

AMENDMENT TO H.R. 2563

**OFFERED BY MR. THOMAS OF CALIFORNIA, MR.
SENSENBRENNER OF WISCONSIN, MR. TAUZIN
OF LOUISIANA, MR. BOEHNER OF OHIO, AND
MR. COX OF CALIFORNIA**

Add at the end the following new title (and amend
the table of contents of the bill accordingly):

1 **TITLE VIII—REFORMS RELATING**
2 **TO HEALTH CARE LIABILITY**
3 **CLAIMS**

4 **SEC. 801. TABLE OF CONTENTS OF TITLE.**

5 The table of contents of this title is as follows:

Sec. 801. Table of contents of title.

Sec. 802. Application in States.

Sec. 803. Encouraging speedy resolution of claims.

Sec. 804. Compensating patient injury; fair share rule.

Sec. 805. Authorization of payment of future damages to claimants in
health care lawsuits.

Sec. 806. No punitive damages for health care products that comply with
FDA standards.

Sec. 807. Effect on other laws.

Sec. 808. Definitions.

Sec. 809. Effective date; general provisions.

6 **SEC. 802. APPLICATION IN STATES.**

7 The provisions of this title relating to any requirement or
8 rule shall not apply with respect to a health care lawsuit
9 brought under State law insofar as the applicable statutory law
10 of that State with respect to such lawsuit specifies another pol-
11 icy with respect to such requirement or rule.

12 **SEC. 803. ENCOURAGING SPEEDY RESOLUTION OF**
13 **CLAIMS.**

14 Health care lawsuits shall be commenced no later than 2
15 years after the claimant discovers, or through the use of rea-
16 sonable diligence should have discovered, the injury for which
17 the lawsuit was brought. In all cases, a health care lawsuit



1 shall be filed no later than 5 years after the date of the injury.
2 The time periods for filing health care lawsuits established in
3 this section shall not apply in cases of malicious intent to in-
4 jure. To the extent that chapter 171 of title 28, United States
5 Code, relating to tort procedure, and, subject to section 802,
6 State law (with respect to both procedural and substantive
7 matters), establishes a longer period during which a health care
8 lawsuit may be initiated than is authorized in this section, such
9 chapter or law is superceded or preempted.

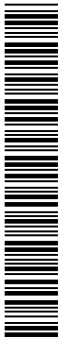
10 **SEC. 804. COMPENSATING PATIENT INJURY; FAIR**
11 **SHARE RULE.**

12 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
13 LOSSES IN HEALTH CARE LAWSUITS.—In any health care law-
14 suit, the full amount of a claimant's economic loss may be fully
15 recovered, subject to section 809(d)(2), without limitation.

16 (b) ADDITIONAL NON-ECONOMIC DAMAGES.—Subject to
17 section 809(d)(2), in any health care lawsuit, the amount of
18 non-economic damages may be as much as \$250,000, regard-
19 less of the number of parties against whom the action is
20 brought or the number of separate claims or actions brought
21 with respect to the same occurrence.

22 (c) NO DISCOUNT OF AWARD FOR NON-ECONOMIC DAM-
23 AGES.—In any health care lawsuit, an award for future non-
24 economic damages shall not be discounted to present value. The
25 jury shall not be informed of the maximum award for non-eco-
26 nomic damages. An award for non-economic damages in excess
27 of the amount specified in subsection (b) (or the amount pro-
28 vided under section 809(d)(2), if applicable) shall be reduced
29 either before the entry of judgment, or by amendment of the
30 judgment after entry, and such reduction shall be made before
31 accounting for any other reduction in damages required by law.
32 If separate awards are rendered for past and future non-eco-
33 nomic damages and the combined awards exceed the amount so
34 specified, the future non-economic damages shall be reduced
35 first.

36 (d) FAIR SHARE RULE.—In any health care lawsuit, each
37 party shall be liable for the party's several share of any dam-



1 ages only and not for the share of any other person. Each
2 party shall be liable only for the amount of damages allocated
3 to such party in direct proportion to such party's percentage
4 of responsibility. A separate judgment shall be rendered against
5 each such party for the amount allocated to such party. For
6 purposes of this section, the trier of fact shall determine the
7 proportion of responsibility of each party for the claimant's
8 harm.

