

112TH CONGRESS  
1ST SESSION

# S. 12

To amend the Internal Revenue Code of 1986 to provide additional tax relief for private sector job creation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide additional tax relief for private sector job creation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Job Creation Act of 2011”.

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

Sec. 1. Short title; etc.

### TITLE I—TAX AND REGULATORY RELIEF

Sec. 101. Temporary employer payroll tax cut.

Sec. 102. Repeal of individual mandate.

- Sec. 103. Repeal of expansion of information reporting requirements.  
 Sec. 104. Environmental Protection Agency regulatory freeze.  
 Sec. 105. Repeal of sunset on increased limitations on small business expens-  
 ing.  
 Sec. 106. Permanent extension of research credit.

#### TITLE II—ENACTING REAL MEDICAL LIABILITY REFORM

- Sec. 201. Encouraging speedy resolution of claims.  
 Sec. 202. Compensating patient injury.  
 Sec. 203. Maximizing patient recovery.  
 Sec. 204. Additional health benefits.  
 Sec. 205. Punitive damages.  
 Sec. 206. Authorization of payment of future damages to claimants in health  
 care lawsuits.  
 Sec. 207. Definitions.  
 Sec. 208. Effect on other laws.  
 Sec. 209. State flexibility and protection of States' rights.  
 Sec. 210. Applicability; effective date.

## 1 **TITLE I—TAX AND REGULATORY** 2 **RELIEF**

### 3 **SEC. 101. TEMPORARY EMPLOYER PAYROLL TAX CUT.**

4 (a) IN GENERAL.—

5 (1) EMPLOYERS.—Section 601(a) of the Tax  
 6 Relief, Unemployment Insurance Reauthorization,  
 7 and Job Creation Act of 2010 is amended by strik-  
 8 ing “and” at the end of paragraph (1), by striking  
 9 the period at the end of paragraph (2), and by add-  
 10 ing at the end the following new paragraph:

11 “(3) with respect to remuneration received dur-  
 12 ing the payroll tax holiday period, the rate of tax  
 13 under 3111(a) of such Code shall be 4.2 percent (in-  
 14 cluding for purposes of determining the applicable  
 15 percentage under sections 3221(a) of such Code).”.

16 (2) SELF-EMPLOYED INDIVIDUALS.—Section  
 17 601(a) of such Act is amended by striking “10.40

1 percent” in paragraph (1) and inserting “8.40 per-  
2 cent”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 601 of the Tax Relief, Unemploy-  
5 ment Insurance Reauthorization, and Job Creation  
6 Act of 2010 is amended by striking subsection (b).

7 (2) Section 601(e)(2) of such Act is amended  
8 by striking “subsection (a)(2)” and inserting “para-  
9 graphs (2) and (3) of subsection (a)”.

10 (3) The headings for title VI and section 601  
11 of such Act are each amended by striking “em-  
12 ployee”.

13 (c) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by  
15 this section shall apply to wages paid and self-em-  
16 ployment income earned after December 31, 2010.

17 (2) SPECIAL TRANSITION RULE.—

18 (A) NONAPPLICATION OF REDUCTION DUR-  
19 ING FIRST QUARTER.—The amendments made  
20 by subsection (a)(1) shall not apply with respect  
21 to compensation paid during the first calendar  
22 quarter of 2011.

23 (B) CREDITING OF FIRST QUARTER EX-  
24 EMPTION DURING SECOND QUARTER.—The  
25 amount by which the tax imposed under sec-

1           tions 3111(a) and 3221(a) of the Internal Rev-  
 2           enue Code of 1986 would (but for the applica-  
 3           tion of subparagraph (A)) have been reduced  
 4           with respect to compensation paid by an em-  
 5           ployer during the first calendar quarter of 2011  
 6           shall be treated as a payment against the tax  
 7           imposed under section 3111(a) of such Code or  
 8           section 3121(a) of such Code, as the case may  
 9           be, with respect to the employer for the second  
 10          calendar quarter of 2011 which is made on the  
 11          date that such tax is due.

