rule, only four amendments selected by the Committee on Rules majority may be offered on the House floor.

One of the amendments the Committee on Rules denied would have been offered by the gentlewoman from California (Ms. LOFGREN) and others. This amendment maintained the existing legal authority to hold fully accountable unethical gun dealers and the manufacturers of cheap Saturday night specials.

Mr. Speaker, too many crimes in our Nation take place with easily available guns, and we need every tool we can to end this plague of violence. That is why more than 20 cities and counties in the country are holding manufacturers and dealers liable. It is a valuable tool in the battle against gun violence.

Without the Lofgren amendment, this bill will make it more difficult for cities and counties to use this tool. The organization, Handgun Control, labeled the bill ''The Gun Industry Relief Act'' because it lets some manufacturers and dealers off the hook for their actions.

The Committee on Rules should have made this amendment in order so that it could be fully debated on the House floor. However, the Committee on Rules, on a 6–3 straight party-line vote rejected it. I regret that so early in the session this year the Committee on Rules is starting with restrictive rules like this.

Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. LATOURETTE). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HALL of Ohio. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 223, nays 187, not voting 24, as follows:

[Roll No. 23]

YEAS—223

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth-Hage
Coble
Coburn
Collins
Combest
Condit
Cook
Cox
Cramer
Crane
Cubin
Cunningham
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fletcher
Foley
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Granger
Green (WI)
Greenwood
Gutknecht
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Toomey
Traficant
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NAYS—187

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Barcia
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Capuano
Cardin
Carson
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Danner
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Forbes
Ford
Frank (MA)
Gejdenson
Gephardt
Gonzalez
Gordon
Green (TX)
Hall (OH)
Hall (TX)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E.B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pickett
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Spratt
Stabenow
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Wise
Woolsey
Wu
Wynn

NOT VOTING—24

Baird
Baldacci
Bishop
Brown (OH)
Callahan
Campbell
Capps
Clay
Cooksey
DeFazio
Frost
Graham
Gutierrez
Lowey
Martinez
McCollum
McIntyre
Myrick
Sanford
Smith (NJ)
Snyder
Tiahrt
Vento
Weygand

□ 1130

Ms. DEGETTE, Ms. RIVERS, and Messrs. FORBES, RANGEL, MINGE, CLYBURN and CUMMINGS changed their vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROGAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2366, the legislation about to be considered.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2372

Mr. BARCIA. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 2372.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

SMALL BUSINESS LIABILITY REFORM ACT OF 2000

The SPEAKER pro tempore. Pursuant to House Resolution 423 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2366.

□ 1131

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the

consideration of the bill (H.R. 2366) to provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers, with Mr. THORNBERRY in the Chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California (Mr. ROGAN) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. ROGAN).

Mr. ROGAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I introduced the Small Business Liability Reform Act last summer, along with the gentleman from Pennsylvania (Mr. HOLDEN), the gentleman from Virginia (Mr. MORAN), and the gentleman from North Carolina (Mr. BURR) with the express intent of advancing the cause of small business owners across the Nation. Its provisions are designed to improve the fairness of the civil justice system, to enhance its predictability, and to eliminate the wasteful and excessive costs of the legal system by reducing unnecessary litigation.

In H.R. 2366, my colleagues and I have attempted to approach this goal in an incremental and pragmatic way by focusing on a few narrowly crafted reforms that have won the bipartisan support of Members in this Chamber in recent years.

This bill was crafted with an eye toward helping America's small businesses become more competitive, more profitable, and better able to resist the single greatest threat to their existence, a frivolous lawsuit that can ruin a small business overnight and crush the American dream for those men and women who are driving our Nation's economic expansion.

For the smallest of America's businesses, those with fewer than 25 full-time employees, this bill limits punitive damages that may be awarded against a small business to the lesser of three times the claimant's compensatory damages, or $250,000. Punitive damages would be allowed in cases where the plaintiff shows by clear and convincing evidence that the defendant engaged in particularly egregious misconduct.

It is important to note that this cap on punitive damages does not cap or diminish a claimant's right to sue for both economic and noneconomic losses, such as lost wages, medical bills and pain and suffering.

Similarly, the bill provides that a small business shall be liable for noneconomic damages in proportion to their responsibility for causing a claimant's harm. As such, our bill borrows from the California model enacted overwhelmingly by referendum in 1986, which abolished joint liability for these kind of damages.

Title II of the bill provides that product sellers other than manufacturers will be liable in product liability cases when they are responsible for the claimant's harm. Innocent sellers finally will find protection from frivolous lawsuits.

The bill would not change the current liability rules if the manufacturer is not subject to judicial process or is judgment-proof. In either of those cases, the seller would still be liable for the harm. This provision will protect innocent claimants from being left with no redress in the courts if they are harmed. It simply focuses liability on the party where it is most appropriately targeted.

Furthermore, it shields renters and lessors from being held liable for someone else's wrongful conduct simply due to product ownership.

An amendment that my good friend, the gentleman from Arkansas (Mr. HUTCHINSON), will offer later is the result of continuing discussions that began during our committee deliberations as to whether there should be some exception to the punitive damage cap when a small business defendant has acted with the intent to commit a specific harm. In that case, an exception is appropriate.

These issues are familiar to many of our colleagues. In the 104th Congress, this House passed legislation, including similar, more broadly applied punitive damage and joint liability reforms, as well as the product seller liability standard. More recently, provisions similar to the latter two were included in product liability litigation that was debated in the Senate during the 105th Congress, which the President then indicated he would sign if given the opportunity.

Further, Title II's joint liability reforms borrow from those enacted by the Congress in 1997 as part of the Volunteer Protection Act.

Mr. Chairman, this bill presented before our colleagues today is supported by the United States Chamber of Commerce, National Federation of Independent Businesses, the National Association of Manufacturers, the Association of Builders and Contractors, the National Association of Wholesale Distributors, the National Restaurant Association, and millions of small business-owning men and women around our country who are looking to Congress for fairness in the court system.

Mr. Chairman, the purpose of this legislation is to reduce needless litigation that unfairly burdens and easily can cripple small businesses with wasteful legal costs. I look forward to the support of our colleagues on this vital measure to protect every American, small business owner, from the threat of back-breaking litigation.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, we are now confronted with a measure that ought to begin with the observation of the necessity for truth in labeling. The sponsors of this bill have had the courage to put small business liability, to put ''small'' in the title. They have been bold enough to include this phrase in the title.

The problem, of course, is on any reading of this, this measure is in no way limited to small business. Title II, which limits the liability of product sellers, contains no size limitation whatsoever. The fact that we talk about 25 employees or less ignores the simple fact that there is no constraint on the amount the business is doing in terms of revenues.

Hundreds of millions, if not billions of dollars, could be included, as we know, in financial organizations that frequently have far less than 25 employees. So this is not a small business bill.

Of course, to fundamentally limit victims' rights when it comes to dangerous products, negligence and other misconduct is, to me, going in the wrong direction, because it follows the form of other liability legislation we passed that is already going in the wrong direction.

This bill has to stand next to the class action bill that federalized most class actions; the statute of repose bill that created an 18-year limit on durable goods and machinery and equipment. And now we come up with a bill misnamed a small business bill, which puts a cap on punitive damages, limits joint and several liability and exempts a number of corporations from the doctrines of strict liability, failure to warn, and breach of an implied contract.

This is a serious move in the wrong direction. It is not just an unnecessary bill; it is moving way, way in a direction that I do not think most of the Members here, once they recognize what is in this bill, will support.

First, the bill imposes severe evidentiary restrictions and an overall cap of $250,000 in punitive damages in every civil case against businesses with fewer than 25 employees. Collectively, these restrictions are likely to eliminate not only the incentive for seeking punitive damages but it also eliminates any realistic possibility of obtaining them. It sends exactly the wrong message to people with deliberate intent to do wrong, people who are not concerned with the considerations of safety in the workplace. They are being told it does not matter how harmful or malicious their action or behavior is, they will never be realistically subject to significant punitive damages, which erodes the whole concept of punitive damages.

When we eliminate joint and several liability for noneconomic damages, we are eliminating in those few cases the right to pain and suffering recovery and loss of life and limb that so frequently is important in the cases where those theories would apply.

This has the effect of making innocent victims bear the risk of loss when

a co-defendant is judgment-proof and would severely discriminate against seniors and women who bear the greatest portion of noneconomic damages in our society.

To take one class of defendants and relieve them of responsibility from the doctrines of strict liability, the failure to warn or breach of implied warranty, is unbelievable, leaving only a plaintiff with negligence as a cause of action.

So, in my view, the legislation is not just unnecessary, it is misleading and it is reckless and it should be turned aside.

Mr. Chairman, I reserve the balance of my time.

Mr. ROGAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Chairman, I rise today in support of this legislation which seeks to enact reasonable reforms to liability laws affecting America's small businesses. Through passage of this legislation today, this body makes clear its dedication to promoting sensible policies which acknowledge the importance of our small businesses.

As vice chairman of the Committee on Small Business, I can attest that it is the work and energy of small business enterprises that comprise a driving force behind our Nation's economy. It is essential that we continually work to ensure that they are able to operate in a free and fair marketplace.

In supporting this bill, we also make clear today our reproach for those who seek to exploit shortcomings in current liability statutes.

Approval of this measure will mark an important stride in removing the onerous and unreasonable threat of litigation which serves to stifle the growth and entrepreneurial spirit of small businesses.

Current liability law encourages many of these businesses to impose limitations on their own promise, to bypass opportunities to improve and expand. This not only conflicts fundamentally with our American character, but it is an unnecessary restraint on the livelihood of the millions of Americans who work for these businesses. This simply is not right, and this Congress ought to do what it can to change it.

I ask my colleagues to join me in doing so today, by voting in favor of this sensible reform measure.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me this time.

Mr. Chairman, I rise to speak in strong opposition to the Small Business Liability Reform Act and speak in support of the Conyers-Scott amendment when I speak later on.

□ 1145

Mr. Chairman, there are numerous problems with the bill. The gentleman from Michigan (Mr. CONYERS), the ranking member and chairman to be, will be introducing that amendment later. But there are some false inferences represented in the bill's title.

The title is Small Business Liability Reform Act. While the bill purports to protect small businesses which presumably do not possess the resources to defend themselves against supposedly frivolous and costly lawsuits, the truth about the Small Business Liability Reform Act is that it rewards all businesses, big and small, with broad and sweeping legal protections when they cause personal and financial injury due to defective products.

With those parts of the bill which actually pertain to small business, the small business in this bill contains no qualifier that limits their revenues. So even billion-dollar corporations can still qualify for small business protection.

While the bill purports to constitute liability reform, the language is overbroad and covers contract law, antitrust law, trademark protection, and other areas not properly considered by the committee.

Although the Conyers/Scott amendment seeks to inject some truth in advertising into the legislation, there are other problematic provisions. For example, the bill will raise the bar for awarding punitive damages, capping the damages at a maximum of $250,000 and making it more difficult to get punitive damages. While the proponents of caps on punitive damages claim that those caps would discourage frivolous lawsuits, those Draconian caps and arbitrary caps would actually apply to least frivolous lawsuits, those which in fact can get the larger damages.

In fact, punitive damages are rare and available only when a defendant is engaged in the worst misconduct. This bill would effectively give businesses licenses to engage in reckless behavior as long as they are willing to pay the $250,000 price tag. Because the bill does not define a small business in terms of revenue, this may be a small price to pay for those companies who have revenues in the millions and even billions of dollars.

The bill eliminates joint and several liability for non-economic damages, thus preventing many injured persons from full compensation for their injury. This bill would preempt laws in most States where injured persons are permitted to collect damages from any of the people that are found responsible.

The rationale is that injured parties should not suffer because one or more of the wrongful actors cannot compensate them for a number of reasons. For example, that party might not even be a party to the lawsuit, they may be a foreign company, they may have gone bankrupt. And the non-economic damages, including the loss of a spouse or child, the loss of fertility, the loss of a limb, disfigurement, or chronic pain, those losses go uncompensated when defendants cannot be held jointly responsible for non-economic damages.

Unfortunately, the burden of uncompensated non-economic loss is most likely to fall on those least likely to protect themselves: the poor, the elderly, the disabled. And because these persons make limited incomes and do not work, they are least likely to collect large sums in economic damages and, therefore, must depend on awards of non-economic loss if they are to recover any significant compensation at all.

Again, there are numerous reasons to oppose the bill, but in its entirety, the bill sets a dangerous precedent in law. It encourages corporate misconduct, endangers health and safety, and leaves injured people with little compensation for their pain and suffering.

So I ask my colleagues to vote no on this anti-consumer legislation.

Mr. ROGAN. Mr. Chairman, I yield 3 minutes to our friend and colleague, the gentleman from Pennsylvania (Mr. HOLDEN).

Mr. HOLDEN. Mr. Chairman, I am pleased to join my colleague from California in cosponsoring H.R. 2366, the Small Business Liability Reform Act of 1999.

Like the other pieces of civil justice reform legislation that have recently been enacted into Federal law, this bill departs from the comprehensive approach that advocates of broad product liability and tort reform have taken in the past.

Instead, this bill focuses on a few key specific liability issues: the exposure of small business with fewer than 25 full-time employees to joint liability for non-economic damages and punitive damages, and the exposures of retailers, wholesalers, distributors, and other non-manufacturing product sellers to product liability lawsuits for harms they did not cause.

Mr. Chairman, I have many small businesses in my Congressional district that stand to benefit greatly from this legislation. Many of these businesses have been family run for several generations, and this bill will protect them from the type of frivolous litigation that threatens their existence.

Let me emphasize that the bill we are considering here today is careful not to overreach. As I previously indicated, this is a narrowly crafted, tightly focused bill. The provisions restraining joint liability and punitive damages do not apply to civil cases that may arise from certain violations of criminal law or gross misconduct. Nor do they apply in States that elect to opt out with respect to cases brought in State court in which parties are citizens of that State.

The product seller liability provisions are strictly confined to product liability actions and protect the ability of innocent victims of defective products to fully recover damage awards which they are entitled.

Mr. Chairman, some of my colleagues who oppose this legislation might say

the bill is unnecessary. They may say this last year there were only 14 cases where punitive damages were awarded in the entire United States.

That may be true, Mr. Chairman, but it is irrelevant. It is irrelevant because it does not take into account the countless incidences where cases were filed that seek such extraordinarily high punitive damages that defendants are frightened into settlement rather than risking what might happen in a court of law. This bill tries to put an end to this abuse.

Lastly, Mr. Chairman, the provisions of this legislation have previously won bipartisan support in this chamber as well as the other body. Although limited in scope, their enactment into law will reduce unnecessary litigation and wasteful legal costs and improve the administration of civil justice across this country.

I urge my colleagues on both sides of the aisle to vote yes and pass this limited but meaningful civil justice reform bill.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a member of the committee.

Mr. DELAHUNT. Mr. Chairman, well, here we go again. We have a bill before us now that would sweep aside generations of State laws that protect consumers so that corporations can evade their responsibilities for wrongs that they commit.

Forget about States' rights. Federalism as a core Democratic principle is withering away in this institution, and this proposal is an example of that.

Earlier today, the Committee on the Judiciary was to consider a proposal which would shift to the Federal courts local zoning issues. And those that speak and preach States' rights and devolution I suggest should revisit their words.

Let me join with others who have stressed that we are not talking about small businesses here. I mean, if we read the bill, that simply is inaccurate. It is absurd in fact. There are no revenue caps in this legislation. The bill would permit large, prosperous businesses making enormous profits to escape liability so long as they maintain a small employee base.

A corporation could have millions of dollars of revenue, tens of millions of dollars in revenue, hundreds of millions of dollars in revenue, and they could evade their responsibility under the parameters of this bill.

But, of course, while the bill does not put caps on revenues of profits, it does cap punitive damages, punitive damages that would apply to conduct that is so egregious it would border on the criminal.

Now, the proponents of the bill claim that a cap is necessary to prevent juries, juries made up of American citizens, people in the community, from awarding appropriate punitive damages. Of course, there is no evidence that there is a problem. In fact, it was the previous speaker who spoke in support of the bill that, last year, in the entire United States, there were 14 cases where juries awarded punitive damages. But the proponents would suggest there is a problem. There is no evidence and there is no data to that effect.

