

Union Calendar No. 35

104TH CONGRESS
1ST SESSION

H. R. 956

[Report No. 104-64, Part I]

A BILL

To establish legal standards and procedures for
product liability litigation, and for other purposes.

MARCH 7, 1995

Committee on Commerce discharged; committed to the
Committee of the Whole House on the State of the
Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1995

Mr. HYDE (for himself and Mr. HOKE) introduced the following bill; which
was referred to the Committee on the Judiciary

MARCH 2, 1995

Reported with an amendment and referred to the Committee on Commerce
for a period ending not later than March 7, 1995 for consideration of
such provisions of the bill and amendment as fall within the jurisdiction
of that committee pursuant to clause 1(e), rule X

[Strike out all after the enacting clause and insert the part printed in italic]

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Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 15, 1995]

A BILL

To establish legal standards and procedures for product
liability litigation, 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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Common Sense Legal*
3 *Standards Reform Act of 1995”.*

4 **TITLE I—PRODUCT LIABILITY**
5 **REFORM**

6 **SECTION 101. SHORT TITLE.**

7 *This title may be cited as the “Common Sense Product*
8 *Liability Reform Act of 1995”.*

9 **SEC. 102. FINDINGS AND PURPOSES.**

10 (a) *FINDINGS.*—*The Congress finds that—*

11 (1) *the manufacture and distribution of goods in*
12 *interstate commerce is to a large extent a national ac-*
13 *tivity which affects national interests in a variety of*
14 *important ways;*

15 (2) *in recent years, the free flow of products in*
16 *interstate commerce has been increasingly burdened*
17 *by product liability law;*

18 (3) *as a result of this burden, consumers have*
19 *been adversely affected through the withdrawal of*
20 *products and producers from the national market,*
21 *and from excessive liability costs passed on to them*
22 *through higher prices;*

23 (4) *the rules of product liability law in recent*
24 *years have evolved rapidly and inconsistently within*
25 *and among the several States, such that the body of*

1 *product liability law prevailing in this nation today*
2 *is complex, contradictory, and uncertain;*

3 *(5) the unpredictability of product liability*
4 *awards and doctrines are inequitable to both plain-*
5 *tiffs and defendants and have added considerably to*
6 *the high cost of liability insurance, making it difficult*
7 *for producers and insurers to protect their liability*
8 *with any degree of confidence;*

9 *(6) the recent explosive growth in product liabil-*
10 *ity actions and punitive damage awards jeopardizes*
11 *the financial well-being of many industries, and is a*
12 *particular threat to the viability of the nation's small*
13 *businesses;*

14 *(7) the extraordinary costs of the product liabil-*
15 *ity system undermine the ability of American indus-*
16 *try to compete internationally, and is costing the loss*
17 *of jobs and productive capital; and*

18 *(8) because of the national scope of the manufac-*
19 *ture and distribution of most products, it is not pos-*
20 *sible for the individual states to enact laws that fully*
21 *and effectively respond to these problems.*

22 *(b) PURPOSES.—Based upon the powers contained in*
23 *Article I, clause 3 of the United States Constitution, the*
24 *purposes of this title are to promote the free flow of goods*
25 *in interstate commerce—*

1 (1) *by establishing certain uniform legal prin-*
2 *ciples which provide a fair balance between the inter-*
3 *ests of product users, manufacturers, and product*
4 *sellers,*

5 (2) *by placing reasonable limits on product li-*
6 *ability law,*

7 (3) *by ensuring that product liability law oper-*
8 *ates to compensate persons injured by the wrongdoing*
9 *of others,*

10 (4) *by reducing the unacceptable transactions*
11 *costs and delays which harm both plaintiffs and de-*
12 *fendants,*

13 (5) *by allocating responsibility for harm to those*
14 *in the best position to prevent such harm, and*

15 (6) *by establishing greater predictability in*
16 *product liability actions.*

17 **SEC. 103. FEDERAL CAUSE OF ACTION PRECLUDED.**

18 *The district courts of the United States shall not have*
19 *jurisdiction pursuant to this title based on section 1331 or*
20 *1337 of title 28, United States Code.*