12 **SEC. 102. REPEAL OF INDIVIDUAL MANDATE.**

13          Section 5000A of the Internal Revenue Code of 1986,  
 14          as added by the Patient Protection and Affordable Care  
 15          Act, is amended by adding at the end the following new  
 16          subsection:

17          “(h) TERMINATION.—This section shall not apply  
 18          with respect to any month beginning after the date of the  
 19          enactment of this subsection.”.

20 **SEC. 103. REPEAL OF EXPANSION OF INFORMATION RE-**  
 21 **PORTING REQUIREMENTS.**

22          (a) IN GENERAL.—

23                 (1) REPEAL OF PAYMENTS FOR PROPERTY AND  
 24          OTHER GROSS PROCEEDS.—Subsection (b) of section  
 25          9006 of the Patient Protection and Affordable Care

1 Act, and the amendments made thereby, are hereby  
2 repealed; and the Internal Revenue Code of 1986  
3 shall be applied as if such subsection, and amend-  
4 ments, had never been enacted.

5 (2) REPEAL OF APPLICATION TO CORPORA-  
6 TIONS AND REGULATORY AUTHORITY.—

7 (A) IN GENERAL.—Section 6041 of the In-  
8 ternal Revenue Code of 1986, as amended by  
9 section 9006(a) of the Patient Protection and  
10 Affordable Care Act and section 2101 of the  
11 Small Business Jobs Act of 2010, is amended  
12 by striking subsections (i) and (j).

13 (B) EFFECTIVE DATE.—The amendment  
14 made by this paragraph shall apply to payments  
15 made after December 31, 2010.

16 (b) RESCISSION OF UNSPENT FEDERAL FUNDS TO  
17 OFFSET LOSS IN REVENUES.—

18 (1) IN GENERAL.—Notwithstanding any other  
19 provision of law, of all available unobligated funds,  
20 \$39,000,000,000 in appropriated discretionary funds  
21 are hereby rescinded.

22 (2) IMPLEMENTATION.—The Director of the  
23 Office of Management and Budget shall determine  
24 and identify from which appropriation accounts the  
25 rescission under subsection (a) shall apply and the

1 amount of such rescission that shall apply to each  
2 such account. Not later than 60 days after the date  
3 of the enactment of this Act, the Director of the Of-  
4 fice of Management and Budget shall submit a re-  
5 port to the Secretary of the Treasury and Congress  
6 of the accounts and amounts determined and identi-  
7 fied for rescission under the preceding sentence.

8 (3) EXCEPTION.—This subsection shall not  
9 apply to the unobligated funds of the Department of  
10 Defense or the Department of Veterans Affairs.

11 **SEC. 104. ENVIRONMENTAL PROTECTION AGENCY REGU-**  
12 **LATORY FREEZE.**

13 (a) IN GENERAL.—Notwithstanding any other provi-  
14 sion of law and beginning on the date of enactment of  
15 this Act, the Administrator of the Environmental Protec-  
16 tion Agency shall not promulgate or enforce any regulation  
17 for a period of 1 year, subject to subsection (b).

18 (b) EXCEPTION.—The Administrator of the Environ-  
19 mental Protection Agency may promulgate or enforce a  
20 regulation during the 1-year period described in subsection  
21 (a) if the Administrator determines that the promulgation  
22 or enforcement of the regulation is necessary for imme-  
23 diate health or safety reasons.

1 **SEC. 105. REPEAL OF SUNSET ON INCREASED LIMITATIONS**  
2 **ON SMALL BUSINESS EXPENSING.**

3 (a) **IN GENERAL.**—Subsection (b)(1) of section 179  
4 of the Internal Revenue Code of 1986, as amended by the  
5 Tax Relief, Unemployment Insurance Reauthorization,  
6 and Job Creation Act of 2010, is amended by striking  
7 “shall not exceed—” and all that follows and inserting  
8 “shall not exceed \$500,000.”.

