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Products Liability: A Legal Overview

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SUMMARY

Products liability refers to the liability of a manufacturer or seller for injury caused by his product to the person or property of a buyer or third party. Legal developments starting in the 1960s, particularly the adoption of strict tort liability, have made it substantially easier for persons injured by defective products to recover damages. Starting in the 1980s, however, many states enacted tort reform legislation that limited the rights of injured parties. Advocates for consumers and plaintiffs view strong products liability law as necessary to ensure adequate compensation for injured workers and consumers and to furnish an incentive for the manufacture of safe products. Manufacturers and their insurers, by contrast, contend that many products liability judgments are unwarranted or excessive and that national uniformity in products liability law is needed. Therefore, they favor replacing the 50 state products liability laws with one federal law. In the 109th Congress, several bills have been introduced that would affect various aspects of products liability law (H.R. 5, H.R. 534, H.R. 554, H.R. 650, H.R. 800, H.R. 1360, H.R. 1363, H.R. 1757, H.R. 1957, H.R. 2357, H.R. 3509, S. 3, S. 354, S. 366, S. 367, S. 397, S. 852, S. 908).

MOST RECENT DEVELOPMENTS

On July 28, 2005, the House passed H.R. 5, which would limit recovery in medical malpractice suits and products liability suits that allege injuries resulting from defective medical products, including drugs. For additional information, see CRS Report RS22054, *Medical Malpractice Liability Reform: H.R. 5, 109th Congress*, by Henry Cohen.

On October 19, 2005, the House passed H.R. 554, the Personal Responsibility in Food Consumption Act. H.R. 554 would prohibit suits "against a manufacturer, marketer, distributor, advertiser, or seller" of a food, or a trade association, claiming that a person's "accumulated acts of consumption" of the food caused "weight gain, obesity, or a health condition that is associated with a person's weight gain or obesity." The bill would not, however, prohibit (1) "an action based on allegations of breach of express contract or express warranty, provided that the grounds for recovery alleged in such action are unrelated to a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity," (2) an action charging that the defendant "knowingly violated a Federal or State statute applicable to the marketing, advertisement, or labeling of the [food] with intent for a person to rely on that violation," and the person relied on the violation and his reliance was the proximate cause of his weight gain, obesity, or health condition associated with weight gain or obesity; or (3) actions brought by the Federal Trade Commission or Food and Drug Administration.

On October 26, 2005, the President signed S. 397, 109th Congress, making it Public Law 109-92. This statute, the Protection of Lawful Commerce in Arms Act, prohibits "a civil action or proceeding or an administrative proceeding," except in six circumstances, against a manufacturer or seller of a firearm or ammunition, or a trade association, for damages "resulting from the criminal or unlawful misuse" of a firearm or ammunition. The exceptions cause the statute not to bar suits if, among other circumstances, the defendant violated a statute or engaged in negligent entrustment or an act of negligence per se. One of the exceptions ensures that the Bureau of Alcohol, Tobacco, Firearms and Explosives may still bring proceedings against gun manufacturers and sellers. Section 5 of P.L. 109-92 is a separate law called the Child Safety Lock Act of 2005. With exceptions, it requires a "secure gun storage or safety device" (as defined in 18 U.S.C. § 921(a)(34)) on handguns, and provides that a person who has lawful possession and control of a handgun, and who uses such a device, is entitled to the same immunity as granted to gun manufacturers, sellers, and trade associations by P.L. 109-92. See CRS Report RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis Public Law 109-92 (2005)*, by Henry Cohen.

BACKGROUND AND ANALYSIS

Products liability, which is primarily a matter of state law, is generally based on strict tort liability rather than on negligence. This means that a plaintiff need prove only that the defendant sold a defective product and that the defect was the proximate cause of the plaintiff's injuries. Due care on the part of the defendant is ordinarily immaterial. The purpose of strict tort liability is "to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than by

the injured persons who are powerless to protect themselves" (*Greenman v. Yuba Power Products, Inc.*, 377 P.2d 897 (1963)).

The Federal Interagency Task Force on Product Liability, under the direction of the Department of Commerce, in its Final Report issued November 1, 1977, found that the cost of product liability insurance had risen dramatically, making it more difficult for some small firms to obtain adequate insurance coverage. The major causes of the dramatic rise in rates, the Task Force found, were irrational premium setting procedures by insurance companies, the manufacture of products that are not as safe as current technologies would allow, and uncertainties as to how personal injury litigation is conducted.