The real problem is that this negates the entire purpose of punitive damages. And the purpose of punitive damages is to deter misconduct, wanton and willful and egregious misconduct. The rationale for punitive damages is to induce companies to spend the money to safeguard workers and protect consumers rather than take the risk of being hit with substantial damages down the road.

This bill will fail to deter misconduct. It will fail and will allow for injuries that were fully foreseeable and preventable from happening.

This bill is nothing more than a warrant for corporate recklessness. And, of course, the bill overreaches in this and many other ways. It eviscerates the traditional product liability law in this country. It exempts all product sellers, renters, and lessors regardless of their size.

Again, no, it is not about small business. This bill should be defeated.

Mr. ROGAN. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I thank the gentleman for yielding me the time. I also want to thank the gentleman and the gentlewoman for their indulgence.

Mr. Chairman, I rise today in opposition to H.R. 2366. This bill would strip society of the important tools it uses to deter bad behavior by corporations. At stake is a wall of legal safeguards that protect people from malicious conduct by businesses.

Title I of this bill encourages a company to act egregiously and to act with flagrant disregard to the rights and safety of American consumers. Additionally, despite the title's deceptive suggestion, Title II unfairly exempts from liability both small and large business retailers for the sale of defective products.

Title I of H.R. 2366 takes the bite out of monetary damages imposed for malicious corporate conduct. The punitive damages are designed to punish corporations for willful misconduct and it deters future reckless behavior. This bill caps punitive damages to the arbitrary amount of a quarter of a million dollars.

H.R. 2366 takes away the deterring effect of punitive damages and sets a price at which companies can figure in the expense of conducting business maliciously. This bill deprives the jury from the ability to hold a company morally responsible for their willful misconduct.

Title II of H.R. 2366 unfairly protects all business retailers in their ability to profit from dangerous products. Under current law, a seller warrants that the product it sells is safe. The consumer then has the confidence of being able to use the product without risking injury. H.R. 2366 takes away the only legal reason a consumer would have confidence. It changes the law and allows the retailer to sell and make money from a defective product that the retailer knows or should have known is dangerous. If the seller gets a benefit, they should also pay when consumers are hurt.

In conclusion, H.R. 2366 takes away corporate incentives to produce and sell safe products. This bill puts profit before product safety.

Mr. Chairman, I strongly urge my colleagues to vote no on H.R. 2366.

Mr. ROGAN. Mr. Chairman, I yield 3 minutes to my patient friend and colleague, the gentlewoman from Illinois (Mrs. BIGGERT).

(Mrs. BIGGERT asked for and was given permission to revise and extend her remarks.)

Mrs. BIGGERT. Mr. Chairman, I rise today in support of H.R. 2366, and I commend my colleague, the gentleman from California (Mr. ROGAN), for his sponsorship of this legislation.

The Small Business Liability Reform Act will help alleviate the abusive and frivolous lawsuits filed against the smallest of America's smallest businesses.

□ 1200

I have long been a supporter, a strong supporter, of tort reform. As a State representative, I sponsored legal reforms to ensure that businesses in Illinois could operate and compete on a fair, flexible, and equal opportunity in the marketplace. I am proud to continue these efforts here in Congress. Small businesses create the bulk of our Nation's jobs. Yet a recent survey of more than 1200 small businesses found that one in three have been sued, and more than half have been threatened with a lawsuit in the last 5 years. Our small businesses are being victimized by the litigiousness of our society and they desperately need relief.

Small business owners face rising costs for liability insurance, not to mention the crippling cost of defending themselves should they be named in a lawsuit. Innocent or not, defending oneself is costly. The estimated cost of a business owner's defense in the average lawsuit is $100,000. Considering that the actual salary of a typical small business owner is between $40,000 and $50,000, it is easy to see that just one frivolous lawsuit can easily put a small firm out of business.

H.R. 2366 provides crucial limits on the lawsuits by capping punitive damages at $250,000, or three times noneconomic damages, for businesses only with fewer than 25 employees. I would like to see how many small mom and pop stores would ever dream of having revenues of $100,000, $200,000, $300,000 and the riches that the Members across the aisle seem to imply.

It also abolishes joint liability for noneconomic damages, ensuring that small business owners are only liable for damages in proportion to their fault. H.R. 2366 embodies key legal reforms that this House has overwhelmingly supported in the past. This bill is good business and good law. I urge my colleagues to support H.R. 2366 to enact small business legal reform that is long overdue.

Mr. CONYERS. Mr. Chairman, I yield 5 minutes to the gentlewoman from California (Ms. LOFGREN), a distinguished member of the Committee on the Judiciary who has worked very hard on the measure.

Ms. LOFGREN. Mr. Chairman, I oppose the bill before us today, and I think it is worth pointing out that I am joined in this opposition by the Violence Policy Center, the National Conference of State Legislatures, Handgun Control, as well as the attorney general of the State of California.

This so-called small business liability reform bill offered by the gentleman from California (Mr. ROGAN) is not really about small businesses at all. In fact, the businesses may be quite big, making millions and millions of dollars and still be protected by this bill. It is only judged small by the number of employees.

Interestingly enough, it turns out that the manufacturers of most of the guns that have caught our attention in the tragedies that have beset this Nation, for example, the horrible shootings in Columbine, were in fact manufactured by gun companies that fall below the 25-employee limit, who would be, if this bill were to pass, immune from liability.

That liability is now being pursued by a number of local governments. For example, back home, the county of San Mateo and the city of Los Angeles are pursuing lawsuits against gun manufacturers and dealers to try and assess the responsibility for wrong behavior. Unfortunately, this bill would put those lawsuits out of court. I do not think that is the right thing to do. I do not think that is the right thing for this Congress to do.

Now, it may be true that the causes of action being pursued by these local governments to hold these gun manufacturers responsible for misbehavior, it may be that these causes of action will not be sustained. But I do not believe it is proper for Congress to intervene in that judicial process. I do not think we should be giving a court holiday to the manufacturer of the Tec DC–9 that tried to evade the rules and the laws that Congress adopted against assault weapons. We know the result of that evasion was that young people in Columbine High School lost their lives.

I am a member of the Juvenile Justice Conference Committee. I am mindful that we have met only once. We met on August 3 of last year. There was a lot of talk at that time that we would come together and address the gun safety issues that the Senate had passed, that we would do that in time for the beginning of this school year. Time is a-wasting. My daughter is now preparing for her high school graduation, not the onset of high school, and yet we have done nothing, to do nothing except propose to take away the only tool that exists for local government to try and get control of this out-of-control gun violence issue. I think what we are doing is shameful.

I would hope that we would listen to the Council of State Governments and butt out of this litigation issue, that we would not create a web of safety for gun manufacturers who have acted improperly. I would add that we offered an amendment at the Committee on Rules, myself and the gentlewoman from New York (Mrs. MCCARTHY) and the gentlewoman from Colorado (Ms. DEGETTE) and the gentlewoman from Connecticut (Ms. DELAURO) and some others. That amendment was not put in order. I think that was a real shame, that we would not have an opportunity to exempt gun dealers and manufacturers from the protections that this bill would provide.

Because of that and many other reasons, I would hope that people who want to do something about gun violence, people who feel that we owe something to the mothers and fathers of this country to make their children a little bit safer in school from gun violence, that we will vote against this measure. That is all that we can do in decency.

Mr. Chairman, I oppose the bill before us today. I think it is worth pointing out that I am joined in this opposition by the Violence Policy Center, the National Conference of State Legislatures, Handgun Control, as well as the Attorney General of the State of California.

This so-called small business liability reform bill, offered by the gentleman from California (Mr. ROGAN), is not really about small businesses at all. In fact, the businesses may be quite big, making millions and millions of dollars and still be protected by this bill for small businesses. It is only judged small by the number of employees.

Interestingly enough, it turns out that the manufacturers of most of the guns that have caught our attention in the tragedies that have beset this Nation, including the horrible shootings in Columbine, were gun manufacturers that fall below the 25-employee limit and who would be, if this bill were to pass, immune from liability for the damage they've done.

Liability for wrong doing by these manufacturers is now being pursued by a number of local governments. For example, back home in California, the county of San Mateo and the city of Los Angeles are suing gun manufacturers and dealers for wrong behavior, to try and assess their irresponsibility. Unfortunately, this bill would put such lawsuits out of court and on the street. I do not think that is the right thing for this Congress to do.

Now, of course, it may be true that the causes of action being pursued in court by these local governments, seeking to hold these gun manufacturers responsible for misbehavior, may not be upheld. But I do not believe it is proper for Congress to intervene in such judicial processes and determine the issue this way. I do not think we should be giving a court holiday to the manufacturer of the Tec DC–9. That gun manufacturer tried to evade the rules and the laws that Congress adopted against assault weapons by slight modifications to their weapons to evade our proscriptions. We know the result of that evasion was that their weapon was available and young people in Columbine High School lost their lives.

I am a member of the Juvenile Justice Conference Committee. I am mindful that we have met only once and that was on August 3rd of last year. There was a lot of talk at that time by the majority about how we would come together and address the gun safety issues that the Senate had passed, that we would do that in time for the beginning of the school year, that is, the school year that began last September. Well, time is a-wasting. My daughter is now preparing not for the beginning of the year but for her high school graduation. Yet we have done nothing—nothing except propose to take away the only tool that exists for local government to try to get control of this out-of-control gun violence issue. I think what we are doing is shameful.

I would hope that we would listen to the Council of State Governments who believe this is their business, not ours, and butt out of this litigation issue. I would hope that we would not create a safety shield that protects gun manufacturers who have acted improperly. It is not like we haven't tried to avoid this miscarriage. I argued against this in an amendment offered in the Judiciary Committee. We offered the same amendment before the Committee on Rules, myself, the gentlewoman from New York (Mrs. MCCARTHY), the gentlewoman from Colorado (Ms. DEGETTE), and the gentlewoman from Connecticut (Ms. DELAURO). That amendment was ruled out of order even though it was germane and voted upon in the Judiciary Committee. It was ruled out of order for a vote by the full House. I think that was a real shame, that we would not have an opportunity for the members of this House to exempt gun dealers and manufacturers from the protections that this bill would provide.

For this and many other reasons, I would hope that people who want to do something about gun violence, people who feel that they owe something to the mothers and fathers of this country to make their children a little bit safer in school from gun violence, that they will vote against this measure. That is all that they can do in decency and justice.

Mr. ROGAN. Mr. Chairman, I yield myself such time as I may consume. Just briefly in response to the comments of my friend and colleague from California, I think it is wholly unfortunate that she wishes to hold up this bill, which is so necessary for small businesses, in the mistaken attempt of turning this into somehow some gun control bill. The fact is, Mr. Chairman, her claim that some of these lawsuits or all of these lawsuits would be thrown out of court simply misses the mark.

As I indicated in my opening statement, this bill would do nothing to preclude a claimant from obtaining economic damages which include wages, medical expenses, and business loss. It

would do nothing to preclude a claimant from receiving noneconomic damages, such as pain and suffering, disfigurement, loss of enjoyment or companionship and other recognized damages. Finally, Mr. Chairman, this bill again would do nothing under the amendment that I contemplate will be accepted if in fact there was an intentional wrong done by a small businessperson who happened to be a gun manufacturer.

I hate to see this bill held up by those attempting to pursue a gun control agenda. This is not about gun control. This is about small businesspeople being given the protection of law that they so desperately need to keep their small businesses afloat.

Mr. Chairman, I yield such time as he may consume to my good friend, the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding me this time, and I congratulate him for his outstanding work on this issue which is so important to small businesspeople across this country but to others as well. Small businesses create more new jobs in this country than all of the large corporations in America combined. Small business, the millions of small businesses we have, are the engine that drives our economy. They are so often the ones that create the new jobs, new enterprises that grow later into larger businesses that provide more jobs. But for a company that provides 10, 15, 20 jobs, it is the employees of those businesses as well as the businessmen and women who own them that will find this legislation important, and also consumers will benefit from this legislation as well because it will help to hold down the cost of goods and services provided by those small businesses.

Many small businesses are in some of the most competitive industries that there are. When they are faced with unfair legal costs, it often either puts them out of business or forces them to raise their prices and make themselves uncompetitive or to pass those charges on to the consumers that do business with them. Putting a cap on punitive damages for small businesses, this is something that I think we should provide in every lawsuit, no matter what the size of the corporation or business or individual who is in business; but we certainly should do it for small businesses, for companies with fewer than 25 employees.

To face a fine of more than $250,000 could easily put 10, 15, or 20 people out of work when a small company or an individual employing them cannot meet that kind of punitive damage liability, and joint liability. Again, so many instances where lawsuits are filed against a whole host of people. The small businessperson who might be the distributor, the manufacturer's representative, might be engaged in a part of a transaction but have only a small amount of the responsibility for the damages that are caused; and if the manufacturer has gone out of business or somebody who misused the product in installing it or some other involvement in it goes out of business, that small businessperson can be left with an enormous amount of liability and should not face that if they only cause a small portion of the damages involved.

And then finally, we know about all of these lawsuits that are filed where a shotgun approach is used where a whole host of defendants are made a party to the suit and somebody is brought in as a defendant in a suit and they really have a very limited liability for it; but there is not a clear definition of what that liability might be.

And so when we have the provision in title II that establishes a uniform liability standard that would be applied to nonmanufacturers or product sellers in product liability cases, a standard that would allow the product sellers to be liable only for the harms caused by their own negligence, intentional misconduct or when the manufacturing supplier is culpable but judgment-proof, it seems to me that setting a definite national standard when so many of these transactions involve interstate commerce is entirely appropriate for the Congress to do.

I commend the gentleman for his support for this legislation. I commend him for garnering the kind of bipartisan support that he has and support from a whole host of organizations concerned about small businesses like the National Federation of Independent Businesses. This is truly good legislation. I would call upon my colleagues on the other side of the aisle to join with us in giving some relief to the people who do the most for job creation in this country.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute, because the author of this bill, the gentleman from California (Mr. ROGAN), knows what I know, namely, that the 70,000 gun dealers in this country are happy to assume that they would enjoy the protection of H.R. 2366's restriction on the liability of product sellers.

We had this amendment debated in Judiciary. The bill attempts to exempt some legal theories that apply to the negligent sale of firearms, such as negligent entrustment and negligence per se. But there are many numerous other theories that have been successfully used against firearm retailers and proprietors of gun clubs or target ranges to recover damages caused by the sale or rental of a firearm. This is a cover for gun dealers against lawsuits that are coming up that are using theories such as public nuisance, negligent marketing, and unfair and fraudulent business practices. We cannot give the gun dealers a free ride in this bill.

Mr. ROGAN. Mr. Chairman, I am pleased to yield 3 minutes to my good friend, the gentleman from Ohio (Mr. CHABOT).

□ 1215

Mr. CHABOT. Mr. Chairman, I rise today as both a Member of the Committee on the Judiciary and Committee on Small Business to urge my colleagues to support H.R. 2366, the Small Business Liability Reform Act of 1999, and I would like to commend my colleague from the Committee on the Judiciary, the gentleman from California (Mr. ROGAN), for his leadership in this area.

Small businesses with 25 or fewer full-time workers employ nearly 60 percent of the American workforce. Their continued vitality is essential to our strong economy. However, just one lawsuit, frivolous or not, can easily destroy a small business.

Today, small businesses operate in constant fear that they will be named as a defendant in a lawsuit, be found minimally responsible for the claimant's harm, and be financially crushed under the weight of damages and attorneys' fees and the rest.

According to a recent Gallop survey, one out of every five small businesses decides not to hire more employees, not to expand its business, not to introduce a new product or not to improve an existing product out of fear of litigation.

Mr. Chairman, H.R. 2366 would help alleviate the tremendous burden and fear of unlimited liability on businesses that employ less than 25 people by making two modest changes to existing tort law, while still steadfastly protecting injured plaintiffs' rights to sue.

First, H.R. 2366 would raise the burden of proof to a clear and convincing evidence standard for a plaintiff suing for punitive damages and place reasonable caps on these damages, up to three times the total amount awarded for economic and non-economic loss or $250,000. This provision is vitally important, because businesses cannot be insured to cover these types of judgments.