9 (b) **REDUCTION IN LIMITATION.**—Subsection (b)(2)  
10 of section 179 of such Code, as amended by the Tax Re-  
11 lief, Unemployment Insurance Reauthorization, and Job  
12 Creation Act of 2010, is amended by striking “exceeds—  
13 ” and all that follows and inserting “exceeds  
14 \$2,000,000.”.

15 (c) **CONFORMING AMENDMENT.**—Section 179(b) of  
16 such Code, as amended by the Tax Relief, Unemployment  
17 Insurance Reauthorization, and Job Creation Act of 2010,  
18 is amended by striking paragraph (6).

19 (d) **COMPUTER SOFTWARE.**—Section  
20 179(d)(1)(A)(ii) of such Code, as amended by the Tax Re-  
21 lief, Unemployment Insurance Reauthorization, and Job  
22 Creation Act of 2010, is amended by striking “and before  
23 2013”.

24 (e) **REVOCATION OF ELECTION.**—Section 179(c)(2)  
25 of such Code, as amended by the Tax Relief, Unemploy-

1 ment Insurance Reauthorization, and Job Creation Act of  
2 2010, is amended to read as follows:

3           “(2) REVOCATION OF ELECTION.—Any election  
4           made under this section, and any specification con-  
5           tained in any such election, may be revoked by the  
6           taxpayer with respect to any property, and such rev-  
7           ocation, once made, shall be irrevocable.”.

8           (f) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to taxable years beginning after  
10          December 31, 2011.

11 **SEC. 106. PERMANENT EXTENSION OF RESEARCH CREDIT.**

12          (a) IN GENERAL.—Section 41 of the Internal Rev-  
13          enue Code of 1986 is amended by striking subsection (h).

14          (b) CONFORMING AMENDMENT.—Paragraph (1) of  
15          section 45C(b) of the Internal Revenue Code of 1986 is  
16          amended by striking subparagraph (D).

17          (c) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to taxable years beginning after  
19          December 31, 2010.

20                   **TITLE II—ENACTING REAL**  
21                   **MEDICAL LIABILITY REFORM**

22 **SEC. 201. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

23          The time for the commencement of a health care law-  
24          suit shall be 3 years after the date of manifestation of  
25          injury or 1 year after the claimant discovers, or through



1 the use of reasonable diligence should have discovered, the  
2 injury, whichever occurs first. In no event shall the time  
3 for commencement of a health care lawsuit exceed 3 years  
4 after the date of manifestation of injury unless tolled for  
5 any of the following—

6 (1) upon proof of fraud;

7 (2) intentional concealment; or

8 (3) the presence of a foreign body, which has no  
9 therapeutic or diagnostic purpose or effect, in the  
10 person of the injured person.

11 Actions by a minor shall be commenced within 3 years  
12 from the date of the alleged manifestation of injury except  
13 that actions by a minor under the full age of 6 years shall  
14 be commenced within 3 years of manifestation of injury  
15 or prior to the minor's 8th birthday, whichever provides  
16 a longer period. Such time limitation shall be tolled for  
17 minors for any period during which a parent or guardian  
18 and a health care provider or health care organization  
19 have committed fraud or collusion in the failure to bring  
20 an action on behalf of the injured minor.

21 **SEC. 202. COMPENSATING PATIENT INJURY.**

22 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
23 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
24 health care lawsuit, nothing in this title shall limit a claim-

1 ant's recovery of the full amount of the available economic  
2 damages, notwithstanding the limitation in subsection (b).

3 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
4 health care lawsuit, the amount of noneconomic damages,  
5 if available, may be as much as \$250,000, regardless of  
6 the number of parties against whom the action is brought  
7 or the number of separate claims or actions brought with  
8 respect to the same injury.