On April 6, 1978, the Department of Commerce released an *Options Paper on Product Liability and Accident Compensation Issues*, 43 *Federal Register* 14612. It included a model bill entitled, "Product Liability Self-Insurance Act of 1978." On September 11, 1978, the Department published a summary of over 300 comments submitted to it on its Options Paper (43 *Federal Register* 40438).

On July 20, 1978, the Carter Administration unveiled its program to deal with product liability problems. The proposals generally followed those suggested by the Department of Commerce in its Options Paper. The Administration also directed that a model uniform product liability law be prepared to add stability to products liability law, which varies from state to state.

The Department of Commerce subsequently published a Model Uniform Product Liability Act. See 44 *Federal Register* 2996 (January 12, 1979) for the draft version and 44 *Federal Register* 62714 (October 31, 1979) for the final version. Although intended for enactment by the states, the draft version was introduced in the 96th Congress as H.R. 1676, and the final version was introduced as H.R. 5976 (both by Representative LaFalce). Hearings on the two versions were held, but neither was enacted.

In October 1985, Attorney General Meese established the Tort Policy Working Group, which consisted of representatives of ten Federal agencies and the White House. In February, 1986, the group issued its report: "Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis of Insurance Availability and Affordability." The report made eight recommendations, including the elimination of joint and several liability and of the collateral source rule, a $100,000 cap on non-economic damages, and a 25% cap on the first $100,000 in lawyer's contingent fees (see "Glossary" regarding terms used in this sentence). In March 1987, the Tort Policy Working Group issued another report, "An Update on the Liability Crisis."

During the 1980s, in response to the liability insurance "crisis," many states enacted tort reforms intended to limit the rights of injured parties. Some states limited the right of plaintiff to sue product sellers other than the manufacturer; some states permitted awards of punitive damages only upon proof by "clear and convincing" evidence, or required that a portion of punitive damages be paid to a state fund; some states enacted caps on punitive damages or on non-economic damages, such as pain and suffering; some states limited or eliminated joint and several liability or the collateral source rule; and some enacted a statute of repose. (See "Glossary" for an explanation of these terms.) State reforms continued to be enacted through 1990s and to the present day.

Consumer representatives and plaintiffs' attorneys generally oppose limiting injured parties' rights in products liability suits; they consider the present system necessary to provide incentives for the manufacture of safe products and to ensure adequate compensation for injured workers and consumers. Insurance companies and product manufacturers, by contrast, hoping to reduce the amount currently paid as the result of products liability suits, and seeking national uniformity in products liability law, have supported federal products liability reform.

A federal products liability statute could bring about national uniformity with respect to some issues; some proposed legislation, for example, has included a national statute of limitations and statute of repose for products liability suits. However, some legislative provisions, such as one that establishes a standard of conduct for the award of punitive damages, are necessarily subject to varying interpretations by every federal and state court, unless the Supreme Court establishes a national interpretation of it. Even if the Supreme Court does so, such a provision's application to the facts of particular cases may vary among juries. Therefore, the possibility of uniformity should not be overestimated.

Glossary

The extent to which each of the following concepts is applicable in particular products liability lawsuits depends upon the relevant state law.

Alteration of product. A possible contributing cause to an injury that may be performed by a plaintiff or a third party, such as a plaintiff's employer; it may reduce or eliminate a defendant's liability.

Assumption of risk. A form of contributory fault by a plaintiff; it may reduce or eliminate a defendant's liability.

Breach of warranty. A basis for liability that does not require the plaintiff to prove that the defendant was negligent, but does permit the defendant to raise certain contract law defenses to avoid liability.

Collateral source rule. The rule that a plaintiff's damages will not be reduced by amounts he recovered from sources other than the defendant, such as health insurance benefits.

Comparative negligence. The rule that plaintiff's recovery will be reduced in proportion to the degree that his own negligence (or other fault) was responsible for his injury. In its modified form, recovery is barred if the plaintiff's responsibility exceeds a specific degree, such as 50%.

Contributory negligence. Negligence (or other fault) on the part of the plaintiff that is wholly or partially responsible for his injury. In a few states, any degree of contributory negligence will totally bar recovery.

Design defect. A defect resulting from a product that, although manufactured as it had been designed, was not designed as safely as it should have been.

Economic damages. Out-of-pocket expenses incurred by the plaintiff, such as medical bills or loss of income.

Failure to warn. A defect consisting of the defendant's failure to provide adequate warnings or instructions regarding the use of its product.