21 **SEC. 104. APPLICABILITY AND PREEMPTION.**

22 (a) *PREEMPTION.*—*This title governs any product li-*
23 *ability action brought in any State or Federal court, on*
24 *any theory for harm caused by a product. A civil action*

1 *brought for commercial loss shall be governed only by appli-*
2 *cable commercial or contract law.*

3 *(b) RELATIONSHIP TO STATE LAW.—This title super-*
4 *sedes State law only to the extent that State law applies*
5 *to an issue covered by this title. Any issue that is not gov-*
6 *erned by this title shall be governed by otherwise applicable*
7 *State or Federal law.*

8 **SEC. 105. LIABILITY RULES APPLICABLE TO PRODUCT SELL-**
9 **ERS.**

10 *(a) GENERAL RULE.—Except as provided in sub-*
11 *section (b), in any product liability action, a product seller*
12 *other than a manufacturer shall be liable to a claimant only*
13 *if the claimant establishes that—*

14 *(1)(A) the product which allegedly caused the*
15 *harm complained of was sold by the product seller;*
16 *(B) the product seller failed to exercise reasonable*
17 *care with respect to the product; and (C) such failure*
18 *to exercise reasonable care was a proximate cause of*
19 *the claimant's harm; or*

20 *(2)(A) the product seller made an express war-*
21 *ranty applicable to the product which allegedly*
22 *caused the harm complained of, independent of any*
23 *express warranty made by a manufacturer as to the*
24 *same product; (B) the product failed to conform to the*

1 warranty; and (C) the failure of the product to con-
2 form to the warranty caused the claimant's harm; or
3 (3) the product seller engaged in intentional
4 wrongdoing as determined under applicable State law
5 and such intentional wrongdoing was a proximate
6 cause of the harm complained of by the claimant.

7 For purposes of paragraph (1)(B), a product seller shall
8 not be considered to have failed to exercise reasonable care
9 with respect to the product based upon an alleged failure
10 to inspect a product where there was no reasonable oppor-
11 tunity to inspect the product in a manner which would,
12 in the exercise of reasonable care, have revealed the aspect
13 of the product which allegedly caused the claimant's harm.

14 (b) *EXCEPTION.*—In a product liability action, a
15 product seller shall be liable for harm to the claimant
16 caused by such product as if the product seller were the
17 manufacturer of such product if—

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

21 (2) at any point before or after entry of judg-
22 ment, the court determines that the claimant would be
23 unable to enforce a judgment against the manufac-
24 turer.

1 **SEC. 106. DEFENSE BASED ON CLAIMANT'S USE OF INTOXI-**
2 **CATING ALCOHOL OR DRUGS.**

3 (a) *GENERAL RULE.*—In any product liability action,
4 it shall be a complete defense to such action if—

5 (1) the claimant was intoxicated or was under
6 the influence of intoxicating alcohol or any drug when
7 the accident or other event which resulted in such
8 claimant's harm occurred; and

9 (2) the claimant, as a result of the influence of
10 the alcohol or drug, was more than 50 percent respon-
11 sible for such accident or other event.

12 (b) *CONSTRUCTION.*—For purposes of subsection (a)—

13 (1) the determination of whether a person was
14 intoxicated or was under the influence of intoxicating
15 alcohol or any drug shall be made pursuant to appli-
16 cable State law; and

17 (2) the term “drug” means any controlled sub-
18 stance as defined in the Controlled Substances Act (21
19 U.S.C. 802(6)) that has been taken by the claimant
20 other than in accordance with the terms of a lawfully
21 issued prescription.