9 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
10 DAMAGES.—For purposes of applying the limitation in  
11 subsection (b), future noneconomic damages shall not be  
12 discounted to present value. The jury shall not be in-  
13 formed about the maximum award for noneconomic dam-  
14 ages. An award for noneconomic damages in excess of  
15 \$250,000 shall be reduced either before the entry of judg-  
16 ment, or by amendment of the judgment after entry of  
17 judgment, and such reduction shall be made before ac-  
18 counting for any other reduction in damages required by  
19 law. If separate awards are rendered for past and future  
20 noneconomic damages and the combined awards exceed  
21 \$250,000, the future noneconomic damages shall be re-  
22 duced first.

23 (d) FAIR SHARE RULE.—In any health care lawsuit,  
24 each party shall be liable for that party's several share  
25 of any damages only and not for the share of any other

1 person. Each party shall be liable only for the amount of  
2 damages allocated to such party in direct proportion to  
3 such party's percentage of responsibility. Whenever a  
4 judgment of liability is rendered as to any party, a sepa-  
5 rate judgment shall be rendered against each such party  
6 for the amount allocated to such party. For purposes of  
7 this section, the trier of fact shall determine the propor-  
8 tion of responsibility of each party for the claimant's  
9 harm.

10 **SEC. 203. MAXIMIZING PATIENT RECOVERY.**

11 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
12 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
13 suit, the court shall supervise the arrangements for pay-  
14 ment of damages to protect against conflicts of interest  
15 that may have the effect of reducing the amount of dam-  
16 ages awarded that are actually paid to claimants. In par-  
17 ticular, in any health care lawsuit in which the attorney  
18 for a party claims a financial stake in the outcome by vir-  
19 tue of a contingent fee, the court shall have the power  
20 to restrict the payment of a claimant's damage recovery  
21 to such attorney, and to redirect such damages to the  
22 claimant based upon the interests of justice and principles  
23 of equity. In no event shall the total of all contingent fees  
24 for representing all claimants in a health care lawsuit ex-  
25 ceed the following limits:

1           (1) 40 percent of the first \$50,000 recovered by  
2           the claimant(s).

3           (2) 33 $\frac{1}{3}$  percent of the next \$50,000 recovered  
4           by the claimant(s).

5           (3) 25 percent of the next \$500,000 recovered  
6           by the claimant(s).

7           (4) 15 percent of any amount by which the re-  
8           covery by the claimant(s) is in excess of \$600,000.

9           (b) APPLICABILITY.—The limitations in this section  
10          shall apply whether the recovery is by judgment, settle-  
11          ment, mediation, arbitration, or any other form of alter-  
12          native dispute resolution. In a health care lawsuit involv-  
13          ing a minor or incompetent person, a court retains the  
14          authority to authorize or approve a fee that is less than  
15          the maximum permitted under this section. The require-  
16          ment for court supervision in the first two sentences of  
17          subsection (a) applies only in civil actions.

18          **SEC. 204. ADDITIONAL HEALTH BENEFITS.**

19          In any health care lawsuit involving injury or wrong-  
20          ful death, any party may introduce evidence of collateral  
21          source benefits. If a party elects to introduce such evi-  
22          dence, any opposing party may introduce evidence of any  
23          amount paid or contributed or reasonably likely to be paid  
24          or contributed in the future by or on behalf of the oppos-  
25          ing party to secure the right to such collateral source bene-

1 fits. No provider of collateral source benefits shall recover  
2 any amount against the claimant or receive any lien or  
3 credit against the claimant's recovery or be equitably or  
4 legally subrogated to the right of the claimant in a health  
5 care lawsuit involving injury or wrongful death. This sec-  
6 tion shall apply to any health care lawsuit that is settled  
7 as well as a health care lawsuit that is resolved by a fact  
8 finder. This section shall not apply to section 1862(b) (42  
9 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
10 1396a(a)(25)) of the Social Security Act.