H.R. 2366 would also eliminate joint and several liability for non-economic damages for small businesses. In the States that have joint and several liability in place, a defendant who is found only 1 percent responsible for an injury can be stuck paying 100 percent of the damages. Such a judgment could easily bankrupt a small business that is only minimally responsible for a non-economic harm. If that happens, workers lose their jobs.

I want to emphasize that real economic damages, including medical costs, are not limited by this bill, and plaintiffs remain free to sue more responsible parties.

Mr. Chairman, more than 60 percent of small business owners make no more than $50,000 a year. Litigation costs and excessive judgments can put them out of business in a heartbeat, causing employees, again, to lose their jobs and impacting the community that has come to rely upon the services of that particular business.

This is a commonsense tort reform bill, and I encourage Members to vote yes on H.R. 2366.

I again commend the gentleman from California (Mr. ROGAN) for showing his leadership in proposing this important legislation.

Mr. CONYERS. Mr. Chairman, I am happy to yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a distinguished member of the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member for his leadership on this issue.

I appreciate the desire of the gentleman from California (Mr. ROGAN) to be helpful in the enhancement of small businesses in the United States of America. I think, unfortunately, I need to disabuse those who have debated this bill of any suggestion that they are supporting a small business protection bill. This is not.

This is, again, a back-door attempt to do tort reform when the members of the other party fully recognize that we have been unsuccessful in doing such and there have been no calls for these kinds of major changes in tort reform or product liability.

In particular, I will be supporting the Conyers amendment, that really speaks to small businesses, and that is to narrow the protection of this bill to businesses earning $5 million or less. That is a small business. The only thing we have in this bill is to suggest that if you have 25 employees. But we well know that in the trucking industry, where, unfortunately, we have suffered over 440,000 large trucks involved in accidents, including 4,871 fatal crashes, we realize that those can be considered small businesses.

So this is a farce. This is a farce as it relates to the very important issue that we have discussed about the enormous gun violence that is going on in America, and, I might add, the very important litigation that has been going on.

This bill fails to exempt several well-known causes of action: Public nuisance, negligent marketing and unfair and fraudulent business practices, the cornerstone of many cases dealing with gun violence.

I cannot say to the gentleman from California (Mr. ROGAN) that every mayor of every city is wrong about their attempt to protect their cities from gun violence by the lawsuits that they have filed. Their communities want them to file them; their communities want gun violence to stop; their communities want the proliferation of guns to stop; and we want our children to stop dying. This bill is a farce as it relates to providing the protection of that these litigants need to address their grievances.

The other point is why is this bill protecting the actor of the act, meaning the one who has negligently acted, and has no concern about the victim, by capping punitive damages? The gentleman from California (Mr. ROGAN) fully knows that the courts rarely give punitive damages, and it is only in egregious circumstances that such is given. Now he is suggesting he is going to fall on the side of the negligent actor, as opposed to the victim.

Secondly, in the Committee on Rules they refused to listen when we offered a hate crimes amendment, because the hate crimes provision in this bill is benign, at best. We wanted to put language in that reflects an intentional act, when some business, a KKK-run business would intentionally burn a synagogue or, if you will, to refuse service or to do something violent to an individual, and it is a business, an intentional act, we could not get the committee on rules to accept that or even in the committee.

I ask where the seriousness behind this legislation is, if we are not willing to protect people from hateful, intentional acts?

In addition, this bill does not protect children whose parents may not file an action before they reach the age of majority. It is well known that many times children are in fact the victims of a negligent act. At Lincoln Park Daycare, Danny Kasar died in a collapsed crib in a daycare center. That crib may have been sold by a small business, and the idea is if there is an egregious act through the manufacturer and the seller, then this legislation keeps poor Danny, if, for example, in this instance, he died, it keeps any case that may happen if the child had not died to be able to be reached in majority.

Let me conclude, Mr. Chairman, by saying this is a bad bill, it is not a small business bill, and I wish the gentleman from California (Mr. ROGAN) would take it back so we can work in a bipartisan manner, and I ask my colleagues to defeat it.

Mr. Chairman, I rise in strong opposition to H.R. 2366, the Small Business Liability Reform Act of 1999. This bill is not a small business bill—it is a measure to insulate potentially large corporations from the most egregious misconduct.

This bill seeks to limit injured parties' punitive damages to $250,000 or 3 times compensatory damages, whichever is less for any business with 25 or fewer employees regardless of the company's actual financial earnings. In today's Internet economy it is likely that a company with 25 or fewer employees is flush with income—why should this Congress limit their punitive damages to such a low level?

Punitive damages are often awarded to deter those companies who engage in behavior that is deemed grossly negligent. The fear of a jury awarding punitive damages is our legal system's way of saying to Corporate America that we will not tolerate willful and wanton conduct that may injure our citizens.

For example, a little girl whose hand was caught in an exposed rotating chain saw and lost three fingers was awarded $420,100 in damages. If this bill becomes law the manufacturer of this chainsaw with 25 or fewer employees would cap this girl's compensation to $250,000 for a product that endangered this child's life. Our children and our loved ones will be adversely affected by this bill. Why should the Nation's most egregious corporate wrongdoers be protected at the expense of innocent victims.

As you may be aware, tort law has evolved over the centuries to reflect societal values and needs. Because it is common law—or judge-made law—State tort law has developed from generation to generation in the form of reported cases: ''In theory, the judges [draw] their decision from existing principles of law; ultimately, these principles [reflect] the living values, attitudes and ethical ideas of the people.''

The tort system provides a number of benefits to society: it (1) compensates injured victims; (2) deters misconduct that may cause perceived injury and punishes wrongdoers who inflict injury; (3) prevents injury by removing dangerous products and practices from the marketplace; (4) forces public disclosure of information on dangerous products and practices otherwise kept secret; and (5) expands public health and safety rights in a world of increasingly complex technology. The tort system is intended to effect behavior through the forces of the private market. The ''invisible hand'' of the tort system alters behavior so as to prevent dangerous and reckless conduct, which is often not prohibited by any governmental regulation.

Product liability law, in particular, typically refers to the liability of a manufacturer, seller or other supplier of products to a person who suffers physical harm caused by the product. The legal liability of the defendant may rest on five theories: (1) intent; (2) negligence; (3) strict liability; (4) implied warranties of merchantability and fitness for a particular purpose; and (5) representation theories (express warranty and misrepresentation).

Historically, if the courts upset the liability rules that balance the interests of injured citizens and wrongdoers, the State legislatures are able to respond by either strengthening or weakening the laws. For example, during the 1980's, a majority of States adopted a number of product liability reforms involving such areas as punitive damages, joint and several liability and strict liability in reaction to a perceived ''insurance crisis.'' Each State has developed its own tort system and considered and adopted reforms based on the needs of its citizens and its desires to attract commerce. Restatements of law, written by legal scholars, can indicate areas suitable for nationwide uniformity if the states consider it to be in their own best interests.

Congress has been considering product liability legislation since as early as 1979 when Representative DINGELL introduced legislation which would have federalized a number of areas of State liability law. Proponents of such reforms have argued, inter alia, that State laws have led to excessive product liability damage awards and that the unpredictable and ''patchwork'' nature of the State product liability system harms the competitiveness of domestic manufacturing firms. After being unable to bring a product liability reform bill to either the House or Senate floor for a number of years, during the 104th Congress the House and Senate agreed to product liability legislation which would have, inter alia,

capped punitive damages for large and small businesses and narrowed the standards for awarding such damages; eliminated joint and several liability for non-economic damages; created a fifteen-year statute of repose and a two-year statute of limitations; limited seller liability; and limited liability for medical implant suppliers. President Clinton subsequently vetoed the legislation.

In the wake of President Clinton's veto, the White House entered into negotiations with Senators ROCKEFELLER and GORTON, which culminated in a somewhat narrower form of product liability legislation (the ''Senate Product Liability Proposal''). The Senate Product Liability Proposal was brought directly to the Senate floor but its proponents were unable to obtain cloture to cut off debate.

The Senate Product Liability Proposal, among other things, capped the maximum amount of punitive damages which may be awarded against ''small businesses;'' narrowed the ground for the award of punitive damages to those cases where there is a ''conscious, flagrant, indifference to the rights or safety of others'' which can be established by ''clear and convincing evidence;'' provided for a national statute of limitations and statute or repose; and offered relief to product sellers, lessors, and renters by specifying that they may only be subject to product liability suit where they (1) failed to exercise reasonable care, (2) violated an express warranty, or (3) engaged in intentional wrongdoing.

H.R. 2366 is similar to the 1998 Senate Product Liability Proposal, however, it is broader in that it is not limited entirely to product liability actions and it is narrower in that it excludes (1) the statute of repose provision and (2) potential pro-victim provisions such as a two-way preemptive federal statute of limitations running from the time the harm was actually discovered.

I am skeptical of the need for this bill, as there is no credible empirical evidence to support the notion that there is currently a litigation explosion in the state and federal courts. Additionally, punitive damages tend to be awarded in only the most egregious cases. Furthermore, Congress should not be in the business of protecting the rogue small business from reckless or harmful behavior, particularly legislation such as this that rewards businesses that hire temporary employees rather than full time employees. Yet again, the Majority is attempting to undermine the principles of federalism by the federal preemption of the state-based liability system. Given my concerns, I will not support this bill which jeopardizes the right of innocent victims to recover for corporate wrongdoing. We must continue to protect our children, our loved ones, and to encourage the deterrence of corporate misconduct.

Mr. ROGAN. Mr. Chairman, I am pleased to yield such time as he may consume to my friend the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman for yielding me time. I want to congratulate him for his outstanding work on this legislation and the spirit in which he worked with the different members on the committee.

I also want to express my appreciation to the minority, because I believe their participation in the Committee on the Judiciary improved the entire process and the bill, and we have a very good product here.

To the gentlewoman from Texas, she just raised a question about the instances of intentional conduct and she cited some examples. I believe she used the KKK, if they engage in some intentional conduct, that there would be caps on damages.

There is an amendment, I would say to my friend the gentlewoman from Texas, that will be offered subsequently to this that would remove the cap on intentional conduct that causes harm. So, with that, which we will offer at a later time, it improves this bill even more. It makes sure everyone is protected.

It is very important that litigants have access to the court. We wanted to make sure that is accomplished and preserved. It is an important right in America.

But, at the same time, we want to have a balance, so that in those rare cases where the damages go out of whack, and that is what puts the chilling effect on small businesses, that that is brought back into scale and in line with the American system of justice.

This bill does very simple things: It eliminates joint and several liability for the pain and suffering aspect of it, and then it puts some reasonable caps on punitive damages. It applies this to small business.

Now, I am a trial lawyer. I made my living after I was a Federal prosecutor trying cases, going to court, representing litigants in personal injury cases.

There is the rare case there is an abuse. I was with another lawyer friend of mine, and I said, ''Can you tell me a moral justification to defend joint and several liability?'' He tries more cases in Arkansas than probably anyone. He said, ''No, I can't.'' It was an honest answer. I believe this is good reform for the legal system.

So I very much congratulate my friend the gentleman from California (Mr. ROGAN) who has worked so hard on this legislation. What it does is that it makes sure that the plaintiff will get economic damages, first of all. That is the medical bills, the lost wages, the future lost wages, those are those out-of-pocket expenses that you can itemize for the jury. Those he can get without any limitation whatsoever. Pain and suffering, there is absolutely no limitation on pain and suffering. I think that is reasonable.

The joint and several liability limitation only applies to the pain and suffering aspect. The punitive damages is what is capped. It is a very reasonable cap on punitive damages, and that is what is intended to punish, not intended to reward a plaintiff, and that is what we keep in scope. There should be a limitation on punishment.

Again, with the amendment I am offering shortly, if there is intentional conduct, extremely egregious conduct, the judge can override that cap even at that instance so that justice can continue to be done. It applies only to small business, less than 25 employees. There are some amendments that I believe will be offered that will change the definition of that, but this is a good, simple, fair definition, less than 25 employees. It is easy to quantify. It is similar to the civil rights statutes in that regard.

Again, I would ask my colleagues to support this bill. It is a good bill for small business, but it is also a good and fair bill for the legal system, which I cherish and honor and want to strengthen.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute to discuss this lawyer's discussion that the gentleman from Arkansas has been having with other lawyers who think this is a fine bill.

Well, maybe some of them do, but the fact of the matter is that as this measure stands now, we are going to eliminate joint and several liability for non-economic damages, and this is going to have a very harmful effect on the victims. You do not have to be a lawyer to figure that out. That is what the bill accomplishes, whether lawyers like it or not. The bill imposes severe evidentiary restrictions and an overall $250,000 cap on punitive damages in all civil cases.

Now, 25 employees or less, you must know that there are businesses doing hundreds of millions of dollars of business with less than 25 employees. Yes, it protects ''mom and pops,'' but it lets in at the other end these huge companies that are going to be so happy to know that you have got this provision on the floor.

Mr. ROGAN. Mr. Chairman, I am pleased to yield 3 minutes to my good friend, the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, I thank my friend for yielding me time.

Mr. Chairman, just to respond to the gentleman from Michigan, victims are not hurt by capping punitive damages. They still get all their actual damages. They get economic damages. Punitive damages are to punish defendants who behave in the wrong way, not to reward the victims. This does not touch what the victims can get from actual damages.

But I support this legislation. Small businesses are the engine that drives our economy. Small businesses account for 99.7 percent of the nation's employers, employing 53 percent of the private workforce, contributing 47 percent of all sales in this country and responsible for 50 percent of the private gross domestic product.

In a recent Gallop survey, one out of every 5 small businesses claimed they do not hire more employees or expand their business or introduce a new product or improve an existing product out of fear of litigation.

The facts show that nationwide liability reform is what our small businesses need. For example, there was an increase of 28 percent in civil filings in State courts since 1984, and the median awards in product liability cases increased 227 percent between 1997 and 1998. Small businesses simply cannot afford to stay in business if they spend their time, energy, and resources fighting lawsuits that are without merit.

Small businesses are often severely burdened by frivolous lawsuits. Since 1960, the number of such lawsuits have tripled and unwarranted lawsuits have cost them billions of dollars, and in effect cost American consumers that same amount. Many small businesses are being forced to settle lawsuits, rather than bear the expense of litigation.

□ 1230

In an effort to counter this growing trend, H.R. 2366 seeks to protect small businesses by reducing their exposure to frivolous litigation. I believe this is much-needed legislation because it includes strategically targeted reforms which have strong bicameral, bipartisan support.

This measure comprises several measures that will limit product liability in small businesses. Those businesses are defined as having fewer than 25 employees. This legislation will cap punitive damages at $250,000 or three times compensatory damages, whichever is less, in any civil lawsuit against small business. In order to receive damages, plaintiffs must meet the ''clear and convincing evidence'' standard that the defendant acted with willful misconduct and was flagrantly indifferent to the rights and safety of others.

In addition, H.R. 2366 exempts small business defendants from joint and several liability for noneconomic damages, such as pain and suffering. Under this legislation, defendants will only be liable for the proportion of the judgment that corresponds to their percentage of the actual fault.

Mr. Chairman, H.R. 2366 exempts retailers, renters, and lessors from legal responsibility for products that they receive from manufacturers, but did not alter, and which subsequently malfunctioned or caused damages, which makes perfect sense. I believe the uniform standard for awarding punitive damages outlined in this legislation is a vital and necessary part of tort reform. This is a fair and sensible solution to the high number of frivolous lawsuits clogging up our court today.

Given that nearly 60 percent of the American workforce is employed by small business with 25 or fewer full-time employees, I think it is essential that we pass this legislation so our small businesses may become more innovative and competitive in today's global marketplace.

I thank the gentleman for introducing this legislation, and I urge my colleagues to support it.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. Mr. Chairman, I thank the ranking member for yielding me this time.

Mr. Chairman, I rise in strong opposition to this legislation. I would encourage the rest of my colleagues to oppose it as well if, for no other reason, than because of the Federal preemption implications over State law and the work that many State legislatures throughout the country have put into this issue. This is another classic example of ''Washington-knows-best'' when it comes to our system of justice in this country.