22 **SEC. 107. MISUSE OR ALTERATION.**

23 (a) *GENERAL RULE.*—Except as provided in sub-
24 section (c), in a product liability action, the damages for
25 which a manufacturer or product seller is otherwise liable
26 under State law shall be reduced by the percentage of re-

1 *sponsibility for the claimant's harm attributable to misuse*
2 *or alteration of a product by any person if the manufac-*
3 *turer or product seller establishes by a preponderance of the*
4 *evidence that such percentage of the claimant's harm was*
5 *proximately caused by—*

6 (1) *a use or alteration of a product in violation*
7 *of, or contrary to, the manufacturer's or product sell-*
8 *er's express warnings or instructions if the warnings*
9 *or instructions are adequate as determined pursuant*
10 *to applicable State law, or*

11 (2) *a use or alteration of a product involving a*
12 *risk of harm which was known or should have been*
13 *known by the ordinary person who uses or consumes*
14 *the product with the knowledge common to the class*
15 *of persons who used or would be reasonably antici-*
16 *pated to use the product.*

17 (b) *STATE LAW.—Notwithstanding section 104(b) of*
18 *this Act, subsection (a) supersedes State law concerning*
19 *misuse or alteration of a product only to the extent that*
20 *State law is inconsistent.*

21 (c) *WORKPLACE INJURY.—Notwithstanding subsection*
22 *(a), the damage for which a manufacturer or product seller*
23 *is otherwise liable under State law shall not be reduced by*
24 *the percentage of responsibility for the claimant's harm at-*
25 *tributable to misuse or alteration of the product by the*

1 claimant's employer or any co-employee who is immune
2 from suit by the claimant pursuant to the State law appli-
3 cable to workplace injuries.

4 **SEC. 108. SEVERAL LIABILITY FOR NONECONOMIC LOSS.**

5 *In any product liability action, the liability of each*
6 *defendant for noneconomic loss shall be several only and*
7 *shall not be joint. Each defendant shall be liable only for*
8 *the amount of noneconomic loss attributable to such defend-*
9 *ant in direct proportion to such defendant's proportionate*
10 *share of fault or responsibility for the claimant's harm, as*
11 *determined by the trier of fact.*

12 **SEC. 109. STATUTE OF REPOSE.**

13 *A product liability action shall be barred unless the*
14 *complaint is served and filed within 15 years after the time*
15 *of delivery of the product. For the purposes of this section,*
16 *the term "time of delivery" means the time when a product*
17 *is delivered to its first purchaser or lessee who was not in-*
18 *olved in the business of manufacturing or selling such*
19 *product or using it as a component part of another product*
20 *to be sold. This section applies only if the harm caused by*
21 *a product did not include chronic illness. This section does*
22 *not affect the limitations period established by the General*
23 *Aviation Revitalization Act of 1994. This section does not*
24 *bar a product liability action involving a manufacturer or*
25 *product seller who made an express warranty in writing*

1 *as to the safety of the specific product involved which was*
2 *longer than 15 years.*

3 **SEC. 110. FOREIGN-MADE PRODUCTS.**

4 *This title shall not apply to a product liability action*
5 *involving a product or component part of a product, manu-*
6 *factured outside the United States, unless the manufacturer*
7 *of such product or component part has appointed an agent*
8 *in the United States for service of process from anywhere*
9 *in the United States.*

10 **SEC. 111. DEFINITIONS.**

11 *As used in this title:*

12 *(1) The term "claimant" means any person who*
13 *brings a product liability action and any person on*
14 *whose behalf such an action is brought. If such an ac-*
15 *tion is brought through or on behalf of an estate, the*
16 *term includes the claimant's decedent. If such action*
17 *is brought through or on behalf of a minor or incom-*
18 *petent, the term includes the claimant's legal guard-*
19 *ian.*

20 *(2) The term "commercial loss" means any loss*
21 *of or damage to a product itself incurred in the course*
22 *of the ongoing business enterprise consisting of pro-*
23 *viding goods or services for compensation.*

24 *(3) The term "economic loss" means any pecu-*
25 *niary loss resulting from harm (including the loss of*

1 *earnings, medical expense loss, replacement services*
2 *loss, loss due to death, burial costs, and loss of busi-*
3 *ness or employment opportunities) to the extent recov-*
4 *ery for such loss is allowed under applicable State*
5 *law.*