11 **SEC. 205. PUNITIVE DAMAGES.**

12 (a) IN GENERAL.—Punitive damages may, if other-  
13 wise permitted by applicable State or Federal law, be  
14 awarded against any person in a health care lawsuit only  
15 if it is proven by clear and convincing evidence that such  
16 person acted with malicious intent to injure the claimant,  
17 or that such person deliberately failed to avoid unneces-  
18 sary injury that such person knew the claimant was sub-  
19 stantially certain to suffer. In any health care lawsuit  
20 where no judgment for compensatory damages is rendered  
21 against such person, no punitive damages may be awarded  
22 with respect to the claim in such lawsuit. No demand for  
23 punitive damages shall be included in a health care lawsuit  
24 as initially filed. A court may allow a claimant to file an  
25 amended pleading for punitive damages only upon a mo-

1 tion by the claimant and after a finding by the court, upon  
 2 review of supporting and opposing affidavits or after a  
 3 hearing, after weighing the evidence, that the claimant has  
 4 established by a substantial probability that the claimant  
 5 will prevail on the claim for punitive damages. At the re-  
 6 quest of any party in a health care lawsuit, the trier of  
 7 fact shall consider in a separate proceeding—

8           (1) whether punitive damages are to be award-  
 9           ed and the amount of such award; and

10           (2) the amount of punitive damages following a  
 11           determination of punitive liability.

12 If a separate proceeding is requested, evidence relevant  
 13 only to the claim for punitive damages, as determined by  
 14 applicable State law, shall be inadmissible in any pro-  
 15 ceeding to determine whether compensatory damages are  
 16 to be awarded.

17       (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
 18       AGES.—

19           (1) FACTORS CONSIDERED.—In determining  
 20           the amount of punitive damages, if awarded, in a  
 21           health care lawsuit, the trier of fact shall consider  
 22           only the following—

23                   (A) the severity of the harm caused by the  
 24                   conduct of such party;

1 (B) the duration of the conduct or any  
2 concealment of it by such party;

3 (C) the profitability of the conduct to such  
4 party;

5 (D) the number of products sold or med-  
6 ical procedures rendered for compensation, as  
7 the case may be, by such party, of the kind  
8 causing the harm complained of by the claim-  
9 ant;

10 (E) any criminal penalties imposed on such  
11 party, as a result of the conduct complained of  
12 by the claimant; and

13 (F) the amount of any civil fines assessed  
14 against such party as a result of the conduct  
15 complained of by the claimant.

16 (2) MAXIMUM AWARD.—The amount of punitive  
17 damages, if awarded, in a health care lawsuit may  
18 be as much as \$250,000 or as much as two times  
19 the amount of economic damages awarded, which-  
20 ever is greater. The jury shall not be informed of  
21 this limitation.

1 **SEC. 206. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
2 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
3 **SUITS.**

4 (a) IN GENERAL.—In any health care lawsuit, if an  
5 award of future damages, without reduction to present  
6 value, equaling or exceeding \$50,000 is made against a  
7 party with sufficient insurance or other assets to fund a  
8 periodic payment of such a judgment, the court shall, at  
9 the request of any party, enter a judgment ordering that  
10 the future damages be paid by periodic payments. In any  
11 health care lawsuit, the court may be guided by the Uni-  
12 form Periodic Payment of Judgments Act promulgated by  
13 the National Conference of Commissioners on Uniform  
14 State Laws.

15 (b) APPLICABILITY.—This section applies to all ac-  
16 tions which have not been first set for trial or retrial be-  
17 fore the effective date of this title.

18 **SEC. 207. DEFINITIONS.**

19 In this title:

20 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-  
21 TEM; ADR.—The term “alternative dispute resolution  
22 system” or “ADR” means a system that provides  
23 for the resolution of health care lawsuits in a man-  
24 ner other than through a civil action brought in a  
25 State or Federal court.



1           (2) CLAIMANT.—The term “claimant” means  
2 any person who brings a health care lawsuit, includ-  
3 ing a person who asserts or claims a right to legal  
4 or equitable contribution, indemnity, or subrogation,  
5 arising out of a health care liability claim or action,  
6 and any person on whose behalf such a claim is as-  
7 serted or such an action is brought, whether de-  
8 ceased, incompetent, or a minor.

