fee shall be calculated on the basis of an hourly rate which shall not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney’s qualifications and experience and the complexity of the case.

(g) Evidence of Offer.—An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine attorney’s fees and costs.

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) In General.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 101, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution
procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) Defendant’s Penalty for Unreasonable Refusal.—The court shall assess reasonable attorney’s fees (calculated in the manner described in section 101(f)) and costs against the offeree, if—
(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;
(2) final judgment is entered against the defendant for harm caused by a product; and
(3) the defendant’s refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) Good Faith Refusal.—In determining whether an offeree’s refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or
not in good faith, the court shall consider such factors as
the court deems appropriate.

TITLE II—STANDARDS FOR CIVIL ACTIONS

SEC. 201. CIVIL ACTIONS.

A person seeking to recover for harm caused by a
product may bring a civil action against the product’s
manufacturer or product seller pursuant to applicable
State or Federal law, except to the extent such law is in-
consistent with any provision of this Act.

SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LI-

ABILITY.

(a) STANDARDS OF LIABILITY.—In any civil action
for harm caused by a product, a product seller other than
a manufacturer is liable to a claimant, only if the claimant
establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which alleg-
edly caused the harm complained of was sold by the
defendant; (B) the product seller failed to exercise
reasonable care with respect to the product; and (C)
such failure to exercise reasonable care was a prox-
imate cause of the claimant’s harm; or

(2)(A) the product seller made an express war-

ranty, independent of any express warranty made by
a manufacturer as to the same product; (B) the
product failed to conform to the product seller’s war-
ranty; and (C) the failure of the product to conform to the product seller's warranty caused the claimant's harm.

(b) CONDUCT OF PRODUCT SELLER.—(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this Act based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with the warnings and instructions with it received after the product left its possession and control.
(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant’s harm.

(c) **TREATMENT AS MANUFACTURER.**—A product seller shall be deemed to be the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

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

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

SEC. 203. **UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.**

(a) **IN GENERAL.**—Punitive damages may, if otherwise permitted by applicable law, be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer’s or product seller’s conscious, flagrant in-
difference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Punitive damages may not be awarded in the absence of an award of compensatory damages.

(b) Limitation Concerning Certain Drugs and Medical Devices.—(1) Punitive damages shall not be awarded pursuant to this section 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 under section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant’s harm where—

(A) such drug or device was subject to pre-market 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

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and ap-
(2) The provisions of paragraph (1) shall not apply in any case in which—

(A) the defendant, before or after pre-market approval of a drug or device, withheld from or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government required information that is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

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

(c) LIMITATION CONCERNING CERTAIN AIRCRAFT AND COMPONENTS.—(1) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft or aircraft component which caused the claimant’s harm where—

(A) such aircraft or component was subject to pre-market certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft or
component which caused the claimant’s harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft or component;

(B) the aircraft or component was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.); and

(C) the manufacturer of the aircraft or component complied, after delivery of the aircraft or component to a user, with Federal Aviation Administration requirements and obligations with respect to continuing airworthiness, including the requirement to provide maintenance and service information related to airworthiness whether or not such information is used by the Federal Aviation Administration in the preparation of mandatory maintenance, inspection, or repair directives.

(2) The provisions of paragraph (1) shall not apply in any case in which—

(A) the defendant, before or after pre-market certification of an aircraft or aircraft component, withheld from or misrepresented to the Federal Aviation Administration required information that is material and relevant to the performance or the maintenance or operation of such aircraft or compo-
ponent or is causally related to the harm which the
claimant allegedly suffered; or

(B) the defendant made an illegal payment to
an official of the Federal Aviation Administration
for the purpose of either securing or maintaining
certification of such aircraft or component.

(d) SEPARATE PROCEEDING.—At the request of the
manufacturer or product seller, the trier of fact shall con-
sider in a separate proceeding (1) whether punitive dam-
ages are to be awarded and the amount of such award,
or (2) the amount of punitive damages following a deter-
mination of punitive liability. If a separate proceeding is
requested, evidence relevant only to the claim of punitive
damages, as determined by applicable State law, shall be
inadmissible in any proceeding to determine whether com-
pensatory damages are to be awarded.

(e) DETERMINING AMOUNT OF PUNITIVE DAM-
AGES.—In determining the amount of punitive damages,
the trier of fact shall consider all relevant evidence, includ-
ing—

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

(2) the severity of the harm caused by the con-
duct of the manufacturer or product seller;
(3) the duration of the conduct or any concealment of it by the manufacturer or product seller;
(4) the profitability of the conduct to the manufacturer or product seller;
(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;
(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;
(7) prospective awards of compensatory damages to persons similarly situated to the claimant;
(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and
(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—Any civil action subject to this Act shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of
such an action is stayed or enjoined, the running of the
statute of limitations under this section shall be suspended
for the period of the stay or injunction.

(b) **Statute of Repose for Capital Goods.**—(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers’ compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or train, used primarily to transport passengers for hire, shall not be subject to this subsection.

(3) As used in this subsection, the term—

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

(i) used in a trade or business;

(ii) held for the production of income; or

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

(B) "time of delivery" means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(c) Extension of Period for Bringing Certain Actions.—If any provision of this section would shorten the period during which a civil action could be brought under otherwise applicable law, the claimant may, notwithstanding such provision of this section, bring the civil action pursuant to this Act within one year after the effective date of this Act.