This is not just a concern and a belief that I have, but even the Republican governor from my home State of Wisconsin has expressed this concern in a letter to our ranking member on the committee in which he, along with the chairman of the Council of State Governments, State Senator Kenneth McClintock, expressed their severe reservations to this legislation.

In the letter they wrote, ''We are very concerned about the following preemption aspects of this bill:

''The bill establishes new evidentiary tests for punitive damages that would negate State laws for punitive damages, even though every State already requires that a plaintiff prove that a defendant acted in some particularly deliberate or egregious way to receive punitive damages.

''The bill overturns the doctrine utilized in many States of joint and several liability.

''The bill makes a dramatic and unacceptable change that alters the theory of strict product liability that is accepted and practiced in most States.

''The bill only preempts the laws of those States that offer greater protections to consumers, which we challenge from an equity perspective.''

They went on to state, ''Protecting small business in this Nation is a laudable goal. We, as State officials, have a vested interest in the economic growth spawned by small business development, and to this end we are excited to join with you in creating effective and sound legislative solutions.

''We are very concerned with the seeming eagerness of Congress to attempt to preempt State law. We urge you to reconsider your approach to this issue.''

Again, this is a Republican governor from the State of Wisconsin, Tommy Thompson, in opposition to H.R. 2366.

I have another letter from the National Conference of State Legislatures in which Executive Director William Pound wrote that they oppose H.R. 2366 ''because of the damage it would due to our system of constitutional federalism. The tort law and its reform historically and appropriately have been matters within the jurisdiction of States.''

So, Mr. Chairman, I think the attempt here may be laudable, but I hope it is not just an election-year gimmick to try to make some Members appear weak in their support of small businesses when, in fact, we are talking about the very serious issue of Federal preemption over State jurisdiction.

The CHAIRMAN. The Chair would inform Members that the gentleman from California (Mr. ROGAN) has 2 minutes remaining; the gentleman from Michigan (Mr. CONYERS) has 1½ minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield our remaining time to the gentlewoman from Connecticut (Ms. DELAURO).

The CHAIRMAN. The gentlewoman from Connecticut (Ms. DELAURO) is recognized for 1½ minutes.

Ms. DELAURO. Mr. Chairman, I rise in opposition to this misnamed and misguided piece of legislation under the guise of helping small businesses succeed, which is a goal that we can all support. This bill gives cover to businesses that make faulty products, that injure and even kill. This bill would protect companies that make cheap, poorly made firearms. These are weapons that are not made for hunting or for home protection; they are made to give criminals more bang for the buck.

Let me give my colleagues an example. Intratec is best known for its inexpensive assault pistols, notably, the TEC–9, the TEC–DC9 and the AB–10. The TEC–DC9 was one of the guns used in the 1999 massacre at Columbine High School in Colorado.

This is also the company that markets Saturday night special handguns or what they call junk guns. Their advertising copy brags, and I quote, ''that our guns are as tough as your toughest customers.'' In fact, this legislation, my friends, would provide cover to the makers of the weapons that were used at Columbine.

I am dismayed that the Republican majority would not allow this House to consider an amendment that the gentlewoman from California (Ms. LOFGREN) offered, which would have removed the protection from just the gun makers.

This is wrong. We ought to be in the business of encouraging responsibility across the board, including small businesses; but this bill takes us in the wrong direction. It puts consumers, it puts our kids at undue risk by weakening key protections.

Mr. ROGAN. Mr. Chairman, I yield myself the remainder of the time.

I want to thank all of my colleagues who joined in this debate today. I appreciate their comments.

I must say that I deeply regret hearing some of the characterizations of this bill and the way it has been twisted. I have sat here for the last hour listening to the fact that if we give a limitation of liability on punitive damages to small businesses, that people will be killed in the streets and that greedy corporate officers will rake in millions of dollars at the expense of working people; and that just simply is not the case, Mr. Chairman.

When we talk about small business protection, who are these small businesses that we are addressing and that we are trying to demonstrate some protection for in this bill? Mr. Chairman, in our country today, fully 60 percent of every business would be characterized as a small business under the definition of this bill, 24 employees or less, and more than half of those businesses, Mr. Chairman, take in less than $50,000 per year. These are not rich corporate megamerger giant businesses that this bill protects.

The Republican majority is attempting to protect those men and women who are out there trying to create jobs who are risking their capital and are attempting to provide an economic engine for our country. In fact, Mr. Chairman, median business earnings in 1996 were $25,000; about 25 percent of the self-employed earned less than $12,500, and about 25 percent earned more than $50,000. Only 9 percent of small business owners took over $100,000 from their business when these statistics were taken. That is the people that this bill is attempting to protect, those small businessmen and women who are investing their lives and their capital into making this country's economic engine run.

The Congress of the United States has a moral obligation to protect them from frivolous lawsuits so that their livelihood, their families, their homes, and their businesses are not taken by greedy trial lawyers in frivolous lawsuits or worse, be forced to settle a case that has no merit because the gun of punitive damages has been cocked and put to their head and that threat is so great that they cannot afford to defend themselves.

I urge support for this bill.

Mr. Chairman, on behalf of the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary, and the gentleman from Virginia (Mr. BLILEY), the chairman of the Committee on Commerce, I submit the following exchange of letters:

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, February 10, 2000.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR HENRY: Please find enclosed my recent letter to the Speaker agreeing to be discharged from further consideration of the bill, H.R. 2366, the Small Business Liability Reform Act. As you know, the Committee on Commerce's referral was recently extended to February 14, 2000. I am agreeing to have the Committee discharged without taking action on the bill in light of the need to bring this important product liability legislation to the floor in an expeditious manner.

By agreeing to waive its consideration of the bill, the Commerce Committee does not waive its jurisdiction over H.R. 2366 or similar bills. In addition, the Commerce Committee reserves its authority to seek the appointment of an appropriate number of conferees on this bill or similar legislation that may be the subject of a House-Senate conference. I ask for your commitment to support any request by the Commerce Committee for conferees on H.R. 2366 or similar legislation.

I also ask that you include a copy of this letter and your response as part of the Record during consideration of this legislation on the House floor. Thank you for your assistance and cooperation in this matter. I remain,

Sincerely,

TOM BLILEY,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, February 10, 2000.

Hon. J. DENNIS HASTERT,
Speaker, U.S. House of Representatives, the Capitol, Washington, DC.

DEAR MR. SPEAKER: On February 7, 2000, you extended the Committee on Commerce's referral of H.R. 2366, the Small Business Liability Reform Act, for a period ending not later than February 14, 2000. Recognizing the need to bring this important product liability legislation to the floor as soon as possible, I will agree to have the Committee on Commerce discharged from further consideration of H.R. 2366. By agreeing to be discharged, I am not waiving the Committee's jurisdiction over H.R. 2366 or other similar legislation, and I will seek the appointment of an appropriate number of conferees should this legislation be the subject of a House-Senate conference.

Thank you for your assistance and understanding in this matter. I remain.

Sincerely,

TOM BLILEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 11, 2000.

Hon. TOM BLILEY,
Chairman, Committee on Commerce, House of Representatives, Washington, DC.

DEAR TOM: Thank you for your letter regarding your committee's jurisdictional interest in H.R. 2366, the ''Small Business Liability Reform Act of 2000.''

I acknowledge your committee's jurisdiction over title II of this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. As you are well aware, your decision to forgo further action on the bill will not prejudice the Commerce Committee with respect to its jurisdictional prerogatives on this or similar legislation. I will be happy to support your request for conferees on those provisions within the Committee on the Commerce's jurisdiction should they be the subject of a House-Senate conference. I will also include a copy of your letter and this response in the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

HENRY HYDE,
Chairman.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, February 16, 2000.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In the cost estimate for the Small Business Liability Reform Act of 2000 (H.R. 2366), as ordered reported by the House Committee on the Judiciary on February 1, 2000, the Congressional Budget Office (CBO) stated that an estimate of the bill's impact on the private sector would be provided in a separate statement. CBO has now completed its review of this bill.

CBO finds that H.R. 2366 would impose no new private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995.

If you wish further details on this analysis, we will be pleased to provide them. The CBO staff contact is John Harris (202–226–2949).

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Mr. POMEROY. Mr. Chairman, I rise in opposition to H.R. 2366, the Small Business Liability Reform Act of 1999. I believe strongly that action must be taken to protect small businesses from the financial burdens imposed by frivolous lawsuits. In trying to address this issue, however, H.R. 2366 would supersede State tort law, including important statutes enacted in my own State of North Dakota. The preemptive provisions in H.R. 2366 would deny States the right to determine tort law free from Federal intrusion and thereby undermine the principle of federalism upon which our form of government rests.

Mr. Chairman, there is little dispute that small businesses in this country deserve protection from frivolous lawsuits and the resulting increase in insurance costs. In North Dakota, small businesses are the cornerstone of our communities and have helped diversify and stimulate our rural economy. Although these businesses are critically important to the future of States like North Dakota, many have been unfairly disadvantaged by costly lawsuits. Unfortunately, small businesses are often compelled to settle these lawsuits even if they would have prevailed in court, simply in order to avoid the costs of litigation. I believe, as do many of my colleagues, that States should reexamine their tort laws to address this problem.

I also believe, however, that H.R. 2366 does not represent the appropriate Federal response to the issue of frivolous lawsuits. Historically, determination of tort law as well as its reform have fallen within the jurisdiction of the States. Over the past 15 years, several States have substantially reformed tort laws to provide manufacturers and retailers greater protection from liability. My own State of North Dakota, for example, has enacted a statute on punitive damages that is more protective of businesses than the punitive damages provision in this bill. H.R. 2366 would interfere with North Dakota's right, and the right of every State, to determine its own tort law. Because they recognize the potential threat H.R. 2366 poses to our system of federalism, I am joined in my opposition to this bill both by the Council on State Governments and the National Conference of State Legislatures.

Mr. Chairman, although I do not support this particular vehicle for tort reform, I remain committed to protecting small businesses from excessive litigation. I also look forward to working with my colleagues on both sides of the aisle on legislative strategies to encourage small business development in all 50 States.

Mr. DINGELL. Mr. Chairman, I rise in opposition to H.R. 2366, the Small Business Liability Reform Act of 2000. This legislation is very poorly drafted and unclear in its terms and application. It does not simply apply to reform of the product liability laws, which I support. Instead, H.R. 2366 exempts what it defines as small businesses from a broad and unspecified range of civil liability.

There are provisions of this legislation which I have supported, such as the product seller protections in title II. However, I am extremely concerned that no one seems to have a clear and full understanding of all the circumstances

in which this bill would limit the rights victims have to be compensated for the fraud and deception they suffer. The proponents of this legislation are asking for our support without identifying all the existing rights victims have that the bill may preempt.

The sponsors have offered amendments they claim fix a lot of the bill's problems, but I am not at all sure they are right, and furthermore I am very sure we have not yet identified all the problems this legislation creates. For example, the Securities and Exchange Commission (SEC) staff say H.R. 2366 would still limit punitive damages that a victim of a securities ''boiler room'' scam could recover in a case he or she brings in State court. The SEC openly admits that it is not capable of taking on total responsibility for making sure the securities market is free of fraud and deception. Instead, the SEC says that private plaintiffs are a vital supplement to the Commission's enforcement program.

Suing for fraud is the only way a securities ''boiler room'' victim can recoup his or her losses, other than commissions paid. With more and more Americans investing in securities every day, do the sponsors of this legislation really want to arbitrarily limit punitive damage awards that senior citizens and others may receive from State courts in cases of fraud perpetrated by securities ''boiler rooms''?

That's definitely not the kind of litigation reform I support, and I seriously doubt if it's what many of my colleagues want, either. The threat of substantial and meaningful liability is a very important tool needed to keep securities fraud at a minimum. If that liability is reduced by this bill to a point that unscrupulous securities dealers are willing to absorb their reduced liability as a cost of doing business, investors, particularly the least sophisticated investors, will be victimized, and they will suffer.

I cannot vote for a bill that so clearly increases, rather than reduces, the chance that innocent investors will be the victims of fraud and deception in the securities market. I would hope that my colleagues would also find that to be a totally unacceptable and dangerous outcome. Nor can I vote for a bill that is so ambiguous and potentially sweeping in its scope. For these reasons, I urge my colleagues to vote ''no'' on H.R. 2366. It is a fundamentally flawed piece of legislation that does not deserve your support.

Mr. SENSENBRENNER. Mr. Chairman, I rise in strong support of H.R. 2366, the Small Business Liability Reform Act of 2000. In my view, the American tort system is a disaster. It resembles a wealth redistribution lottery more than an efficient system designed to compensate those injured by the wrongful acts of others. Our current system raises the prices of goods made in America, forces State and local governments to expend precious resources, and causes unwarranted personal anguish and damages reputations. Companies should be held responsible for truly negligent behavior resulting in actual harm. But a civil justice system that perpetuates the concept of ''joint and several liability'' and has no effective mechanism, such as a loser pays rule, to deter frivolous lawsuits is simply not just. I am pleased that H.R. 2366 takes the first step toward alleviating this problem. H.R. 2366 would eliminate joint and several liability of small business defendants for non-economic damages, such as pain and suffering, but would retain if for economic damages, such as medical expenses. This would partially relieve the situation where a small business defendant is held liable for damages far in excess of its actual responsibility.

I have been a longtime supporter of legislation to set uniform standards for product liability actions brought in State and Federal court. Inconsistencies within and among the States in rules of law governing product liability actions result in differences in State laws that may be inequitable with respect to plaintiffs and defendants, which, in turn, impose burdens on interstate commerce. Establishing uniform legal principles of liability for product seller, lessors, and renters will provide a fair balance among the interest of all parties in the chain of product manufacturing, distribution, and use, reduce costs and delays in product liability actions, and reduce the burdens on interstate commerce.

Mr. Chairman, I urge passage of this long overdue legislation.

Mrs. MINK of Hawaii. Mr. Chairman, I rise today in opposition to H.R. 2366, the Small Business Liability Reform Act of 1999. H.R. 2366 takes away rights of victims to be compensated for injuries they suffer due to the negligence of manufacturers and retailers and in doing so, encourages corporations to evade their responsibility to provide consumers with safe products.

This bill masquerades as an attempt to assist our Nation's small businesses. In reality however, only title I applies to small businesses, title II of the bill, the products liability provisions, applies to all businesses, despite H.R. 2366's title.

H.R. 2366 will cap punitive damages at $250,000 and will eliminate joint and several liability for noneconomic damages like pain and suffering, loss of limb, loss of fertility, permanent disfigurement, and loss of a child. In doing so, this bill attempts to change a multitude of areas of law and does not solely concentrate on pure liability reform. Beyond that, this bill discriminates against women and our Nation's seniors who bear the greatest portion of noneconomic damages.

If H.R. 2366 becomes law, our Nation's consumers will be left with very limited avenues of recourse if they suffer damages. This bill will set damage caps on liability suits at $250,000 for all businesses with fewer than 25 employees regardless of how much revenue the business generates. It will allow product liability suits in three instances only: when there is a failure to exercise reasonable care, when there is a violation of a manufacturer's express warranty, and when there is intentional wrong doing by the company.

By eliminating joint and several liability, this bill makes unknowing and innocent members of the public bear the burden of their damages as small businesses will, under this bill, be considered judgment proof.

It is no surprise that the National Conference of State Legislators are against this bill. First, this bill does not meet its goal of creating uniformity among our Nation's laws because of its unequal treatment of the issue of punitive damages. This bill does not create punitive damages in States where it does not exist, but it does cap punitive damages for the States that already have punitive damage awards.

Second, H.R. 2366 will eliminate the rights of States and cities to sue gun manufacturers as most of them are considered small businesses under the definition of the bill and therefore are exempt from suit. This robs our States of the autonomy of deciding for themselves how to handle suits against gun manufacturers and retailers. Also, H.R. 2366 raises serious federalism problems. This bill totally disregards States from exercising jurisdiction over their own tort laws, an area of law which has historically been reserved for them to exercise their own jurisdiction over. Many States have already set laws which require that higher standards be met before punitive damages can be awarded but no State has limited punitive damages for intentional injury. This bill would require States to do so. H.R. 2366 dictates to the States what recourse their own citizens have in their own State courts when they are injured by manufacturers and retailers. It is curious to note that this bill affects our Nation's State courts but denies our Federal district courts the right to hear cases that would fall under this bill.