6 (4) *The term “harm” means any physical in-*
7 *jury, illness, disease, or death or damage to property*
8 *caused by a product. The term does not include com-*
9 *mmercial loss, or loss or damage to a product itself.*

10 (5) *The term “manufacturer” means—*

11 (A) *any person who is engaged in a busi-*
12 *ness to produce, create, make, or construct any*
13 *product (or component part of a product) and*
14 *who (i) designs or formulates the product (or*
15 *component part of the product), (ii) has engaged*
16 *another person to design or formulate the prod-*
17 *uct (or component part of the product), or (iii)*
18 *uses the design or formulation of the product de-*
19 *veloped by another person;*

20 (B) *a product seller, but only with respect*
21 *to those aspects of a product (or component part*
22 *of a product) which are created or affected when,*
23 *before placing the product in the stream of com-*
24 *merce, the product seller produces, creates,*
25 *makes, or constructs and designs or formulates,*

1 or has engaged another person to design or for-
2 mulate, an aspect of a product (or component
3 part of a product) made by another; or

4 (C) any product seller not described in sub-
5 paragraph (B) which holds itself out as a manu-
6 facturer to the user of the product.

7 (6) The term “noneconomic loss” means subjec-
8 tive, nonmonetary loss resulting from harm, including
9 pain, suffering, inconvenience, mental suffering, emo-
10 tional distress, loss of society and companionship, loss
11 of consortium, injury to reputation, and humiliation.

12 (7) The term “person” means any individual,
13 corporation, company, association, firm, partnership,
14 society, joint stock company, or any other entity (in-
15 cluding any governmental entity).

16 (8)(A) The term “product” means any object,
17 substance, mixture, or raw material in a gaseous, liq-
18 uid, or solid state—

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

22 (ii) which is produced for introduction into
23 trade or commerce;

24 (iii) which has intrinsic economic value;
25 and

1 (iv) which is intended for sale or lease to
2 persons for commercial or personal use.

3 (B) The term does not include—

4 (i) human tissue, human organs, human
5 blood, and human blood products; or

6 (ii) electricity, water delivered by a utility,
7 natural gas, or steam.

8 (9) The term “product liability action” means a
9 civil action brought on any theory for harm caused
10 by a product or product use.

11 (10) The term “product seller” means a person
12 who, in the course of a business conducted for that
13 purpose, sells, distributes, rents, leases, prepares,
14 blends, packages, labels a product or is otherwise in-
15 volved in placing a product in the stream of com-
16 merce, or who installs, repairs, or maintains the
17 harm-causing aspect of a product. The term does not
18 include—

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

20 (B) a provider of professional services in
21 any case in which the sale or use of a product
22 is incidental to the transaction and the essence
23 of the transaction is the furnishing of judgment,
24 skill, or services; or

25 (C) any person who—

1 (i) acts in only a financial capacity
2 with respect to the sale of a product; or

3 (ii) leases a product under a lease ar-
4 rangement in which the selection, posses-
5 sion, maintenance, and operation of the
6 product are controlled by a person other
7 than the lessor.

8 (11) The term “State” means any State of the
9 United States, the District of Columbia, Puerto Rico,
10 the Northern Mariana Islands, the Virgin Islands,
11 Guam, American Samoa, and any other territory or
12 possession of the United States, or any political sub-
13 division of any of the foregoing.

14 **TITLE II—PUNITIVE DAMAGES**
15 **REFORM**

16 **SEC. 201. PUNITIVE DAMAGES.**

17 (a) *GENERAL RULE.*—Punitive damages may, to the
18 extent permitted by applicable State law, be awarded in
19 any civil action for harm in any Federal or State court
20 against a defendant if the claimant establishes by clear and
21 convincing evidence that the harm suffered was result of
22 conduct—

23 (1) specifically intended to cause harm, or

24 (2) conduct manifesting a conscious, flagrant in-
25 difference to the rights of others.