9           (3) COLLATERAL SOURCE BENEFITS.—The  
10 term “collateral source benefits” means any amount  
11 paid or reasonably likely to be paid in the future to  
12 or on behalf of the claimant, or any service, product,  
13 or other benefit provided or reasonably likely to be  
14 provided in the future to or on behalf of the claim-  
15 ant, as a result of the injury or wrongful death, pur-  
16 suant to—

17           (A) any State or Federal health, sickness,  
18 income-disability, accident, or workers’ com-  
19 pensation law;

20           (B) any health, sickness, income-disability,  
21 or accident insurance that provides health bene-  
22 fits or income-disability coverage;

23           (C) any contract or agreement of any  
24 group, organization, partnership, or corporation  
25 to provide, pay for, or reimburse the cost of

1           medical, hospital, dental, or income-disability  
2           benefits; and

3                   (D) any other publicly or privately funded  
4           program.

5           (4) COMPENSATORY DAMAGES.—The term  
6           “compensatory damages” means objectively  
7           verifiable monetary losses incurred as a result of the  
8           provision of, use of, or payment for (or failure to  
9           provide, use, or pay for) health care services or med-  
10          ical products, such as past and future medical ex-  
11          penses, loss of past and future earnings, cost of ob-  
12          taining domestic services, loss of employment, and  
13          loss of business or employment opportunities, dam-  
14          ages for physical and emotional pain, suffering, in-  
15          convenience, physical impairment, mental anguish,  
16          disfigurement, loss of enjoyment of life, loss of soci-  
17          ety and companionship, loss of consortium (other  
18          than loss of domestic service), hedonic damages, in-  
19          jury to reputation, and all other nonpecuniary losses  
20          of any kind or nature. The term “compensatory  
21          damages” includes economic damages and non-  
22          economic damages, as such terms are defined in this  
23          section.

24           (5) CONTINGENT FEE.—The term “contingent  
25          fee” includes all compensation to any person or per-

1        sons which is payable only if a recovery is effected  
2        on behalf of one or more claimants.

3            (6) ECONOMIC DAMAGES.—The term “economic  
4        damages” means objectively verifiable monetary  
5        losses incurred as a result of the provision of, use  
6        of, or payment for (or failure to provide, use, or pay  
7        for) health care services or medical products, such as  
8        past and future medical expenses, loss of past and  
9        future earnings, cost of obtaining domestic services,  
10       loss of employment, and loss of business or employ-  
11       ment opportunities.

12           (7) HEALTH CARE LAWSUIT.—The term  
13        “health care lawsuit” means any health care liability  
14        claim concerning the provision of health care goods  
15        or services or any medical product affecting inter-  
16        state commerce, or any health care liability action  
17        concerning the provision of health care goods or  
18        services or any medical product affecting interstate  
19        commerce, brought in a State or Federal court or  
20        pursuant to an alternative dispute resolution system,  
21        against a health care provider, a health care organi-  
22        zation, or the manufacturer, distributor, supplier,  
23        marketer, promoter, or seller of a medical product,  
24        regardless of the theory of liability on which the  
25        claim is based, or the number of claimants, plain-

1 tiffs, defendants, or other parties, or the number of  
2 claims or causes of action, in which the claimant al-  
3 leges a health care liability claim. Such term does  
4 not include a claim or action which is based on  
5 criminal liability; which seeks civil fines or penalties  
6 paid to Federal, State, or local government; or which  
7 is grounded in antitrust.

8 (8) HEALTH CARE LIABILITY ACTION.—The  
9 term “health care liability action” means a civil ac-  
10 tion brought in a State or Federal court or pursuant  
11 to an alternative dispute resolution system, against  
12 a health care provider, a health care organization, or  
13 the manufacturer, distributor, supplier, marketer,  
14 promoter, or seller of a medical product, regardless  
15 of the theory of liability on which the claim is based,  
16 or the number of plaintiffs, defendants, or other par-  
17 ties, or the number of causes of action, in which the  
18 claimant alleges a health care liability claim.