Government contractor defense. A rule established by the Supreme Court enabling a defendant whose product complied with federal government contract specifications to avoid liability in some cases. Boyle v. United Technologies Corp., 487 U.S. 500 (1988).

Government standards defense. A rule in a few states enabling a defendant whose product complied with government safety standards to avoid liability or to establish a presumption that its product was not defective.

Joint and several liability. The rule that each defendant who contributes to causing a plaintiff's injury may be held individually liable for the total damages.

Lawyers' contingent fees. Fees payable only upon recovery of damages, based upon a percentage of the recovery.

Manufacturing defect. A defect resulting from a product's not having been manufactured as it had been designed. Compare with "Design defect," supra.

Market share liability. Liability for the percentage of a plaintiff's damages equal to the defendant's market share of the injury-causing product; a few cases have held market share liability applicable where a plaintiff cannot prove that a particular defendant manufactured the injury-causing product.

Misuse of product. A form of contributory fault by a plaintiff; it may reduce or eliminate a defendant's liability.

Negligence. Breach of a duty to exercise due care; it is the traditional non-intentional tort standard in cases not based upon strict liability.

No-fault recovery. Recovery permitted in the absence of fault; it is not the law in any state with respect to products liability. If adopted in the product liability context it would permit recovery in the absence not only of negligence (as strict tort liability does), but in the absence of a product defect.

Non-economic damages. Damages payable for items other than out-of-pocket expenses, such as pain and suffering or punitive damages. Statutory caps on non-economic damages, however, are generally distinct from statutory caps on punitive damages.

Patent danger rule. The rule that a manufacturer is not liable for an injury caused by a design defect if the danger should have been obvious to the product user.

Periodic payments of future damages. Payments by a defendant for a plaintiff's future expenses on a periodic basis rather than in a lump sum.

Post-manufacturing improvements. Improvements in a product's design that occur after an injury and which plaintiffs seek to introduce in court as evidence that an injury-causing product was defective.

Punitive damages. Damages awarded, in addition to economic damages and other non-economic damages, to punish a defendant for willful or wanton conduct.

Restatement (Second) of Torts. A statement of tort law written by legal scholars; section 402A, which provides for strict tort liability for injuries caused by defective products, has been adopted by most states. On May 20, 1997, the American Law Institute adopted Restatement of the Law (3d), Torts: Product Liability, which is intended to replace section 402A.

State of the art defense. The defense that permits a defendant to avoid liability in a design defect case if at the time of manufacture there was no feasible safer design available, or in a failure to warn case if at the time of manufacture there was no reasonable way that the defendant could have known of the danger he failed to warn against.

Statute of limitations. A statute specifying the number of years after injury occurs, or is discovered, or its cause is discovered, within which suit must be filed.

Statute of repose. A statute specifying the number of years after a product is first sold or distributed within which suit must be filed; it supplements the statute of limitations. Manufacturers favor statutes of repose because they preclude recovery where products are old; consumers oppose them because they result in suits being barred before injuries even occur.

Strict tort liability. Liability established if a plaintiff proves that a product defect caused an injury; the plaintiff need not prove that the defendant was negligent.

Useful life limitation. A period of time set forth by statute after which a product's useful life is deemed over and suit is barred or a presumption that the product was not defective is created; this is similar to a statute of repose.

Workers' compensation. Statutes in every state providing for limited no-fault compensation against employers by workers injured on the job. Receipt of such compensation ordinarily precludes a worker from suing his employer; it does not preclude him from suing a product manufacturer.

Federal Statutes Enacted, 97th-108th Congresses

The 97th Congress enacted P.L. 97-45, the Product Liability Risk Retention Act of 1981. The 98th Congress enacted P.L. 98-193, a clarification of the Product Liability Risk Retention Act of 1981. This statute was intended to permit "product manufacturers, sellers, and distributors to purchase ... insurance on a group basis or to self-insure through insurance cooperatives called 'risk retention groups.'" S.Rept. 97-192, 97th Cong., 1st Sess. Federal legislation was necessary to accomplish this because many states have laws that would make

the formation of such groups impractical on an interstate basis. The statute therefore exempts purchasing groups and risk retention groups from most regulation by states other than the ones in which they are chartered.

The 99th Congress enacted the Risk Retention Amendments of 1986, P.L. 99-563, which expanded the scope of the Product Liability Risk Retention Act of 1981 to enable risk retention groups and purchasing groups to provide all types of liability insurance, not only products liability insurance.