(d) Effect on Right to Contribution or Indemnity.—Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

Sec. 205. Workers’ Compensation Subrogation Standards.

(a) In General.—(1) An employer or workers’ compensation insurer of an employer shall have a right of subrogation against a manufacturer or product seller to recover the sum of the amount paid as workers’ compensa-
tion benefits and the present value of all workers’ com-
compensation benefits to which the employee is or would be
entitled as determined by the appropriate workers’ com-
pensation authority for harm caused to an employee by
a product if the harm is one for which a civil action has
been brought pursuant to this Act. To assert a right of
subrogation an employer or workers’ compensation insurer
of an employer shall provide written notice that it is as-
serting a right of subrogation to the court in which the
claimant has filed a complaint. The employer or workers’
compensation insurer of the employer shall not be required
to be a necessary and proper party to the proceeding insti-
tuted by the employee.

(2) In any proceeding against or settlement with the
manufacturer or product seller, the employer or the work-
ers’ compensation insurer of the employer shall have an
opportunity to participate and to assert a right of subroga-
tion upon any payment and to assert a right of subroga-
tion upon any payment made by the manufacturer or
product seller by reason of such harm, whether paid in
settlement, in satisfaction of judgment, as consideration
for covenant not to sue, or otherwise. The employee shall
not make any settlement with or accept any payment from
the manufacturer or product seller without the written
consent of the employer and no release to or agreement
with the manufacturer or product seller shall be valid or enforceable for any purpose without such consent. However, the preceding sentence shall not apply if the employer or workers' compensation insurer of the employer is made whole for all benefits paid in workers' compensation benefits.

(3) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the trier of fact as to this issue as fully as though the employer were a party although not named or joined as a party to the proceeding. Such issue shall be the last issue submitted to the trier of fact. If the trier of fact finds by clear and convincing evidence that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the court shall reduce the damages awarded by the trier of fact against the manufacturer or product seller (and correspondingly the subroga-
tion lien of the employer) by the sum of the amount paid as workers’ compensation benefits and the present value of all workers’ compensation benefits to which the employee is or would be entitled for such harm as determined by the appropriate workers’ compensation authority. The manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer. However, the employer shall not lose its right of subrogation because of an intentional tort committed against the claimant by the claimant’s coemployees or for acts committed by coemployees outside the scope of normal work practices.

(4) If the verdict shall be that the claimant’s harm was not caused by the fault of the claimant’s employer or coemployees, then the manufacturer or product seller shall reimburse the employer or workers’ compensation insurer of the employer for reasonable attorney’s fees and court costs incurred in the resolution of the subrogation claim, as determined by the court.

(b) Effect on Certain Civil Actions.—(1) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers’ compensation law, no third party tortfeasor may maintain any action for implied in-
demnity or contribution against the employer, any
coemployee, or the exclusive representative of the person
who was injured.

(2) Nothing in this Act shall be construed to affect
any provision of a State or Federal workers’ compensation
law which prohibits a person who is or would have been
entitled to receive compensation under any such law, or
any other person whose claim is or would have been deriv-
ative from such a claim, from recovering for harm caused
by a product in any action other than a workers’ com-
pensation claim against a present or former employer or
workers’ compensation insurer of the employer, any
coemployee, or the exclusive representative of the person
who was injured.

(3) Nothing in this Act shall be construed to affect
any State or Federal workers’ compensation law which
permits recovery based on a claim of an intentional tort
by the employer or coemployee, where the claimant’s harm
was caused by such an intentional tort.

(c) Stay Pending Compensation Determina-
tion.—In any civil action subject to this Act in which
damages are sought for harm for which the person injured
is entitled to receive compensation under any State or
Federal workers’ compensation law, the action shall, on
application of the claimant made at the claimant’s sole
election, be stayed until such time as the full amount pay-
able as workers’ compensation benefits has been finally de-
termined under such workers’ compensation law. Should
the claimant elect to bring a civil action under this Act
and not stay his or her action until the full amount pay-
able as workers’ compensation benefits has been finally de-
termined by the appropriate workers’ compensation au-
thority, then the court shall determine the amount of
worker’s compensation that has been or would be payable
if the issue had been determined by the appropriate work-
er’s compensation authority. The verdict as determined by
the trier of fact pursuant to this title shall have no binding
effect on and shall not be used as evidence in any other
proceeding.

(d) **Written Notice.**—A claimant in a civil action
subject to this Act who is or may be eligible to receive
compensation under any State or Federal workers’ com-
pensation law must provide written notice of the filing of
the civil action to the claimant’s employer within thirty
days of the filing. The written notice shall include infor-
mation regarding the date and court in which the civil ac-
tion was filed, the names and addresses of all plaintiffs
and defendants appearing on the complaint, the court
docket number if available, and a copy of the complaint
which was filed in the civil action.
SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) In General.—In any civil action subject to this Act, the liability of each defendant for noneconomic loss shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss allocated to such defendant in direct proportion to such defendant’s percentage of responsibility as determined under subsection (b). A separate judgment shall be rendered against such defendant for that amount.

(b) Proportion of Responsibility.—For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

SEC. 207. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) Civil Actions in Which All Defendants Are Manufacturers or Product Sellers.—In any civil action subject to this Act in which all defendants are manufacturers or product sellers, it shall be a complete defense to such action that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant’s harm.
(b) Other Civil Actions.—In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c) Intoxication Determination to Be Made Under State Law.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

(d) Definition.—As used in this section, the term "drug" means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.