1 (b) *PROPORTIONAL AWARDS.*—The amount of punitive
2 damages that may be awarded to a claimant in any civil
3 action subject to this title shall not exceed 3 times the
4 amount of damages awarded to the claimant for the eco-
5 nomic loss on which the claimant's action is based, or
6 \$250,000, whichever is greater. The requirements of this
7 subsection shall be applied by the court and shall not be
8 disclosed to the jury.

9 (c) *APPLICABILITY AND PREEMPTION.*—Except as pro-
10 vided in section 301, this title shall apply to any civil ac-
11 tion brought in any Federal or State court on any theory
12 where punitive damages are sought. This title does not cre-
13 ate a cause of action for punitive damages in any jurisdic-
14 tion that does not authorize such actions.

15 (d) *BIFURCATION AT EITHER PARTY'S REQUEST.*—At
16 the request of either party, the trier of fact shall consider
17 in a separate proceeding whether punitive damages are to
18 be awarded and the amount of such award. If a separate
19 proceeding is requested, evidence relevant only to the claim
20 of punitive damages, as determined by applicable State law,
21 shall be inadmissible in any proceeding to determine wheth-
22 er compensatory damages are to be awarded.

23 **SEC. 202. DEFINITIONS.**

24 As used in this title:

1 (1) *The term “claimant” means any person who*
2 *brings a civil action and any person on whose behalf*
3 *such an action is brought; if such action is brought*
4 *through or on behalf of an estate, the term includes*
5 *the claimant’s decedent and if such action is brought*
6 *through or on behalf of a minor or incompetent, the*
7 *term includes the claimant’s legal guardian.*

8 (2) *The term “clear and convincing evidence” is*
9 *that measure or degree of proof that will produce in*
10 *the mind of the trier of fact a firm belief or conviction*
11 *as to the truth of the allegations sought to be estab-*
12 *lished. The level of proof required to satisfy such*
13 *standard is more than that required under preponder-*
14 *ance of the evidence, but less than that required for*
15 *proof beyond a reasonable doubt.*

16 (3) *The term “economic loss” means any pecu-*
17 *niary loss resulting from harm (including the loss of*
18 *earnings, medical expense loss, replacement services*
19 *loss, loss due to death, burial costs, and loss of busi-*
20 *ness or employment opportunities), to the extent re-*
21 *covery for such loss is allowed under applicable State*
22 *law.*

23 (4) *The term “harm” means any legally cog-*
24 *nizable wrong or injury for which punitive damages*
25 *may be imposed.*

1 (5) *The term “punitive damages” means dam-*
2 *ages awarded against any person or entity to punish*
3 *or deter such person or entity, or others, from engag-*
4 *ing in similar behavior in the future.*

5 (6) *The term “State” means any State of the*
6 *United States, the District of Columbia, Puerto Rico,*
7 *the Northern Mariana Islands, the Virgin Islands,*
8 *Guam, American Samoa, and any other territory or*
9 *possession of the United States, or any political sub-*
10 *division of any of the foregoing.*

11 ***TITLE III—EFFECT ON OTHER***
12 ***LAW; EFFECTIVE DATE***

13 ***SEC. 301. EFFECT ON OTHER LAW.***

14 *Nothing in title I or II shall be construed to—*

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

17 (2) *supersede any Federal law;*

18 (3) *waive or affect any defense of sovereign im-*
19 *munity asserted by the United States;*

20 (4) *affect the applicability of any provision of*
21 *chapter 97 of title 28, United States Code;*

22 (5) *preempt State choice-of-law rules with re-*
23 *spect to claims brought by a foreign nation or a citi-*
24 *zen of a foreign nation;*

1 (6) *affect the right of any court to transfer venue*
2 *or to apply the law of a foreign nation or to dismiss*
3 *a claim of a foreign nation or of a citizen of a foreign*
4 *nation on the ground of inconvenient forum; or*
5 (7) *supersede any Federal law that prescribes a*
6 *specific regimen for punitive damages.*

7 ***SEC. 302. EFFECTIVE DATE.***

8 *Titles I and II shall apply with respect to actions*
9 *which are commenced after the date of the enactment of this*
10 *Act.*

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