9 (e) ADDITIONAL HEALTH BENEFITS.—In any health care
10 lawsuit, any party may introduce evidence of collateral source
11 benefits. If any party elects to introduce such evidence, the op-
12 posing party may introduce evidence of any amount paid or
13 contributed or reasonably likely to be paid or contributed in the
14 future by or on behalf of such opposing party to secure the
15 right to such collateral source benefits. No provider of collateral
16 source benefits shall recover any amount against the claimant
17 or receive any lien or credit against the claimant's recovery or
18 be equitably or legally subrogated to the right of the claimant
19 in a health care lawsuit. This subsection shall apply to a health
20 care lawsuit that is settled as well as a health care lawsuit that
21 is resolved by a fact finder.

22 (f) TREATMENT OF PUNITIVE DAMAGES.—

23 (1) GENERAL RULE.—Punitive damages may, to the
24 extent permitted by applicable State law, be awarded in any
25 health care lawsuit in any Federal or State court against
26 a defendant if the claimant establishes by clear and con-
27 vincing evidence that the harm suffered was the result of
28 conduct—

29 (A) specifically intended to cause harm; or

30 (B) conduct manifesting a conscious, flagrant in-
31 difference to the rights or safety of others.

32 (2) APPLICABILITY.—This subsection shall apply to
33 any such health care lawsuit on any theory where punitive
34 damages are sought. This subsection does not create a
35 cause of action for punitive damages.

36 (3) LIMITATION ON PUNITIVE DAMAGES.—The total
37 amount of punitive damages that may be awarded to a



1 claimant for losses resulting from the injury which is the
2 subject of such a health care lawsuit may not exceed the
3 greater of—

4 (A) 2 times the amount of economic damages, or

5 (B) \$250,000,

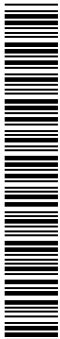
6 regardless of the number of parties against whom the ac-
7 tion is brought or the number of actions brought with re-
8 spect to the injury. Subject to section 802, this subsection
9 does not preempt or supersede any State or Federal law to
10 the extent that such law would further limit the award of
11 punitive damages.

12 (4) BIFURCATION.—At the request of any party, the
13 trier of fact shall consider in a separate proceeding whether
14 punitive damages are to be awarded and the amount of
15 such award. If a separate proceeding is requested, evidence
16 relevant only to the claim of punitive damages, as deter-
17 mined by applicable State law, shall be inadmissible in any
18 proceeding to determine whether actual damages are to be
19 awarded.

20 (g) LIMITATIONS ON APPLICABILITY OF THIS SECTION.—
21 This section applies only to health care lawsuits. Furthermore
22 only to the extent that—

23 (1) chapter 171 of title 28, United States Code, relat-
24 ing to tort procedure, permits the recovery of a greater
25 amount of damages than authorized by this section, such
26 chapter shall be superseded by this section; and

27 (2) only to the extent that either chapter 171 of title
28 28, United States Code, relating to tort procedure, or, sub-
29 ject to section 802, State law (with respect to procedural
30 and substantive matters), prohibits the introduction of evi-
31 dence regarding collateral source benefits or mandates or
32 permits subrogation or a lien on an award of damages for
33 the cost of providing collateral source benefits, such chap-
34 ter or law is superseded or preempted by this section.



1 **SEC. 805. AUTHORIZATION OF PAYMENT OF FUTURE**
2 **DAMAGES TO CLAIMANTS IN HEALTH CARE**
3 **LAWSUITS.**

4 (a) IN GENERAL.—In any health care lawsuit, if an award
5 of future damages, without reduction to present value, equaling
6 or exceeding \$50,000 is made against a party with sufficient
7 insurance or other assets to fund a period payment of such a
8 judgment, the court shall, at the request of any party, enter
9 a judgment ordering that the future damages be paid by peri-
10 odic payments in accordance with the Uniform Periodic Pay-
11 ment of Judgments Act promulgated by the National Con-
12 ference of Commissioners on Uniform State Laws in July
13 1990. This section applies to all actions which have not been
14 first set for trial or retrial prior to the effective date of this
15 title.