I urge my colleagues to vote against this bill and not allow the victims of dangerous products to be robbed of their right to recourse. We need to vote against this bill and help our States decide for themselves how best to protect their own consumers.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to H.R. 2366. This bill would jeopardize the enforcement of the laws which protect our health and our environment, and undermine the responsibility of companies to make product safety a priority.

It is wrong to assume that a company should be less accountable for damage it causes simply because it has fewer employees, or to pretend that a company's smaller size in any way mitigates the extent of the damage it can cause. Think of the far reaching impact of a biotech company that markets a faulty vaccine; a small chemical company that pollutes groundwater; or a small business gun dealer that sold weapons used in a school shooting.

Furthermore, the $250,000 cap on punitive damages is not only an arbitrary slap in the face of the innocent individuals who suffer, it is a dangerous green light for corporate irresponsibility. Placing a quantitative limit on damages turns liability into a cost-benefit business equation where product safety becomes a choice rather than an imperative.

Let me give you a very serious example of how this legislation could interfere with important efforts to deter environmental degradation. In literally thousands of locations throughout California, the fuel additive MTBE is showing up in groundwater.

In my district, for example, the city of Santa Monica has faced the most serious MTBE contamination of any community in the country. Before MTBE contaminated Santa Monica's drinking water, groundwater provided 70 percent of the city's water supply. Now, after the contamination, the city imports more than 80 percent of its drinking water from northern California and the Colorado River. In short, MTBE from leaking underground storage tanks has shut down our drinking water well fields, making the drinking water taste and smell like turpentine.

This is not an isolated problem. It seems each week more MTBE contamination is found in California—as well as in the northeastern States. And in Santa Monica the cleanup could cost as much as $200 million.

Congress should be working to address this serious problem. We should be moving to prevent further contamination and working to aggressively clean up MTBE contamination. However, this legislation takes us in the opposite direction by shielding negligent polluters from punitive damages under State tort claims.

Recently, the TV show ''60 minutes'' documented a small town in California which has been turned into a ghost town due to MTBE contamination from a single gas station. When the city lost their drinking water, the businesses shut down, the residents lost their livelihoods, and the few residents who remain are drinking contaminated drinking water. It makes no sense for Congress to move to protect this gas station owner from State tort claims, in any way, when their leaking underground storage tanks have decimated a small town.

This bill would create a giant loophole for small companies to subvert Federal and State health and environmental laws, and severely weaken their deterrence against faulty business practices. If you want strong deterrence against MTBE contamination of groundwater, oppose this ill-considered legislation.

I also want the record to be clear that the amendment offered by Representatives ROGAN and HUTCHINSON does not address the critical problems with this legislation.

Even with the adoption of their amendment, punitive damages awarded under State tort claims and citizen suits under environmental laws are severely limited.

The Rogan-Hutchinson amendment would allow the $250,000 cap to be exceeded if the defendant acted with specific intent to cause the type of harm for which the action was brought. In the case of MTBE contamination, no business has acted with the intent to contaminate groundwater. However, some businesses may have acted so irresponsibly that we should send a clear signal that we cannot tolerate this behavior. Especially, when the cost is so great on our communities.

With MTBE contamination showing up all over the country, why should we be establishing a safe harbor for polluters?

I urge all members to oppose this bill, regardless of whether or not this amendment passes.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2366

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Small Business Liability Reform Act of 2000''.

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

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

Sec. 101. Findings.
Sec. 102. Definitions.
Sec. 103. Limitation on punitive damages for small businesses.
Sec. 104. Limitation on joint and several liability for noneconomic loss for small businesses.
Sec. 105. Exceptions to limitations on liability.
Sec. 106. Preemption and election of State nonapplicability.

TITLE II—PRODUCT SELLER FAIR TREATMENT

Sec. 201. Findings; purposes.
Sec. 202. Definitions.
Sec. 203. Applicability; preemption.
Sec. 204. Liability rules applicable to product sellers, renters, and lessors.
Sec. 205. Federal cause of action precluded.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

SEC. 101. FINDINGS.

Congress finds that—

(1) the defects in the United States civil justice system have a direct and undesirable effect on interstate commerce by decreasing the availability of goods and services in commerce;

(2) there is a need to restore rationality, certainty, and fairness to the legal system;

(3) the spiralling costs of litigation and the magnitude and unpredictability of punitive damage awards and noneconomic damage awards have continued unabated for at least the past 30 years;

(4) the Supreme Court of the United States has recognized that a punitive damage award can be unconstitutional if the award is grossly excessive in relation to the legitimate interest of the government in the punishment and deterrence of unlawful conduct;

(5) just as punitive damage awards can be grossly excessive, so can it be grossly excessive in some circumstances for a party to be held responsible under the doctrine of joint and several liability for damages that party did not cause;

(6) as a result of joint and several liability, entities including small businesses are often brought into litigation despite the fact that their conduct may have little or nothing to do with the accident or transaction giving rise to the lawsuit, and may therefore face increased and unjust costs due to the possibility or result of unfair and disproportionate damage awards;

(7) the costs imposed by the civil justice system on small businesses are particularly acute, since small businesses often lack the resources to bear those costs and to challenge unwarranted lawsuits;

(8) due to high liability costs and unwarranted litigation costs, small businesses face higher costs in purchasing insurance through interstate insurance markets to cover their activities;

(9) liability reform for small businesses will promote the free flow of goods and services, lessen burdens on interstate commerce, and decrease litigiousness; and

(10) legislation to address these concerns is an appropriate exercise of the powers of Congress under clauses 3, 9, and 18 of section 8 of article I of the Constitution of the United States, and the 14th amendment to the Constitution of the United States.

SEC. 102. DEFINITIONS.

In this title:

(1) CRIME OF VIOLENCE.—The term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code.

(2) DRUG.—The term ''drug'' means any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) that was not legally prescribed for use by the defendant or that was taken by the defendant other than in accordance with the terms of a lawfully issued prescription.

(3) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(4) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property.

(5) HATE CRIME.—The term ''hate crime'' means a crime described in section 1(b) of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(6) INTERNATIONAL TERRORISM.—The term ''international terrorism'' has the same meaning as in section 2331 of title 18, United States Code.

(7) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(8) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(9) SMALL BUSINESS.—

(A) IN GENERAL.—The term ''small business'' means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees as determined on the date the civil action involving the small business is filed.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly owned corporation includes the employees of—

(i) a parent corporation; and

(ii) any other subsidiary corporation of that parent corporation.

(10) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, punitive damages may, to the extent permitted by applicable State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant through willful misconduct or with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages shall not exceed the lesser of—

(1) 3 times the total amount awarded to the claimant for economic and noneconomic losses; or

(2) $250,000.

SEC. 104. LIMITATION ON JOINT AND SEVERAL LIABILITY FOR NONECONOMIC LOSS FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, the liability of each defendant that is a small business, or the agent of a small business, for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—In any civil action described in subsection (a)—

(A) each defendant described in that subsection shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined under subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

SEC. 105. EXCEPTIONS TO LIMITATIONS ON LIABILITY.

The limitations on liability under sections 103 and 104 do not apply—

(1) to any defendant whose misconduct—

(A) constitutes—

(i) a crime of violence;

(ii) an act of international terrorism; or

(iii) a hate crime;

(B) results in liability for damages relating to the injury to, destruction of, loss of, or loss of use of, natural resources described in—

(i) section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(A)); or

(ii) section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)(4)(C));

(C) involves—

(i) a sexual offense, as defined by applicable State law; or

(ii) a violation of a Federal or State civil rights law;

(D) occurred at the time the defendant was under the influence (as determined under applicable State law) of intoxicating alcohol or a drug, and the fact that the defendant was under the influence was the cause of any harm alleged by the plaintiff in the subject action; or

(2) to any cause of action which is brought under the provisions of title 31, United States Code, relating to false claims (31 U.S.C. 3729–3733) or to any other cause of action brought by the United States relating to fraud or false statements.

SEC. 106. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION.—Subject to subsection (b), this title preempts the laws of any State to the extent that State laws are inconsistent with this title.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this title does not apply as of a date certain to such actions in the State; and

(3) containing no other provision.

TITLE II—PRODUCT SELLER FAIR TREATMENT

SEC. 201. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) although damage awards in product liability actions may encourage the production of safer products, they may also have a direct effect on interstate commerce and consumers of the United States by increasing the cost of, and decreasing the availability of, products;

(2) some of the rules of law governing product liability actions are inconsistent within and among the States, resulting in differences in State laws that may be inequitable with respect to plaintiffs and defendants and may impose burdens on interstate commerce;

(3) product liability awards may jeopardize the financial well-being of individuals and industries, particularly the small businesses of the United States;

(4) because the product liability laws of a State may have adverse effects on consumers and businesses in many other States, it is appropriate for the Federal Government to enact national, uniform product liability laws that preempt State laws; and

(5) under clause 3 of section 8 of article I of the United States Constitution, it is the constitutional role of the Federal Government to remove barriers to interstate commerce.

(b) PURPOSES.—The purposes of this title, based on the powers of the United States under clause 3 of section 8 of article I of the United States Constitution, are to promote the free flow of goods and services and lessen the burdens on interstate commerce, by—

(1) establishing certain uniform legal principles of product liability that provide a fair balance among the interests of all parties in the chain of production, distribution, and use of products; and

(2) reducing the unacceptable costs and delays in product liability actions caused by excessive litigation that harms both plaintiffs and defendants.

SEC. 202. DEFINITIONS.

In this title:

(1) ALCOHOL PRODUCT.—The term ''alcohol product'' includes any product that contains not less than ½ of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title 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. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) COMMERCIAL LOSS.—The term ''commercial loss'' means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and noneconomic losses.

(5) DRAM-SHOP.—The term ''dram-shop'' means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who—

(i) is engaged in a business to produce, create, make, or construct any product (or component part of a product); and

(ii)(I) designs or formulates the product (or component part of the product); or

(II) 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) that are created or affected when, before placing the product in the stream of commerce, the product seller—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

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

(9) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(10) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(11) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

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

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

(iii) has intrinsic economic value; and

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

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

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

(12) PRODUCT LIABILITY ACTION.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the term ''product liability action'' means a civil action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) The following claims are not included in the term ''product liability action'':

(i) NEGLIGENT ENTRUSTMENT.—A claim for negligent entrustment.

(ii) NEGLIGENCE PER SE.—A claim brought under a theory of negligence per se.

(iii) DRAM-SHOP.—A claim brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor.

(13) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) 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 judgment, skill, or services; or

(iii) any person who—

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

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(14) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 203. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this title governs any product liability action brought in any Federal or State court.

(2) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes a State law only to the extent that the State law applies to an issue covered by this title. Any issue that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any State law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity 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 or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a 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, for remediation 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))).

SEC. 204. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action covered under this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(B)(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the intentional wrongdoing caused the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

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

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) DEFINITION.—For purposes of paragraph (2), and for determining the applicability of this title to any person subject to that paragraph, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(2) LIABILITY.—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 202(13)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of that product.

SEC. 205. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under this title based on section 1331 or 1337 of title 28, United States Code.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act shall take effect with respect to any civil action commenced after the date of enactment of this Act without regard to whether the harm that is the subject of the action occurred before such date.

The CHAIRMAN. No amendment to the committee amendment in the nature of a substitute is in order, except those printed in House Report 106–498. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is in order to consider Amendment No. 1 printed in House Report 106–498.

AMENDMENT NO. 1 OFFERED BY MR. HUTCHINSON

Mr. HUTCHINSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. HUTCHINSON:

Page 7, strike line 13 through line 6 on page 8 and insert the following:

SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, punitive damages may, to the extent permitted by applicable Federal or State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages awarded against a small business shall not exceed the lesser of—

(1) 3 times the total amount awarded to the claimant for economic and noneconomic losses, or

(2) $250,000,

except that the court may make this subsection inapplicable if the court finds that the plaintiff established by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought.

(c) APPLICATION BY THE COURT.—The limitation prescribed by this section shall be applied by the court and shall not be disclosed to the jury.

The CHAIRMAN. Pursuant to House Resolution 423, the gentleman from Arkansas (Mr. HUTCHINSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to rise in support of this carefully drafted and well-balanced legislation. I do believe that balanced tort reform can be achieved, and this bill takes us in the right direction to do that. I want to thank the gentleman from California (Mr. ROGAN) again for his work and leadership on this.

With the language that we have developed in this amendment, I am now able to lend my enthusiastic support to the legislation.

Small businesses across the country operate in fear of being named as a defendant in a liability case. Though they may be found minimally responsible in the case, the weight of the legal expenses can crush a small enterprise. According to a Gallup survey, one out of every five small businesses do not hire more employees, expand their business, improve their existing products, or introduce new products out of fear of litigation. This legislation addresses the situation by reforming joint and several liability, which ensures that defendants are held liable only for the portion of the harm that they cause. It limits punitive damages in routine cases and establishes uniform liability standards.

Over the last several weeks, after the Committee on the Judiciary passed this bill out, the gentleman from California and I have worked on language that I was very concerned about which would provide an override for the cap on punitive damages. As originally

drafted, the bill capped punitive damages awards at $250,000, or three times the total compensatory award, whichever is less, with no provision for departure in cases of extreme misconduct. I was specifically concerned that the bill did not include a judicial override provision allowing judges to respond to the most egregious cases, and some of the Members have raised this issue even in the debate today.

The amendment that I offer today provides an opportunity for judges to exceed the punitive damages cap if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought. I think we can all agree that intentional behavior demonstrates such a callousness on the part of a defendant that merits application of the full punitive damage award as approved by the jury. This concept of a judicial override has manifested itself previously, but I believe that this language is even better than what has been offered before. The provision is carefully crafted to achieve a balance that provides full punitives in the most egregious cases, while not creating a loophole that undermines the concept of a cap.

There have been a number of discussions as to exactly what a plaintiff has to prove under this language. Let me first say what the plaintiff does not have to prove. The plaintiff will not have to prove that the defendant intended to harm that particular plaintiff or that the defendant intended to cause the harm that occurred. In other words, the plaintiff can prove by clear and convincing evidence that the defendant intended to cause harm to people. He or she does not have to prove that the defendant set out to harm the person specifically.

In addition, if a plaintiff can prove that the defendant intended to cause physical injury, illness, disease, death or property damage, he or she does not have to prove that the defendant meant to cause a specific injury such as a broken leg, dislocated back, or a particular strain of disease. Proving that a defendant intentionally set out to harm others, regardless of who was ultimately hurt or what particular harm resulted, is sufficient to activate this judicial override provision.

So I would like to note for my colleagues that in the 104th Congress, the President vetoed comprehensive tort reform legislation because he was concerned that there was not an adequate judicial override. This addresses his concern. I believe it will lead to the President's signature hopefully on this bill.

There were a number of other technical corrections that were made, including clarifying that the limitation on punitive damages applies only to punitive damages against small businesses. This is very important. The original bill was not clear as to how multidefendant cases where some defendants who did not qualify as a small business would be treated under the bill. This change makes it clear that only small business defendants will enjoy the provisions of this legislation.

So I believe it is a good amendment; it improves the bill. I appreciate my friend and colleague working with me to come up with this language, and I would ask my colleagues to support it.

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Mr. ROGAN. Mr. Chairman, will the gentleman yield?

Mr. HUTCHINSON. I am happy to yield to the gentleman from California.

Mr. ROGAN. Mr. Chairman, first I want to congratulate and commend my colleague, the gentleman from Arkansas, for his exceptional work on this. We spent many long and arduous hours during the committee, both in committee and after hours, trying to perfect this amendment.

I believe that through this amendment we are increasing the scope of fairness to a fundamentally important area. Once again, I want to thank my colleague for his sensitivity, his hard work and his commitment. I enthusiastically support this amendment.

The CHAIRMAN. Does the gentleman from Michigan (Mr. CONYERS) seek to control the time in opposition?

Mr. CONYERS. Yes, I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to commend our distinguished colleague, the gentleman from Arkansas (Mr. HUTCHINSON), for his effort. If he thinks that the president is not going to continue his veto over this legislation because of this amendment, then I am afraid he has another thought coming, because this is too little and too late. This amendment falls well short and offers far too much protection for drug dealers, polluters, copyright infringers, and other types of misconduct.