19 (9) HEALTH CARE LIABILITY CLAIM.—The  
20 term “health care liability claim” means a demand  
21 by any person, whether or not pursuant to ADR,  
22 against a health care provider, health care organiza-  
23 tion, or the manufacturer, distributor, supplier, mar-  
24 keter, promoter, or seller of a medical product, in-  
25 cluding, but not limited to, third-party claims, cross-

1 claims, counter-claims, or contribution claims, which  
2 are based upon the provision of, use of, or payment  
3 for (or the failure to provide, use, or pay for) health  
4 care services or medical products, regardless of the  
5 theory of liability on which the claim is based, or the  
6 number of plaintiffs, defendants, or other parties, or  
7 the number of causes of action.

8 (10) HEALTH CARE ORGANIZATION.—The term  
9 “health care organization” means any person or en-  
10 tity which is obligated to provide or pay for health  
11 benefits under any health plan, including any person  
12 or entity acting under a contract or arrangement  
13 with a health care organization to provide or admin-  
14 ister any health benefit.

15 (11) HEALTH CARE PROVIDER.—The term  
16 “health care provider” means any person or entity  
17 required by State or Federal laws or regulations to  
18 be licensed, registered, or certified to provide health  
19 care services, and being either so licensed, reg-  
20 istered, or certified, or exempted from such require-  
21 ment by other statute or regulation.

22 (12) HEALTH CARE GOODS OR SERVICES.—The  
23 term “health care goods or services” means any  
24 goods or services provided by a health care organiza-  
25 tion, provider, or by any individual working under

1 the supervision of a health care provider, that relates  
2 to the diagnosis, prevention, or treatment of any  
3 human disease or impairment, or the assessment or  
4 care of the health of human beings.

5 (13) MALICIOUS INTENT TO INJURE.—The  
6 term “malicious intent to injure” means inten-  
7 tionally causing or attempting to cause physical in-  
8 jury other than providing health care goods or serv-  
9 ices.

10 (14) MEDICAL PRODUCT.—The term “medical  
11 product” means a drug, device, or biological product  
12 intended for humans, and the terms “drug”, “de-  
13 vice”, and “biological product” have the meanings  
14 given such terms in sections 201(g)(1) and 201(h)  
15 of the Federal Food, Drug and Cosmetic Act (21  
16 U.S.C. 321(g)(1) and (h)) and section 351(a) of the  
17 Public Health Service Act (42 U.S.C. 262(a)), re-  
18 spectively, including any component or raw material  
19 used therein, but excluding health care services.

20 (15) NONECONOMIC DAMAGES.—The term  
21 “noneconomic damages” means damages for phys-  
22 ical and emotional pain, suffering, inconvenience,  
23 physical impairment, mental anguish, disfigurement,  
24 loss of enjoyment of life, loss of society and compan-  
25 ionship, loss of consortium (other than loss of do-

1       mestic service), hedonic damages, injury to reputa-  
2       tion, and all other nonpecuniary losses of any kind  
3       or nature.

4               (16) PUNITIVE DAMAGES.—The term “punitive  
5       damages” means damages awarded, for the purpose  
6       of punishment or deterrence, and not solely for com-  
7       pensatory purposes, against a health care provider,  
8       health care organization, or a manufacturer, dis-  
9       tributor, or supplier of a medical product. Punitive  
10      damages are neither economic nor noneconomic  
11      damages.

12              (17) RECOVERY.—The term “recovery” means  
13      the net sum recovered after deducting any disburse-  
14      ments or costs incurred in connection with prosecu-  
15      tion or settlement of the claim, including all costs  
16      paid or advanced by any person. Costs of health care  
17      incurred by the plaintiff and the attorneys’ office  
18      overhead costs or charges for legal services are not  
19      deductible disbursements or costs for such purpose.