16 (b) LIMITATION ON APPLICABILITY OF THIS SECTION.—
17 Only to the extent that chapter 171 of title 28, United States
18 Code, relating to tort procedure, or, subject to section 802,
19 State law (with respect to both procedural and substantive
20 matters), reduces the applicability or scope of the regulation of
21 periodic payment of future damages as authorized in this sec-
22 tion, is such chapter or law preempted or superseded.

23 **SEC. 806. NO PUNITIVE DAMAGES FOR HEALTH CARE**
24 **PRODUCTS THAT COMPLY WITH FDA STAND-**
25 **ARDS.**

26 (a) GENERAL RULE.—In the case of any health care law-
27 suit, no punitive or exemplary damages may be awarded
28 against the manufacturer of a medical product based on a
29 claim that the medical product caused the claimant's harm if
30 the medical product complies with FDA standards.

31 (b) EXCEPTION.—Subsection (a) shall not apply in any
32 health care lawsuit in which—

33 (1) before or after the grant of FDA permission to
34 market a medical product, a person knowingly misrepres-
35 ents to or withholds from the FDA required information
36 that is material and relevant to the performance of such
37 medical product, if such misrepresentation or withholding



1 of information is causally related to the harm which the
2 claimant allegedly suffered; or

3 (2) a person makes an illegal payment to an official
4 of FDA for the purpose of either securing or maintaining
5 approval of such medical product.

6 **SEC. 807. EFFECT ON OTHER LAWS.**

7 This title does not affect the application of title XXI of
8 the Public Health Service Act (relating to the national vaccine
9 program). To the extent that this title is judged to be in con-
10 flict with such title XXI, then this title shall not apply to an
11 action brought under such title. If any aspect of such a civil
12 action is not governed by a Federal rule of law under such title,
13 then this title or otherwise applicable law (as determined under
14 this title) will apply to that aspect of the action.

15 **SEC. 808. DEFINITIONS.**

16 As used in this title:

17 (1) **ALTERNATIVE DISPUTE RESOLUTION.**—The term
18 “alternative dispute resolution” means a system that pro-
19 vides for the resolution of health care lawsuits in a manner
20 other than through a civil action brought in a State or
21 Federal Court.

22 (2) **AMOUNT RECOVERED BY CLAIMANTS.**—The term
23 “amount recovered by claimants” means the total amount
24 of damages awarded to a party, after taking into account
25 any reduction in damages required by this title or applica-
26 ble law, and after deducting any disbursements or costs in-
27 curred in connection with prosecution or settlement of a
28 claim, including all costs paid or advanced by any person.
29 Costs of health care incurred by the plaintiff and the attor-
30 neys’ office overhead costs or charges for legal services are
31 not deductible disbursements or costs for such purpose.
32 Such term does not include any punitive or exemplary dam-
33 ages.

34 (3) **CLAIMANT.**—The term “claimant” means any per-
35 son who asserts a health care liability claim or brings a
36 health care lawsuit, including a person who asserts or
37 claims a right to legal or equitable contribution, indemnity,



1 or subrogation, arising out of a health care lawsuit, and
2 any person on whose behalf such a claim is asserted or
3 such an action is brought, whether deceased, incompetent,
4 or a minor.

5 (4) COLLATERAL SOURCE BENEFITS.—The term “col-
6 lateral source benefits” means any amount paid or reason-
7 ably likely to be paid in the future to or on behalf of the
8 claimant, or any service, product or other benefit provided
9 or reasonably likely to be provided in the future to or on
10 behalf of the claimant, as a result of injury or wrongful
11 death, pursuant to—

12 (A) any State or Federal health, sickness, income-
13 disability, accident or workers’ compensation act;

14 (B) any health, sickness, income-disability, or acci-
15 dent insurance that provides health benefits or income-
16 disability coverage;

17 (C) any contract or agreement of any group, orga-
18 nization, partnership, or corporation to provide, pay
19 for, or reimburse the cost of medical, hospital, dental,
20 or income disability benefits; and

21 (D) any other publicly or privately funded pro-
22 gram.