I am going to explain how and why that is. First of all, the carve-out is purely discretionary with the court. The court does not have to do this, I say to the gentleman from California (Mr. ROGAN), it is up to them, so the damage cap may apply or the damage cap may not apply. A judge that may be considered pro-defendant in legal circles would have total discretion to render the Rogan-Hutchinson amendment to be a nullity.

Second, the amendment fails to safeguard the wide variety of civil statutes on the books which authorize punitive damages and which are based on far less stringent evidentiary requirements than set forth in the amendment. State laws frequently permit award of punitive damages against businesses based on more lenient evidence standards.

So in some areas we may be of marginal help, but in other areas we are not helping at all. For example, in Illinois, the Drug Dealer Liability Act authorizes punitive damages against corporations participating in illegal drug markets, which would be overturned by the legislation. Florida has an environmental liability law which provides for treble damages in private actions against unlawful pollution or discharge, which would also be overturned by this bill.

The last thing we would want to be doing is creating further legal obstruction to bring drug dealers and corporate polluters to justice. I do not think that this is intentionally set about as an objective, but still, this is the result. It is another example of intent to do well versus the results of what happens when this measure is put into practice.

The copyright law, let us look at this. Plaintiffs are entitled to receive up to $150,000 in penalties where the defendant acted willfully, which is a much lower standard than is put forth in the Hutchinson amendment. The standard for Hutchinson is ''specific intent,'' so the gentleman is making it harder to get those people that may be acting in violation of copyright law.

This is a current major issue in litigation over the I Crave TV web site, a foreign firm which is accused of stealing copyrighted television signals and airing them on the Internet. Unfortunately, the legislation continues to severely minimize liability for copyright theft and harm of all our Nation's intellectual property owners.

Finally, even in the ordinary tort context there are numerous examples of misconduct which should be subject to punitive damages, but which will never meet the ''specific intent'' standard set forth in the amendment. Example: What about the trucking companies? Three hundred thousand trucking companies, most of which have less than 25 employees, would be shielded for punitive damages for flagrant highway accidents, even if they violate State regulations and injure or kill drivers or passengers. This is of particular concern to all of us who are concerned about highway safety.

So I sympathize, I say to the gentleman from Arkansas, with what the gentleman is trying to do with the amendment, but it falls short. It does not go far enough. It will not protect us from a presidential veto, which has happened before in this kind of case, and it is not the kind of thing that we would want to have happen in terms of giving protection to drug dealers, polluters, copyright infringers, and other types of misconduct.

The CHAIRMAN. All time has expired on the amendment.

The question is on the amendment offered by the gentleman from Arkansas (Mr. HUTCHINSON).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 106–498.

AMENDMENT NO. 2 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. MORAN of Virginia:

Page 6, insert after line 15 the following:

(9) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person, entity, or others from engaging in similar behavior in the future. Such term does not include any civil penalties, fines, or treble damages that are assessed or enforced by an agency of State or Federal government pursuant to a State or Federal statute.

The CHAIRMAN. Pursuant to House Resolution 423, the gentleman from Virginia (Mr. MORAN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 2366 in my mind is a focused, tightly-crafted bill that will reduce unnecessary litigation and legal costs. It is careful not to overreach, and as such, gives us the opportunity to respond on a bipartisan basis to the concerns we have been hearing year after year from smaller employers about our civil justice system.

For the smallest of the Nation's businesses, those with less than 25 employees, Title I will abolish joint liability for noneconomic damages and to limit punitive damages. States may elect to opt out and instead apply their own joint liability and punitive damages rules in cases brought in State court when the parties are all citizens of the same State.

Further, these provisions do not apply to civil cases that may arise from certain violations of criminal law or egregious misconduct.

Today our smallest enterprises operate in fear that they will be named as a defendant in a lawsuit, be found minimally responsible for the claimant's harm, but be maximally crushed under the weight of all the damages as a result of the application of joint or deep pockets liability. Most States have recognized the inequity of the unfettered application of joint liability and have acted to abolish or restrain it in some way.

The Small Business Liability Reform Act adopts a fair, balanced approach by limiting the noneconomic damages exposure of a small business defendant to its own proportionate share. Similarly, the owners and employees of a very small commercial enterprise know their business could be destroyed by the legal costs associated with simply defending against a civil action in a jurisdiction where punitive damages are unrestrained.

Rather than face that prospect, small business defendants are coerced into inflated settlements of marginal, sometimes even meritless, lawsuits.

Title II holds non-manufacturer product sellers, lessors, and renters liable for their own negligence and intentional wrongdoing, but it only holds them responsible for the supplier manufacturer's liability when that manufacturer is judgment-proof.

This policy has been a noncontroversial part of Federal product liability legislation since the Carter administration published the model Uniform Product Liability Act 21 years ago.

Most recently, the product seller liability standard in title II was included in the 1998 product liability compromise that President Clinton had agreed to sign. This provision will reduce the exposure of retailers and distributors to meritless product liability claims and unnecessary costs, while meticulously preserving the ability of injured persons to recover their full damages.

Mr. Chairman, this modest but meaningful legislation will improve the administration of civil justice in the United States, and I urge my colleagues to support it.

The amendment that I am offering today addresses the legitimate concerns raised by the White House in their statement of administration policy. The administration is concerned that without a specific definition of punitive damages, provisions of the bill may be read to cap the government's ability to impose civil penalties, civil fines, or treble damages, all of which are punitive in purpose.

This amendment would define ''punitive damages'' in the bill as damages awarded against any person or entity to punish or deter such person, entity, or others from engaging in similar behavior in the future. That is the purpose of punitive damages.

The amendment also makes clear that punitive damages, as defined in the bill, will not include any civil penalties, fines, or treble damages that are assessed or enforced by an agency of State or Federal Government pursuant to a State or Federal statute.

I can tell the Members, as an original cosponsor of the underlying legislation, none of the sponsors of this legislation intended for the bill to include such actions. I do applaud the administration for suggesting the clarifying language in this amendment.

Mr. ROGAN. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from California.

Mr. ROGAN. Mr. Chairman, I thank the gentleman for yielding to me. I simply want to commend the gentleman, both for his amendment, which I think makes a good bill much better, and secondly, from the bottom of my heart I thank the gentleman for not just his leadership on this bill, but for the pleasure of working with him on it. I am proud to have had him as an original cosponsor.

Once again, I thank the gentleman for the impending success of a good piece of legislation.

Mr. MORAN of Virginia. Mr. Chairman, I thank the gentleman very much for his remarks, and I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from Michigan (Mr. CONYERS) seek to control time in opposition?

Mr. CONYERS. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

I want to start off, Mr. Chairman, by letting everyone know how much I think of the gentleman from Virginia (Mr. MORAN). He is a good friend of mine.

I suppose, in the final analysis, he has added a marginal benefit to the bill. What he has done is say that the government, that is, the Federal system and the States, should not be caught by the strictures of this bill, and we should allow them to move forward and be able to bring lawsuits in some range not encumbered by the limitations that we are placing on everybody else.

In other words, a citizen or private environmental groups are not affected by the Moran Amendment. The governments are going to be given an exclusion, Federal and State, but not individual citizens and environmental suits.

That is what we are trying to do in the environmental sector of improving our society. We are trying to encourage citizens and environmental organizations which are not within the purview of this bill.

For example, the bill would continue to wipe out incentives for private citizens to enforce environmental laws by bringing private and whistleblower acts under the Clean Water Act. They would be caught by this bill, even with the Moran Amendment. That is why my praise for the gentleman from Virginia is so limited this afternoon. I really hate to go through this long list of things that are not accomplished by the Moran Amendment.

Yet, it is a modest improvement, but it does not help anybody bringing a whistleblower action. It will not help any citizen suing under the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Superfund, the Safe Drinking Water Act, the Toxic Substance Control Act, the Lead-Based Paint Hazard Reduction Act. Those and other cases brought by citizens or environmental organizations, these people will wave the Moran Amendment to their dismay when they find out that it only applies to State and local governments.

Another problem with the amendment is that it fails to deal with the problems of the bill's overturning a wide variety of joint and several liability standards designed to deter misconduct. Now, in this area, the bill does not do anything for anybody. At least the gentleman is treating the citizens and the government fairly.

This is a particular problem in the context, again, of environmental claims, which are frequently brought by State and Federal governments, as well as private individuals. There are numerous Federal environmental statutes which provide for joint and several liability for noneconomic damages by perpetrators, and are not carved out from the bill's protection.

□ 1300

These include the Clean Water Act, the National Marine Sanctuaries Act, the Park System Resource Protection Act, and other measures that would be overturned by this legislation with the Moran amendment.

I cannot vote for an amendment that continues to protect corporations from oil spills which destroy natural sanctuaries and which damage our natural parks.

So what can I say? The only way to truly fix this problem is to limit the bill's provisions to product liability cases as an amendment offered by myself and another gentleman from Virginia (Mr. SCOTT), which our amendment would do.

Mr. MORAN of Virginia. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. MORAN of Virginia. Mr. Chairman, I would say to the distinguished gentleman from Michigan (Mr. CONYERS), an ardent leader of the full committee, that the purpose of the amendment was to address what was in the statement of administration policy, and I think the amendment does that.

In terms of private rights of action, I suspect that may be addressed in conference and in the Senate as well, but I can understand the gentleman's concerns. I just do not necessarily share them as strongly as the gentleman does.

Mr. CONYERS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. MORAN).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 106–498.

AMENDMENT NO. 3 OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer amendment No. 3.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. WATT of North Carolina:

Page 24, line 11, strike ''or 1337''.

The CHAIRMAN. Pursuant to House Resolution 423, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment deals solely with title II, the products liability part of the bill, a part of the bill which I would point out to my colleagues has no limitation to small businesses and is a complete usurpation of State law on products liability. It preempts all State law in this area to the extent that State laws are inconsistent with title II.

I would point out to my colleagues that this is absolutely contrary to everything that my Republican colleagues say that they stand for. They tell us day after day after day that they believe in States' rights; they believe in moving government closer to the people, sending it back to the local level. This runs absolutely counter to that stated proposition. They have had to go out of their way to justify doing it, and I want to read specifically how they have done it.

They have said products liability cases fall under the commerce clause of the United States. This is what they say in the findings leading into title II. ''Although damage awards in product liability actions may encourage the production of safer products, they may also have a direct effect on interstate commerce.''

They go on to say, ''Some of the rules of law governing product liability actions are inconsistent within and among the States, resulting in differences in State laws that may be inequitable with respect to plaintiffs and defendants and may impose burdens on interstate commerce.''

They go on to say, ''Under clause 3 of Section 8 of article I of the United States Constitution, it is the constitutional role of the Federal Government to remove barriers to interstate commerce.''

These are their findings, and in the purpose of this section, this is what they say and I am quoting, ''The purposes of this title, based on the powers of the United States under clause 3 of Section 8 of article I of the United States Constitution, are to promote the free flow of goods and services and lessen the burdens on interstate commerce.''

They have tried to take over this area of the law because they say there is a compelling Federal Government interest under the interstate commerce clause, but, Mr. Chairman, beware because then we get to the end of the bill. What do they say at the end of the bill? Despite this compelling Federal interest, they then say, ''The district courts of the United States,'' the Federal courts, ''shall not,'' shall not, shall not, Mr. Chairman, ''have jurisdiction under'' the commerce clause of the Constitution.

So Big Brother is saying to the States, we know how to say what the law ought to be in this area, but Big Brother is also saying to the States and to the individual people, despite the compelling Federal interest that we have at the Federal level, we are not going to give access to the Federal courts to litigate these cases.

Is there not something sinister and outrageous and unfair about that?

All my amendment would do is say to them, if there is a compelling Federal reason for doing this, and I do not believe there is, but if there is, as they say there is, at least we ought to allow the citizens of our country to come to the Federal court to talk about and litigate about this supposed Federal remedy that we are giving to them under the statute.

Mr. Chairman, I reserve the balance of my time.

Mr. ROGAN. Mr. Chairman, would the gentleman yield for 15 seconds?

The CHAIRMAN. The gentleman from North Carolina reserves the balance of his time.

Does the gentleman from California seek to control the time in opposition?

Mr. ROGAN. No, Mr. Chairman. I am in support of the amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am delighted and I want to express my absolute delight that despite the fact that they have fought this amendment all the way through the committee process, they have finally come to the light that if there is a Federal right here involved, there ought to at least be access to the Federal courts and I express my appreciation to the gentleman from California (Mr. ROGAN).

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 106–498.

AMENDMENT NO. 4 OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offered amendment No. 4.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. CONYERS:

Page 6, line 23, insert before the period the following: ''and had revenues in each of the last 2 years of $5,000,000 or less''.

Page 19, line 10, strike ''(14)'' and insert ''(15)'' and after line 9 insert the following:

(14) SMALL BUSINESS.—

(A) IN GENERAL.—The term ''small business'' means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees as determined on the date the civil action involving the small business is filed and had revenues in each of the last 2 years of $5,000,000 or less.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly owned corporation includes the employees of—

(i) a parent corporation; and

(ii) any other subsidiary corporation of that parent corporation.

(Title II Applicable to Small Business)

Page 21, line 12, insert after ''title'' the following: ''brought against a small business''.

(Definition of Product and Product Liability Action)

Page 6, beginning in line 16 redesignate paragraphs (9) and (10) as paragraphs (11) and (12), respectively, and add after line 15 the following:

(9) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

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

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

(iii) has intrinsic economic value; and

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

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

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

(10) PRODUCT LIABILITY ACTION.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the term ''product liability action'' means a civil action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) The following claims are not included in the term ''product liability action'':

(i) NEGLIGENT ENTRUSTMENT.—A claim for negligent entrustment.

(ii) NEGLIGENCE PER SE.—A claim brought under a theory of negligence per se.

(iii) DRAM-SHOP.—A claim brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor.

(Making Title I Applicable to only Product Liability Actions)

Page 6, line 22 and page 8, lines 1, 11, and 16, strike ''civil action'' and insert ''product liability action''.

(Definition of Hate Crime)

Page 5, strike lines 23 through 25 and insert the following:

(5) HATE CRIME.—The term ''hate crime'' means a crime in which the defendant intentionally selects a victim, or in the case of property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of the victim or owner of the property.

(Making Section 103 Applicable to Punitive Damages Irrespective of State Law)

Page 7, beginning in line 17, strike '', to the extent permitted by applicable State law,''.

(Allowing State to Elect Nonapplicability by Enacting a Referendum or Initiative)

Page 11, line 9, after ''a statute'' insert '', an initiative, or referendum'', add ''and'' at the end of line 10, in line 13, strike ''; and'' and insert a period, and strike line 14

Page 21, insert after line 7 the following:

(d) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute, an initiative, or referendum—

(1) citing the authority of this subsection; and

(2) declaring the election of such State that this title does not apply as of a date certain to such actions in the State.

The CHAIRMAN. Pursuant to House Resolution 423, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT), my cosponsor.

Mr. SCOTT. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me this time.

Mr. Chairman, I rise to speak in support of the Conyers-Scott amendment which will simply conform the bill to its title and provide some truth in advertising and legislation. Despite its name, the truth about the Small Business Liability Reform Act is that it will reward all businesses, big and small, with broad and sweeping legal protections when they cause personal or financial harm, even intentionally due to defective products.

For those parts of the bill which actually pertain to small businesses, the definition of small business in this bill contains no qualifiers pertaining to annual revenues, so even a billion dollar corporation, with relatively few employees, can still qualify for special protection as a small business.

Furthermore, while this bill purports to constitute liability reform, the language is overbroad and covers contract law and other areas of the law not properly considered by the committee. So this amendment will first define a small business as one with fewer than 25 employees, as it has in the bill, but also one with under $5 million in annual revenues.

Without this amendment, a company with less than 25 employees with revenues in the billions, an Internet corporation, for example, or a brokerage firm, could still be designated as a small business; and they could rip off millions of people for billions of dollars and still get protection under this bill.

Second, this amendment would truly limit the bill to suits against small businesses. As it presently exists, the second part of the bill is a general products liability bill which notwithstanding the title of the bill applies to all businesses, large and small.