The 99th Congress also enacted the National Childhood Vaccine Injury Act of 1986, P.L. 99-660, which has been amended by every subsequent Congress. As amended, the act requires most persons suffering vaccine-related injuries, prior to filing a tort action, to file a claim in the U.S. Court of Federal Claims for no-fault compensation through the National Vaccine Injury Compensation Program established by the act. Under the Program, compensation for pain and suffering is limited to $250,000. A party not satisfied with the compensation awarded under the Program may file a tort action under state law, but subject to some limitations. Although recovery under the Program is limited, it was hoped that "the relative certainty and generosity of the system's awards will divert a significant number of potential plaintiffs from litigation." H.Rept. 99-908, Part 1, 99th Cong., 2d sess. 13 (1986).

On August 17, 1994, the President signed into law the General Aviation Revitalization Act, P.L. 103-298, which established an 18-year statute of repose (see glossary) for planes with fewer than 20 seats that are not used in scheduled service. 49 U.S.C. § 40101 note.

The 104th Congress passed a products liability bill, H.R. 956, but failed to override President Clinton's veto of it.

The 105th Congress enacted H.R. 872, the Biomaterials Access Assurance Act of 1998 (P.L. 105-230), which limits the products liability under state law of biomaterials suppliers, which it defines as an entity that supplies a component part or raw materials for use in the manufacture of an implant.

The 106th Congress enacted H.R. 775, the Y2K Act (P.L. 106-37), which limits contractual and tort liability under state law in suits, other than those for personal injury or wrongful death, "in which the plaintiff's alleged harm or injury arises from or is related to an actual or potential Y2K failure...."

The 107th Congress enacted the Homeland Security Act of 2002 (P.L. 107-296), three sections of which limit the products liability of various defendants: section 304 immunizes manufacturers and administrators of smallpox vaccine from liability, section 863 limits the liability of sellers of anti-terrorism technology, and sections 1714-1717 limit the liability of manufacturers and administrators of the components and ingredients of vaccines. These provisions are discussed in CRS Report RL31649, *Homeland Security Act of 2002: Tort Liability Provisions*, by Henry Cohen.

The 108th Congress enacted P.L. 108-7, Division L, § 102, of which repealed 1714-1717 of P.L. 107-296 (2002).

LEGISLATION

H.R. 5 (Gingrey), H.R. 534 (Cox)

Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act. Identical bills. H.R. 534 introduced February 2, 2005; H.R. 5 introduced July 21, 2005. Both bills referred to the House Judiciary Committee and House Energy and Commerce Committee. The House passed H.R. 5 without amendment on July 28, 2005. H.R. 5 would limit liability for injuries caused not only by medical malpractice, but also by defective medical products (e.g., drugs, medical devices). Among other things, H.R. 5 would impose caps on punitive and non-economic damages in those states that do not have any such caps. H.R. 5 would eliminate punitive damages in injury claims involving medical products approved by the Food and Drug Administration (FDA) or recognized as safe and effective under FDA regulations. See CRS Report RS22054, *Medical Malpractice Liability Reform: H.R. 5, 109th Congress*, by Henry Cohen.

H.R. 554 (Keller)

Personal Responsibility in Food Consumption Act. Introduced February 2, 2005. Reported with amendments by the House Judiciary Committee on June 14, 2005 (H.Rept. 109-130). Passed by the House on October 19, 2005, without amendment except for technical changes to section 3(d), concerning pleadings. H.R. 554, as passed, would prohibit suits "against a manufacturer, marketer, distributor, advertiser, or seller" of a food, or a trade association, claiming that a person's "accumulated acts of consumption" of the food caused "weight gain, obesity, or a health condition that is associated with a person's weight gain or obesity." The bill would not, however, prohibit (1) "an action based on allegations of breach of express contract or express warranty, provided that the grounds for recovery alleged in such action are unrelated to a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity," (2) an action charging that the defendant "knowingly violated a Federal or State statute applicable to the marketing, advertisement, or labeling of the [food] with intent for a person to rely on that violation," and the person relied on the violation and his reliance was the proximate cause of his weight gain, obesity, or health condition associated with weight gain or obesity; or (3) actions brought by the Federal Trade Commission or Food and Drug Administration.