23 (5) COMPLIES WITH FDA STANDARDS.—The term
24 “complies with FDA standards” means, in the case of any
25 medical product, that such product is either—

26 (A) subject to pre-market approval or review by
27 the Food and Drug Administration under section 505,
28 506, 510, 515 or 520 of the Federal Food, Drug, and
29 Cosmetic Act (21 U.S. C. 355, 356, 360, 360e, 360j)
30 or section 351 of the Public Health Service Act (42
31 U.S. C. 262) and such approval or review concerns the
32 adequacy of the packaging or labeling of such medical
33 product or the safety of the formulation or performance
34 of any aspect of such medical product which a health
35 care lawsuit claims caused the claimant’s harm, and
36 such medical product was marketed in conformity with
37 the regulations under such sections, or



(B) generally recognized as safe and effective pursuant to conditions established by the FDA and applicable FDA regulations, including those related to packaging and labeling.

(6) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(7) ECONOMIC LOSS.—The term “economic loss” means reasonable amounts incurred for necessary health treatment and medical expenses, lost wages, replacement service losses, and other pecuniary expenditures due to personal injuries suffered as a result of injury.

(8) FDA.—The term “FDA” means the Food and Drug Administration.

(9) HEALTH CARE GOODS OR SERVICES.—The term “health care goods or services” means any medical product, or any service provided by a health care provider or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(10) HEALTH CARE LAWSUIT.—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services, or any civil action concerning the provision of health care goods or services brought in a State or Federal Court or pursuant to an alternative dispute resolution procedure, against a health care provider or the manufacturer, distributor, supplier, marketer, promoter or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term “health care liability claim” means a demand by any per-



son (whether or not pursuant to an alternative dispute resolution system, an action in State court, or an action in Federal court) concerning the provision of health care goods or services, if made against a health care provider or the manufacturer, distributor, supplier, marketer, promoter or seller of a medical product, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision or use of (or the failure to provide or use) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action.

(12) HEALTH CARE PROVIDER.—The term “health care provider” means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care goods or services or whose health care goods or services are required to be so licensed, registered, or certified, or which are exempted from such requirement by other statute or regulation.

(13) INJURY.—The term “injury” means any illness, disease, or other harm that is the subject of a health care liability claim.

(14) MALICIOUS INTENT TO INJURE.—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

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

(16) NON-ECONOMIC LOSS.—The term “non-economic loss” means physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of com-



panionship, loss of services, loss of consortium, and any other non-pecuniary losses.

(17) RECOVERY.—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of a claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) 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, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(20) STATE LAW.—The term “State law” includes all constitutional provisions, statutes, laws, judicial decisions, rules, regulations, or other State action having the effect of law in any State.

SEC. 809. EFFECTIVE DATE; GENERAL PROVISIONS.

(a) IN GENERAL.—This title shall apply to any health care lawsuit brought in a Federal or State court, and to any health care liability claim subject to an alternative dispute resolution system, that is initiated on or after the date of enactment of this Act, except that any health care lawsuit arising from an injury occurring before the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

(b) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, relating to tort claims procedure and, subject to section 802, preempt State law to the extent that State law differs from any provisions of law established by or under this title.

(c) PROTECTION OF STATES’ RIGHTS.—Any issue that is not governed by any provision of law established by or under this title (including State standards of negligence) will be gov-



1 erned by otherwise applicable State or Federal law. Subject to
2 subsection (d)(2) and section 802, this title does not preempt
3 or supersede any law that imposes greater protections for
4 health care providers, plans, and organizations from liability,
5 loss, or damages that those provided by this title.

6 (d) RULE OF CONSTRUCTION.—No provision of this title
7 shall be construed to preempt—

8 (1) the implementation of any State sponsored or pri-
9 vate alternative dispute resolution program;

10 (2) pursuant to section 802, any State statutory limit
11 (whether enacted before, on, or after the date of the enact-
12 ment of this Act) on the total amount of economic, non-
13 economic, or punitive damages that may be awarded in a
14 health care lawsuit, whether or not such State statutory
15 limit permits the recovery of a greater or lesser amount of
16 such damages than is provided for under section 804; or

17 (3) any defense available to a party in a health care
18 lawsuit under any other provision of Federal law.