Third, this bill would limit the scope of part one of the bill to product liability rather than civil action as the bill does. So the bill protects wrongdoers involving contract law, antitrust law, trademark protection and everything else. The scope of this title is unreasonably broad and expansive and should be narrowed to conform to the title Small Business Liability Reform Act.

Fourth, this amendment would create consistency and uniformity in that all States would be required to provide for punitive damages under limited conditions set forth in the bill. As presently written, the bill unfairly disadvantages consumers, as it preempts any State law more favorable to consumers while leaving intact State laws more favorable to businesses in the area of punitive damages.

Fifth, the bill allows an opt-out by States by statute. This amendment would allow the State to opt out by initiative and referendum for those States which also allow initiative and referendum in enacting laws.

Sixth, this amendment expands the hate crime exclusion to include victims of gender discrimination. A hate crime based on gender discrimination is just as despicable as one based on race, religion, or national origin; and it should, therefore, be included in a definition of a hate crime and not protected by this bill.

In closing, this bill sets some dangerous precedents as also it is dangerous to public health and safety. I strongly urge my colleagues to vote yes on this amendment which seeks to both conform the bill to its title, as well as provide a remedy for some of the most egregious aspects of the legislation.

Mr. ROGAN. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, this amendment would use the word ''revenue'' to define a small business rather than the current definition of 24 or fewer employees. Under the gentleman's suggested change, a small business would have to have revenues in each of the prior 2 years of $5 million or less.

First, we know, Mr. Chairman, from what has been presented here today, that the bulk of small businesses do not make $5 million. The amendment is not sufficiently defined. For instance, is it proposing to use gross revenues or net?

The simple statement that revenues should be used is not sufficient. Net revenue is more difficult to determine than the number of full-time employees. Full-time employees is a more constant measure of a small business. Revenue is more volatile year to year, whereas the number of full-time employees can easily be determined by looking at a company's W–2 form.

Using gross revenues instead of the number of employees offers a very narrow view of small business. A small business' gross revenue can change dramatically over a period of time.

I remind my colleagues that the Y2K Act approved by Congress and signed into law last year by the President capped punitive damages and defined a small business as fewer than 50 full-time employees, with no revenue limits.

The standard in the underlying bill before this Chamber today, that is under 25 employees, ensures that only the smallest of America's small businesses will be covered.

Further, litigation could end up focusing upon the sole issue of the period of gross revenue in question.

Finally, defining a small business by any revenue sends a disturbing policy message that discourages owners and employees from achieving greater revenues.

□ 1315

Next, the amendment would substantially abbreviate the effect of Title I by limiting the applicability of its provisions to non-manufacturing product sellers that are also small businesses as defined by Title I.

This amendment would further complicate product liability law. Because product liability affects interstate commerce, the rules of the road governing the liability of product sellers for compensatory damages to claimants due to harms caused by defective products should be a uniform Federal standard applicable to all product sellers.

Defeating this amendment and enacting Title II as presented in the underlying bill will reduce unnecessary lawsuits against blameless product sellers and reduce the wasteful legal and litigation-related costs that go hand in hand with them. Neither the content nor the effect of Title II is business-size sensitive.

Because the practical effect of Title I will be to focus litigation on the parties alleged to have been truly responsible for causing the claimant's harm rather than to change outcomes, neither claimant nor consumers have anything whatsoever to gain by limiting the scope of Title II to product sellers which are small businesses.

Next, the gentleman seeks to apply limitations on punitive damages to only product liability actions and not civil actions against a small business.

The fear of having to settle a frivolous lawsuit is not just limited to product liability cases but to all civil actions. Many business owners are forced to settle out of court for significant awards due to the fear of unlimited punitive damages and civil actions even if the claim is unwarranted.

Testimony submitted by Mr. David Harker before the House Committee on the Judiciary last year confirmed his frivolous suit was not over a product but over damages incurred to property. There are legions of other examples of such frivolous suits in the record of the committee.

H.R. 2366 does not cap compensatory damages, that is economic and noneconomic damages, for civil actions. Although compensatory damages in civil actions may be covered by liability insurance, punitive damages frequently are not covered and defendants must cover those out of pocket.

Next, this amendment would create punitive damage awards in those States that do not recognize punitive damages. Under the current bill, punitive damages are only available if the State already has them. The intent of the legislation is to reduce frivolous litigation and legal costs. This amendment would significantly expand the number of States in which punitive damages are available and the potential for more widespread abuse.

The punitive damage cap in the underlying bill is consistent with the Y2K act that was, again, signed into law by the President last year.

Another section of this amendment would undermine the intent of Title II to create a uniform standard of liability for all non-manufacturing product sellers in product liability cases.

Section 204, subsections (a) and (b), establish a uniform standard of liability for all non-manufacturing product sellers in product liability cases. A seller would be liable to the claimant for harm caused by a defective product when the harm is caused by the seller's own negligence, breach of an express warranty, or a seller's intentional wrongdoing.

Under Title II, product sellers who injure consumers due to their failure to exercise reasonable care are liable. The failure to recognize reasonable care is neither driven nor affected in any way by the size of a business.

Under Title II, if a claimant's injury was caused by a breach of the product seller's own express warranty, the seller is liable. Breaches of express warranties are neither caused nor in any way affected by the mere size of a business.

Under Title II, product sellers are liable and will pay if the manufacturer is not subject to service of legal process or if the court determines that the claimant would not be able to enforce the judgment against a liable manufacturer. The relevant status of a culpable manufacturer is not in any way dependent upon the size of the product seller.

The standard of product seller liability has nothing whatsoever to do with business size, and the two should not be linked to this bill.

It is for those reasons, Mr. Chairman, that I urge a no vote on this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would point out a couple of items here made in the statement of the author of this bill against the amendment that I think we might want to review more carefully.

First, the most commonsense response to whether this is a small business bill or not would be to put some limit on the revenues in each of the last 2 years of less than $5 million each year. That would solve all of the discussion about whether or not this is a bill in which a lot of large businesses in terms of their annual revenue are crowding under the umbrella of mom-and-pop stores.

Here is an example of a wonderful intent demonstrated by the gentleman from California (Mr. ROGAN) with no conception of the effect of what he is doing here. This would allow businesses with hundreds of millions of dollars of annual revenue to come under the umbrella.

We do not want that, I say to the gentleman from California (Mr. ROGAN), let me help. Let me help by amending his definition of ''small business'' not just to 25 employers or less. He knows that the high-tech industries have people working in lofts in their own homes with only a few other people that are commanding much more than millions of dollars' worth of revenue every year.

Why does my colleague not accept the limitation of small business, if that is what he is really concerned about, to those businesses that have revenues of less than $5 million a year?

Most mom-and-pops do not come anywhere near $5 million a year. Most mom-and-pops are happy to get $100,000 or $200,000 or $300,000 worth of business a year. The gentleman told me himself, and I know it already. But why not a $5 million, $4 million, $6 million limitation? Those cannot be called mom-and-pop businesses.

I think it is because the gentleman knows the effect of that unusual distorted definition that he is going to let in trucking companies, big businesses, people who certainly do not fit into the mom-and-pop category.

Now, the gentleman says that this bill of his tracks the Y2K bill in terms of limiting punitive damages. Sorry. The Y2K bill limits punitive damages to the greater of three times compensatory damages. His bill limits the damages to the lesser of three times the compensatory damages, or $250,000, whichever is less.

I know the gentleman from California (Mr. ROGAN) just inadvertently thought that he was moving along the lines that the other bill supported by the administration was doing.

So the argument that I present here in terms of the amendment that I and the gentleman from Virginia (Mr. SCOTT) offer is about truth in labeling. We are not limited to small businesses. There is no reason this Congress should shield from liability large businesses, and our amendment fixes it by a $5 million revenue limitation, rather high.

In addition, Title II of the bill limits the liability of product sellers and contains no size limitation at all, whether based on employees or revenues. This means that Wal-Mart, Hertz Rent-A-Car, and other huge corporations could achieve multi-million-dollar windfalls, not to mention all the reckless gun sellers that have been referenced earlier whose carelessness and extended negligence lead to thousands of deaths or injury.

Now, I am afraid that that, I say to the author of the bill, cannot be considered a harmless error or a mistake. I think that that is what he meant it to do. That is what the effect is, and that is the result that will occur if this measure is passed in the form, even with all the amendments that have been added to it so far today.

Now, there is a misperception about the measure that this is somehow limited to product liability. It is not. Title 1 is truly breathtaking in its scope to any civil action, to any civil action, whether it relates to a contract claim, a copyright claim, environmental claim, a securities claim, civil RICO, a bankruptcy action, even a reckless driving claim or a malpractice claim.

Now, I think this is changing the direction that we are going in in this legislation when we incorporate something of this magnitude in this bill. Why do we not limit it to product liability, as the discussion began, rather than protecting businesses against frivolous product liability suits. They have now taken the huge step forward to say that they would serve to protect businesses involved in criminal misconduct, foreign companies stealing U.S. copyrights, as well as careless corporate polluters.

I do not buy that wide provision of insulating liability under the rubric of protecting small businesses in product liabilities cases. They have gone a bit too far this time. They have gone too far.

And so, I am well aware that the body has tried to deal with the Rogan and Moran amendments to improve the situation, but the problems still remain. We are still protecting gun manufacturers, drug dealers, and polluters.

Our amendment responds to this. This is the most important amendment that my colleagues may ever see on this bill. And I am stunned that, in their generous conduct on the floor today, they have accepted or supported every amendment but this one, the one that might take care of the problems and make it reasonable in the eyes of many people and organizations and the administration, as well.

We are trying only to clarify the misleading provisions of the bill. My colleagues purport to have a hate crimes carve-out. But did they accidentally leave out gender-based hate crimes or did they deliberately leave out gender-based hate crimes? Nobody knows. But let us put it in. They are not, apparently, willing to do that.

They want to claim that they are two-way preemptive, but they only preempt State laws in which punitive damages are more favorable to the victims. The bill appears to allow State opt-outs but limits it to legislative statutes.

Might I ask why a referendum might not be acceptable and that they require just to pass through the House, as well? There are other ways for citizens to indicate their support. What about a referendum?

Our amendment fixes these problems, providing for a real hate crimes carve-out, providing for a real two-way preemption, providing for a hate crimes provision that includes gender.

And so, if we are going to vote on a bill to protect small businesses, we ought to be clear and honest enough to limit the bill to actual small businesses. And so, for that reason, I hope this bill may be made viable and whole by supporting our amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ROGAN. Mr. Chairman, may I inquire how much time remains on both sides?

The CHAIRMAN. The gentleman from California (Mr. ROGAN) has 13½ minutes remaining, and the gentleman from Michigan (Mr. CONYERS) has 7 minutes remaining.

Mr. ROGAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first I say to my dear friend, my senior colleague, the gentleman from Michigan (Mr. CONYERS), may I say that, although we differ philosophically on the concept of lawsuit abuse reform, I have a great deal of respect both for his talents and his seniority, as well as his acts.

□ 1330

I am sorry that I cannot accept his amendment because his amendment would undermine and gut the entire purpose of the underlying bill. I just want to take a moment if I may to correct the record and I think the gentleman may have misspoken. In my remarks, I talked about the liability aspects of the Y2K bill which currently now are law and how we attempted to track that in our bill. I believe the gentleman said that it did not track it. I invite the gentleman's attention to section 5, subsection B, subsection 1, captioned Punitive Damages Limitation from the Y2K bill. It says that a Y2K action may not exceed the lesser of three times the amount awarded for compensatory damages or $250,000.

Mr. Chairman, that is the standard that is now a part of the underlying bill, and so it does track the Y2K litigation reform that has passed both houses of Congress and the President signed last year. There is a fundamental difference between the Y2K standard and the standard of the underlying bill. In the Y2K standard that currently is law, small business is defined as 50 employees or less. In the underlying bill before us today, that standard has been cut in half, more than half, to 24 employees or less. The purpose of doing that was to ensure as faithfully as possible that this bill would impact the smallest of American businesses.

Now, it is a tempting invitation from the gentleman to go on a revenue-based standard of what constitutes a small business rather than an employee-based standard; but for all of the reasons that I outlined in my opening remarks, Mr. Chairman, I think that it is unworkable. There are exceptions, certainly, to small businesses who have 24 or less employees that are doing very well. I know of some up in the Silicon Valley myself. But I would submit to the gentleman, and statistics prove it out, that those are the very rare exception and not the rule.

The question before this House is will we allow the very small exception to upset and overturn the opportunity to provide needed relief to the millions and millions of men and women who comprise America's small business owners? I think not. The cosponsors of this bill have joined with me to ensure that those protections are adequate and fair. It is for those reasons and the reasons articulated in my previous statements, Mr. Chairman, that I am regrettably unable to join with my friend from Michigan in support of his amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

I would like to point out that there are some companies that we may or may not want to be included in the provisions of the bill, and that is why this amendment exists. Take the famous American Derringer Company that has less than 25 employees but manufactures as many as 10,000 cheap pistols a year, which will now be protected as a small business under the Rogan bill. Is that a small business? Is this a mom and pop?

What about Davis Industries? It has 15 employees. It is in the home State of the author of this bill, of California, and is known for manufacturing the majority of Saturday night specials in this country. As many as 180,000 pistols a year. Is this a small business that we want to protect? And may I point out that the Conyers-Scott amendment limitation would stop this ridiculous assumption that businesses that are bringing in hundreds and hundreds of thousands of dollars, millions of dollars, are, in effect, small businesses, that we are concerned about the mom and pop effect.

Again, it is a matter of Rogan intent versus the bill's effect. The effect is, you are giving an umbrella to those that do not deserve it. Intratec, the manufacturer of the infamous TEC–DC9 used at Columbine High School, has less than 25 employees but sells as many as 100,000 of these awful weapons a year. Is this a small business that we want to protect, or do we want the Conyers-Scott amendment to make sure that it will not reside under the protection of the Rogan bill?

I say we should exclude all of these gun manufacturers from the provisions of the bill, not because of the death-dealing weapons they manufacture, but because they are not small businesses in the true sense of the definition. We need a revenue cap on the definition of small business. Thanks to the gentleman from California, American Derringer, Davis Industries, and Intratec all will be very grateful to know that you are refusing a cap that would catch them. The Rogan bill says that all of these are small businesses. Do we really want to protect them? I think not.

I urge all of the Members in this body to support the Conyers-Scott amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ROGAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I must respectfully again take issue with my dear friend from Michigan. He says in his remarks that small business gun manufacturers are now automatically protected under

the Rogan bill. First, that is not a correct statement. Secondly, the statement itself and the arguments preceding the statement from some of our other colleagues appear to make the suggestion that there is something inherently evil about an otherwise lawful gun manufacturer being able to sell guns to law-abiding citizens. I would respectfully suggest to my colleague and to those who seem to take that same position that if it is really their intention to override the second amendment protection for law-abiding citizens to defend themselves in their homes or in their place of business, and abolish the private ownership of all handguns, then let them introduce their constitutional amendment to overturn the second amendment, let them introduce their legislation to preclude law-abiding citizens from being able to defend themselves, and let us then debate the merits of that bill up or down. But let us not destroy the protections of small business owners through America, millions and millions of men and women, who have nothing to do with guns, who have nothing to do with gun manufacturing, who have everything to do with driving our economic engine.

By the way, I would just also suggest to my colleague that there are many poor people in this country who do not have the Secret Service protection that some of our top leaders in government have, who do not have a bevy of staff around them at all times to ease their comfort and pain, who live in the poorest neighborhoods, and the only protection they have when a dope addict or a murderer or a rapist is coming through their window is the protection that they find in their drawer.

These are not evil people. These are law-abiding citizens trying to defend their families. There are a lot of single mothers in my district and I would suspect in the gentleman from Michigan's district who fall within that category. If it is the desire of my colleagues on the left to preclude them from being able to protect themselves, to sue out of business manufacturers of lawful handguns that which they cannot accomplish by way of legislation, then let them bring that bill forward. Even assuming that that was the case, that the manufacturing of handguns in this country was an inherently evil proposition, I would respectfully suggest to my colleague that the Rogan bill does not do what he suggests, that it protects them from liability for any harm that they cause.