H.R. 650 (Keller)

Vaccine Accessibility for Children and Seniors (VACS) Act. Introduced February 8, 2005. Referred to the House Energy and Commerce Committee and the House Judiciary Committee. H.R. 650 would amend the Public Health Service Act to create an exclusive federal cause of action for claims of vaccine-related injury after January 1, 1988, other than those handled through the National Vaccine Injury Compensation Program. The bill would also allow for suspension of attorneys who repeatedly violate the Federal Rules of Civil Procedure with respect to the filing of frivolous vaccine-related claims. H.R. 650 would also amend the procedures governing civil actions for vaccine-related injuries by requiring reliable scientific evidence that demonstrates that the vaccine was the cause of the claimant's injury. In addition, the bill would require the United States Attorney General and the Secretary of Health and Human Services to submit a joint report containing recommendations for making the National Vaccine Injury Compensation Program more efficient and less adversarial.

H.R. 800 (Stearns)

Protection of Lawful Commerce in Arms Act. Introduced February 15, 2005. Reported without amendment by the House Judiciary Committee on June 14, 2005 (H.Rept. 109-124). The bill as reported would prohibit suits, except in five circumstances, against manufacturers and sellers of firearms and ammunition, and against trade associations, for damages arising from the unlawful use of firearms or ammunition by the plaintiff or a third person. Identical to S. 397 as S. 397 was introduced. See CRS Report RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis of Public Law 109-92 (2005)*, by Henry Cohen.

H.R. 1360 (Kirk)

Fairness in Asbestos Injury Resolution (FAIR) Act. Introduced March 17, 2005. Referred to House Judiciary, Energy and Commerce, Ways and Means, Education and the Workforce, and Financial Services Committees. H.R. 1360 would create a federal administrative compensation program for asbestos claims. To handle these claims, the bill would establish within the Department of Labor the Office of Asbestos Disease Compensation. The Office would make awards to claimants from the Asbestos Injury Claims Resolution Fund, which would be funded by contributions from defendants in pending asbestos cases ($90 billion) and insurers of those defendants ($46 billion). The bill would establish ten levels of awards based on seriousness of injury and exposure to asbestos. See CRS Report RS22088, *Fairness in Asbestos Injury Resolution Act of 2005 (H.R. 1360, 109th Congress)*, by Henry Cohen and Nathan Brooks.

H.R. 1363 (Chabot)

Workplace Goods Job Growth and Competitiveness Act. Introduced March 17, 2005. Referred to House Judiciary Committee. The bill would create an 18-year statute of repose protecting manufacturers and sellers in actions for damages to personal property involving certain commercial products expected to last longer than three years. The statute of repose would also apply to a damages action for death or personal injury where the victim is eligible to receive workers' compensation and the injury is not a "toxic" one. The statute of repose would not apply to actions involving a "motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire," and certain environmental damages. In addition, for a covered product with an express warranty beyond 18 years, the statute of repose would not apply until the end of the warranty.

H.R. 1757 (Andrews)

Introduced April 21, 2005. Referred to the House Judiciary Committee and the House Energy and Commerce Committee. The bill would require an award of treble damages to any claimant suffering injury from a product that is not in compliance with a voluntary or mandatory standard of the Consumer Products Safety Commission.

H.R. 1957 (Cannon)

The Asbestos Compensation Fairness Act of 2005. Introduced April 28, 2005. Referred to the House Judiciary Committee. The bill would give federal courts original jurisdiction over all asbestos claims and silica claims, and would establish the level of physical impairment that claimants would have to show to receive compensation. H.R. 1957 would limit a defendant's liability in asbestos and silica cases to that defendant's percentage of fault, and would eliminate punitive damages for asbestos claims and silica claims. Claimants could recover no more than $250,000 for noneconomic damages, except that those

claimants suffering from mesothelioma could recover up to $500,000 for noneconomic damages. Awards in asbestos and silica cases would be reduced by the amount of collateral source compensation received by the claimants.

H.R. 2357 (Shuster)

The Respirator Access Assurance Act of 2005. Introduced May 23, 2005. Referred to House Judiciary Committee and House Energy and Commerce Committee. H.R. 2357 would shield manufacturers and sellers of respirators from liability for defective design or warning in actions involving respirators that were approved by the National Institute on Occupational Safety and Health (NIOSH) and manufactured in compliance with NIOSH design and labeling standards.

H.R. 3509 (Chabot)

The Workplace Goods Job Growth and Competitiveness Act of 2005. Introduced July 28, 2005. Referred to the House Judiciary Committee. The bill is identical to H.R. 1363, except that H.R. 3509 would substitute a 12-year statute of repose for H.R. 1363's proposed 18-year statute of repose.