20              (18) STATE.—The term “State” means each of  
21      the several States, the District of Columbia, the  
22      Commonwealth of Puerto Rico, the Virgin Islands,  
23      Guam, American Samoa, the Northern Mariana Is-  
24      lands, the Trust Territory of the Pacific Islands, and

1 any other territory or possession of the United  
2 States, or any political subdivision thereof.

3 **SEC. 208. EFFECT ON OTHER LAWS.**

4 (a) VACCINE INJURY.—

5 (1) To the extent that title XXI of the Public  
6 Health Service Act establishes a Federal rule of law  
7 applicable to a civil action brought for a vaccine-re-  
8 lated injury or death—

9 (A) this title does not affect the application  
10 of the rule of law to such an action; and

11 (B) any rule of law prescribed by this title  
12 in conflict with a rule of law of such title XXI  
13 shall not apply to such action.

14 (2) If there is an aspect of a civil action  
15 brought for a vaccine-related injury or death to  
16 which a Federal rule of law under title XXI of the  
17 Public Health Service Act does not apply, then this  
18 title or otherwise applicable law (as determined  
19 under this title) will apply to such aspect of such ac-  
20 tion.

21 (b) OTHER FEDERAL LAW.—Except as provided in  
22 this section, nothing in this title shall be deemed to affect  
23 any defense available to a defendant in a health care law-  
24 suit or action under any other provision of Federal law.



1 **SEC. 209. STATE FLEXIBILITY AND PROTECTION OF**  
2 **STATES' RIGHTS.**

3 (a) **HEALTH CARE LAWSUITS.**—The provisions gov-  
4 erning health care lawsuits set forth in this title preempt,  
5 subject to subsections (b) and (c), State law to the extent  
6 that State law prevents the application of any provisions  
7 of law established by or under this title. The provisions  
8 governing health care lawsuits set forth in this title super-  
9 sede chapter 171 of title 28, United States Code, to the  
10 extent that such chapter—

11 (1) provides for a greater amount of damages  
12 or contingent fees, a longer period in which a health  
13 care lawsuit may be commenced, or a reduced appli-  
14 cability or scope of periodic payment of future dam-  
15 ages, than provided in this title; or

16 (2) prohibits the introduction of evidence re-  
17 garding collateral source benefits, or mandates or  
18 permits subrogation or a lien on collateral source  
19 benefits.

20 (b) **PROTECTION OF STATES' RIGHTS AND OTHER**  
21 **LAWS.**—(1) Any issue that is not governed by any provi-  
22 sion of law established by or under this title (including  
23 State standards of negligence) shall be governed by other-  
24 wise applicable State or Federal law.

25 (2) This title shall not preempt or supersede any  
26 State or Federal law that imposes greater procedural or

1 substantive protections for health care providers and  
2 health care organizations from liability, loss, or damages  
3 than those provided by this title or create a cause of ac-  
4 tion.

5 (c) STATE FLEXIBILITY.—No provision of this title  
6 shall be construed to preempt—

7 (1) any State law (whether effective before, on,  
8 or after the date of the enactment of this Act) that  
9 specifies a particular monetary amount of compen-  
10 satory or punitive damages (or the total amount of  
11 damages) that may be awarded in a health care law-  
12 suit, regardless of whether such monetary amount is  
13 greater or lesser than is provided for under this title,  
14 notwithstanding section 202(a); or

15 (2) any defense available to a party in a health  
16 care lawsuit under any other provision of State or  
17 Federal law.

18 **SEC. 210. APPLICABILITY; EFFECTIVE DATE.**

19 This title shall apply to any health care lawsuit  
20 brought in a Federal or State court, or subject to an alter-  
21 native dispute resolution system, that is initiated on or  
22 after the date of the enactment of this Act, except that  
23 any health care lawsuit arising from an injury occurring  
24 prior to the date of the enactment of this Act shall be

- 1 governed by the applicable statute of limitations provisions
- 2 in effect at the time the injury occurred.

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