Nothing in this bill to a small business gun manufacturer would preclude an injured person from receiving economic damages. Nothing in this bill would preclude an injured victim from receiving lost wages, medical compensation, loss of business. Nothing in this bill would preclude them from receiving noneconomic damages. Nothing would preclude them from receiving payment for pain and suffering, for disfigurement, for loss of companionship or the bevy of other noneconomic damages that are available to them. And nothing in this bill as amended would preclude a victim from having punitive damages assessed on one of those manufacturers if the manufacturer intended a harm to occur and was found to come within that intentional conduct that was amended into the bill by our friend from Arkansas.

So this claim that gun manufacturers are going to be able to run rampant under this bill and put in the hands of murderers and killers inherently dangerous weapons that are inherently faulty, that have no legitimate social purpose and that this is somehow some disguised bill to protect them under cover of small business, I would suggest to my colleague is not a fair statement.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume. I want to tell the gentleman from California how shocked I am to hear the last statements that he has uttered. He has been very calm and polite and generous in his discussion. But to say that we are naming gun manufacturers as evil and giving me instructions to go to a constitutional amendment to stop them is, of course, deliberately missing the point. We are not trying to hurt gun manufacturers. The Saturday night special is a faulty weapon. The gentleman is on the Committee on the Judiciary. He is a former member of the court. He is an attorney who has practiced law. The Saturday night special is not a protected weapon. It frequently is found to be a malfunctioning, dangerous weapon. We are not trying to put the gun dealers out of business.

But for him to stand here and tell me that he is not going to help them by limiting their liability where they may be negligent is an incredible statement on his part. He imposes the cap on punitive recovery. He imposes the elimination of joint and several liability for everybody that comes under the definition of this bill. Davis Industries may not be evil, but they are the ones manufacturing the Saturday night specials. Intratec, I am not sure they are not evil people, there may be some nice ones there, but they are the ones who manufacture the TEC–DC9 used at Columbine. It is his State and cities and counties in California suing Davis Industries. We are not trying to put them out of business. We are trying to make them vulnerable to legal action, and he is protecting them. He is protecting them. Why does he disagree, I might ask, to the lawsuits that are being brought in California at this present moment?

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. SCOTT. I would ask the gentleman if he will notice in the bill where crimes of violence are exempted, so if a defendant whose misconduct constitutes a crime of violence, that would not be covered. But any other crime, an actual crime or criminal enterprise, would be covered. So if we have a business perpetrating actual criminal activity, stealing people's money, that that would be protected because it is not a crime of violence; and they would have the benefits under the bill, limits of punitive damages, and if you are not stealing much from everybody, you would be limited to the actual damage, the little bit of money, and three times that of punitive damages against each employee, even if you are committing a crime. Would those people be protected under this bill?

Mr. CONYERS. Of course they would. Criminal sales of guns to felons would be caught by the protective provisions supposedly going to protect small businesses, mom and pop stores. We have heard mom and pop all day. These gun manufacturers are not mom and pop stores. Our definition would not put them out of business. All it would do is it would apply to all of those that have revenues in excess of $5 million a year. If they have revenues smaller than $5 million a year, they would enjoy the protections. So this is not an antigun, all-guns-are-evil argument in which I have to refer to a constitutional provision. I am merely trying to take these gun manufacturers out of the protections that the gentleman from California is inadvertently giving them in trying to protect so-called small business.

Mr. Chairman, I include the following letter for the RECORD:

NATURAL RESOURCES DEFENSE COUNCIL,
Washington, DC, February 16, 2000.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, House of Representatives.

Hon. JOHN CONYERS, Jr.,
Ranking Minority Member, Committee on the Judiciary, House of Representatives.

DEAR CHAIRMAN HYDE AND RANKING MEMBER CONYERS: On behalf of the Natural Resources Defense Council's over 400,000 members, I am writing to you to ask you to oppose passage of H.R. 2366, the ''Small Business Liability Reform Act of 2000,'' because of the adverse effects that it would have on enforcement of environmental protection statutes and private causes of action against those who violate the law. The bill is objectionable in its current form and would remain objectionable even if the two proposed Rogan amendments are approved.

While the purpose of the bill appears to be to limit the liability of small businesses for ''punitive damages'' in personal injury and other tort lawsuits, the language is sufficiently broad to impact federal, state, and citizen environmental enforcement actions. For example, the definition of ''noneconomic loss'' in Section 102 is broad enough to include environmental degradation or even environmental catastrophes. There is no definition of ''punitive damages'' in the bill, and that term could be interpreted to apply to civil penalties or fines, and even treble damages—all of which are punitive in nature. Thus, this bill could allow companies and individuals to violate environmental laws with impunity, encouraging recalcitrant behavior.

It could be interpreted to supersede specifically-enacted provisions designed to ensure adequate punishment and deterrence for serious environmental violations, including long-term noncompliance with statutes protecting public health and the environment resulting in serious environmental harm. Moreover, it could prohibit federal and state trustees from recovering natural resource damages under a number of environmental statutes. The bill also could prevent whistleblowers from recovering damages under certain federal environmental laws, including those that ensure safe drinking water. In addition, victims of lead paint poisoning will be less able to protect themselves.

It would also restrict punitive damage recovery for violations of clean up orders under Section 107(c)(3) of CERCLA, which specifically provides for a punitive damage recovery against those who fail to comply with such orders. Removing the possibility of treble damages for failure to comply with such orders would encourage companies to delay compliance and instead hire attorneys to challenge those orders. Delay and wasteful litigation would result.

This bill would not only interfere with citizen's right to bring enforcement actions to clean up their local waters and air and prevent future violations, but could also stop families from obtaining adequate compensation from severe pollution that makes them sick. The bill does not even contain an exemption for conduct that results in death. Families should be able to obtain all the damages to which they are entitled under current law when their health is destroyed by the negligence of a small business as well as by a large one. This bill could end up protecting small businesses at the expense of injured families.

For these reasons, the proposed amendments cannot repair the harm that would result from this bill, and I respectfully urge you to oppose this bill.

Sincerely,

NANCY STONER,
Senior Staff Attorney,
Natural Resources Defense Council.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. CONYERS) has expired. The gentleman from California (Mr. ROGAN) has 6½ minutes remaining.

□ 1345

Mr. ROGAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first, I certainly hope that my dear friend from Michigan does not mistake a serious policy difference in any way with a lack of respect or affection for him. I take a back seat to no one in this Chamber in admiration, both for his service and the strength of his positions. We do have a fundamental policy difference with respect to liability limitations as advocated in this bill. The gentleman sees it one way; certainly I see it another.

I do not view this bill, Mr. Chairman, as giving protection to people who have violated the law, and in fact we have tried to craft it very carefully to ensure that if there is some intentional wrongdoing, even by a business that would qualify as a small business, they would not come under any cap of punitive damages, and under any event there is no cap on the other damages.

I do believe from a policy perspective, I would say to my friend, that the concept of joint and several liability as currently upon the books is inherently unfair. The idea that somebody could have a very minuscule involvement in a harm, say, 1 percent, but could be required to have to pay 100 percent of the damages, is not a fair concept. I think a tort system where liability was based on percentage of fault would be a much better way in which to go.

Mr. Chairman, again I want to thank my colleagues on both sides of the aisle for their participation in this debate. It is through the bipartisan effort that we have developed this important bill, and we hope that the spirit of consensus will carry this bill quickly through the House and on to the other body.

Although this amendment should be defeated, I am pleased that today the House of Representatives will have an historic opportunity. With the defeat of this amendment and passage of the underlying bill, the House of Representatives will stand behind the 2 million small business owners in my State of California alone and the millions and millions more across the Nation.

The message we will send to these small business owners is clear: frivolous and meritless lawsuits, or the threat of a frivolous and meritless lawsuit, are crippling the lifeblood of America's economy and they must be stopped.

The Small Business Liability Reform Act will limit product liability for a product seller when their negligence is the responsibility of the product manufacturer.

As we all know, some 20 percent of America's small businesses will not expand services, they will not increase employee benefits, they will not hire more workers, they will not create more jobs and they will not cut consumer costs out of fear of being saddled with a frivolous or crippling lawsuit and having to pay its debilitating costs.

In addition, this legislation will bring fairness and justice to millions of small business owners by bringing relief from the destructive threat of frivolous lawsuits that threaten to close their doors, put workers on the unemployment line and severely damage our economy. We owe America's small businesses and their employers nothing less.

Mr. Chairman, I again thank my cosponsors and colleagues for their valuable support in bringing forward this bill.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 237, not voting 19, as follows:

[Roll No. 24]

AYES—178

Abercrombie
Ackerman
Allen
Andrews
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Capuano
Cardin
Carson
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Edwards
Engel
English
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gejdenson
Gephardt
Gonzalez
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lazio
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Slaughter
Smith (WA)
Spratt
Stabenow
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—237

Aderholt
Archer
Armey
Baca
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth-Hage
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Etheridge
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden

Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—19

Baird
Baldacci
Bishop
Brown (OH)
Callahan
Campbell
Capps
Clay
Cooksey
DeFazio
Everett
Graham
Lowey
Martinez
McCollum
Sanford
Snyder
Vento
Watts (OK)

□ 1412

Messrs. GOODLING, SMITH of Michigan, KUYKENDALL, LEWIS of California, SIMPSON, SHUSTER, SESSIONS, RILEY, FORBES, TAUZIN, and Ms. DUNN changed their vote from ''aye'' to ''no.''

Mr. GEPHARDT changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SUNUNU) having assumed the chair, Mr. THORNBERRY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2366), to provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers, pursuant to House Resolution 423, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 221, noes 193, not voting 20, as follows:

[Roll No. 25]

AYES—221

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth-Hage
Clement
Collins
Combest
Condit
Cook
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Dickey
Dooley
Dreier
Duncan
Dunn
Ehlers
Emerson
Ewing
Fletcher
Foley
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goodling
Gordon
Goss
Granger
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hutchinson
Hyde
Isakson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Myrick
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sweeney
Talent
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Upton
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOES—193

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Capuano
Cardin
Carson
Clayton
Clyburn
Coble
Coburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doolittle
Doyle
Edwards
Ehrlich
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Forbes
Frost
Gejdenson
Gephardt
Gilman
Gonzalez
Green (TX)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Hunter
Inslee
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E.B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Pickett
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Shadegg
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Spratt
Stabenow
Stark
Strickland
Stupak
Sununu
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Toomey
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOT VOTING—20

Baird
Baldacci
Bishop
Brown (OH)
Callahan
Campbell
Capps
Clay
Cooksey
DeFazio
Everett
Graham
Gutierrez
Lowey
Martinez
McCollum
Oberstar
Sanford
Snyder
Vento

□ 1432

Mr. HUNTER changed his vote from ''aye'' to ''no.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. TIAHRT. Mr. Speaker, today I was unavoidably detained and missed rollcall vote numbers 22 and 23. Had I been present, I would have voted "yes" on approving the Journal of February 15, and "yes" on H. Res. 423, the rule for H.R. 2366, the Small Business Liability Reform Act.

MILLENNIUM DIGITAL COMMERCE ACT

Mr. BLILEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. SUNUNU). Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 761

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 "Millennium Digital Commerce Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The growth of electronic commerce and electronic government transactions represent a powerful force for economic growth, consumer choice, improved civic participation and wealth creation.

(2) The promotion of growth in private sector electronic commerce through Federal legislation is in the national interest because that market is globally important to the United States.

(3) A consistent legal foundation, across multiple jurisdictions, for electronic commerce will promote the growth of such transactions, and that such a foundation should be based upon a simple, technology neutral, nonregulatory, and market-based approach.

(4) The Nation and the world stand at the beginning of a large scale transition to an information society which will require innovative legal and policy approaches, and therefore, States can serve the national interest by continuing their proven role as laboratories of innovation for quickly evolving areas of public policy, provided that States also adopt a consistent, reasonable national baseline to eliminate obsolete barriers to electronic commerce such as undue paper and pen requirements, and further, that any such innovation should not unduly burden inter-jurisdictional commerce.

(5) To the extent State laws or regulations do not provide a consistent, reasonable national baseline or in fact create an undue burden to interstate commerce in the important burgeoning area of electronic commerce, the national interest is best served by Federal preemption to the extent necessary to provide such consistent, reasonable national baseline or eliminate said burden, but that absent such lack of consistent, reasonable national baseline or such undue burdens, the best legal system for electronic commerce will result from continuing experimentation by individual jurisdictions.

(6) With due regard to the fundamental need for a consistent national baseline, each jurisdiction that enacts such laws should have the right to determine the need for any exceptions to protect consumers and maintain consistency with existing related bodies of law within a particular jurisdiction.

(7) Industry has developed several electronic signature technologies for use in electronic transactions, and the public policies of the United States should serve to promote a dynamic marketplace within which these technologies can compete. Consistent with this Act, States should permit the use and development of any authentication technologies that are appropriate as practicable as between private parties and in use with State agencies.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to permit and encourage the continued expansion of electronic commerce through the operation of free market forces rather than proscriptive governmental mandates and regulations;

(2) to promote public confidence in the validity, integrity and reliability of electronic commerce and online government under Federal law;

(3) to facilitate and promote electronic commerce by clarifying the legal status of electronic records and electronic signatures in the context of contract formation;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the appropriate electronic signature technologies for their transactions; and

(5) to promote the development of a consistent national legal infrastructure necessary to support electronic commerce at the Federal and State levels within existing areas of jurisdiction.

SEC. 4. DEFINITIONS.

In this Act:

(1) ELECTRONIC.—The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) ELECTRONIC AGENT.—The term "electronic agent" means a computer program or an electronic or other automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.

(3) ELECTRONIC RECORD.—The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(4) ELECTRONIC SIGNATURE.—The term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(5) GOVERNMENTAL AGENCY.—The term "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, or institution of the Federal Government or of a State or of any county, municipality, or other political subdivision of a State.

(6) RECORD.—The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) TRANSACTION.—The term "transaction" means an action or set of actions relating to the conduct of commerce, between 2 or more persons, neither of which is the United States Government, a State, or an agency, department, board, commission, authority, or institution of the United States Government or of a State.

(8) UNIFORM ELECTRONIC TRANSACTIONS ACT.—The term "Uniform Electronic Transactions Act" means the Uniform Electronic Transactions Act as provided to State legislatures by the National Conference of Commissioners on Uniform State Law in that form or any substantially similar variation thereof.

SEC. 5. INTERSTATE CONTRACT CERTAINTY.

(a) IN GENERAL.—In any commercial transaction affecting interstate commerce, a contract may not be denied legal effect or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) METHODS.—Parties to a transaction are permitted to determine the appropriate electronic signature technologies for their transaction, and the means of implementing such technologies.

(c) PRESENTATION OF CONTRACTS.—Notwithstanding subsection (a), if a law requires that a contract be in writing, the legal effect or enforceability of an electronic record of such contract shall be denied under such law, unless it is delivered to all parties to such contract in a form that—

(1) can be retained by the parties for later reference; and

(2) can be used to prove the terms of the agreement.

(d) SPECIFIC EXCLUSIONS.—The provisions of this section shall not apply to a statute, regulation, or other rule of law governing any of the following:

(1) The Uniform Commercial Code, as in effect in a State, other than sections 1–107 and 1–206, Article 2, and Article 2A.

(2) Premarital agreements, marriage, adoption, divorce or other matters of family law.

(3) Documents of title which are filed of record with a governmental unit until such time that a State or subdivision thereof chooses to accept filings electronically.

(4) Residential landlord-tenant relationships.

(5) The Uniform Health-Care Decisions Act as in effect in a State.

(e) ELECTRONIC AGENTS.—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect or enforceability solely because its formation involved—

(1) the interaction of electronic agents of the parties; or

(2) the interaction of an electronic agent of a party and an individual who acts on that individual's own behalf or as an agent for another person.

(f) INSURANCE.—It is the specific intent of the Congress that this section apply to the business of insurance.

(g) APPLICATION IN UETA STATES.—This section does not apply in any State in which the Uniform Electronic Transactions Act is in effect.

SEC. 6. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

To the extent practicable, the Federal Government shall observe the following principles in an international context to enable commercial electronic transaction:

(1) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(2) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those