S. 3 (Gregg)

Protecting America in the War on Terror Act. Introduced January 24, 2005. Referred to Senate Finance Committee. Subchapter B of the bill would create exclusive federal court jurisdiction over injury claims regarding certain products developed as countermeasures to bioterrorist attacks or for preventing pandemics/epidemics. Punitive damages and the collateral source rule would be abolished for such claims, and noneconomic damages would be capped at $250,000. Manufacturers of the aforementioned products could also benefit from the government contractor defense. Bill would also call for a study of litigation surrounding the National Vaccine Injury Compensation Program and amend the Social Security Act to make more children eligible to receive federally funded pediatric vaccines.

S. 354 (Ensign)

Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act. Introduced February 10, 2005. Referred to Senate Committee on Health, Education, Labor, and Pensions. S. 354 is similar to H.R. 534 in limiting liability for injuries caused by medical malpractice and defective medical products (e.g., drugs, medical devices), the major differences being that S. 354 would: (1) abolish the collateral source rule when applicable law does not allow for subrogation; (2) provide no special protections for FDA-approved products; (3) establish qualifications for expert witnesses; and (4) preempt state caps on non-economic and punitive damages when such caps are higher than the bill's. See CRS Report RS22075, *Medical Malpractice Liability Reform: S. 354, 109th Congress*, by Henry Cohen.

S. 366 (Gregg)

Healthy Mothers and Healthy Babies Access to Care Act. Introduced February 10, 2005. Referred to Senate Judiciary Committee. With respect to claims concerning obstetrical or gynecological goods or services, the bill would limit liability for injuries caused not only by medical malpractice, but also by defective medical products (e.g., drugs, medical devices). In addition, the bill would impose caps on punitive and non-economic damages in those states that do not have any such caps.

S. 367 (Gregg)

Pregnancy and Trauma Care Access Protection Act. Introduced February 10, 2005. Referred to Senate Judiciary Committee. The bill is identical to S. 366, except that S. 367 would also apply to claims concerning emergency or trauma goods or services.

S. 397 (P.L. 109-92) (Craig)

Protection of Lawful Commerce in Arms Act. Introduced February 16, 2005. Placed on Senate Legislative Calendar. Passed by the Senate with amendments on July 29, 2005, and by the House, as amended by the Senate, on October 20, 2005. S. 397, as introduced, was identical to H.R. 800. S. 397 was signed by the President on October 26, 2005, and became P.L.109-92. It prohibits "a civil action or proceeding or an administrative proceeding," except in six circumstances, against a manufacturer or seller of a firearm or ammunition, or a trade association, for damages "resulting from the criminal or unlawful misuse" of a firearm or ammunition. The exceptions cause the statute not to bar suits if, among other circumstances, the defendant violated a statute or engaged in negligent entrustment or an act of negligence per se. One of the exceptions ensures that the Bureau of Alcohol, Tobacco, Firearms and Explosives may still bring proceedings against gun manufacturers and sellers. Section 5 of P.L. 109-92 is a separate law called the Child Safety Lock Act of 2005. With exceptions, it requires a "secure gun storage or safety device" (as defined in 18 U.S.C. § 921(a)(34)) on handguns, and provides that a person who has lawful possession and control of a handgun, and who uses such a device, is entitled to the same immunity as granted to gun manufacturers, sellers, and trade associations by P.L. 109-92. See CRS Report RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis Public Law 109-92 (2005)*, by Henry Cohen.

S. 852 (Specter)

Fairness in Asbestos Injury Resolution (FAIR) Act. Introduced April 19, 2005. Ordered to be reported favorably with amendments from the Senate Judiciary Committee on April 19, 2005. The bill would remove most asbestos claims from the tort system and create an administrative compensation program for such claims. To handle these claims, the bill would establish within the Department of Labor the Office of Asbestos Disease Compensation. The Office would make awards to claimants from the Asbestos Injury Claims Resolution Fund, which would be funded by contributions from defendants in pending asbestos cases ($90 billion) and insurers of those defendants ($46 billion). The bill would establish nine levels of awards based on seriousness of injury and exposure to asbestos. See CRS Report RS22081, *S. 852: the Fairness in Asbestos Injury Resolution Act of 2005*, by Nathan Brooks.

S. 908 (McConnell)

The Commensense Consumption Act of 2005. Introduced April 26, 2005. Referred to Senate Judiciary Committee. S. 908 would prohibit the filing of claims — and dismiss all pending claims — against manufacturers, sellers, advertisers, marketers, and distributors of food if such claims are based on the plaintiff's consumption of food and resulting obesity, weight gain, or health conditions related to obesity or weight gain.

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