

**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. CONYERS**

Page 19, line 9, insert before "criminal liability" the following: "intentional tort liability or".

Page 19, line 22, insert after "health care liability claim." the following: "Such term does not include a claim or action which is based on intentional tort liability."



AMENDMENT TO H.R. 5  
OFFERED BY M. ~~WATERS~~ <sup>S. WATERS</sup> (~~WATERS~~)

Page 14, line 21, strike "or".

Page 15, line 2, strike the period at the end and insert ";or".

Page 15, insert after line 2 the following:

- 1 (C) the medical product that caused the
- 2 harm alleged in the health care lawsuit is defec-
- 3 tive as result of negligence in the manufacture
- 4 or distribution of that medical product.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. NADLER OF NEW YORK**

Page 15, after line 18, insert the following and re-designate the succeeding sections accordingly:

1 **SEC. 9. RESTRICTIONS ON PROTECTIVE ORDERS AND SEAL-**  
2 **ING OF CASES AND SETTLEMENTS.**

3 (a)(1) In any health care lawsuit in which the plead-  
4 ings state facts that are relevant to the protection of pub-  
5 lic health or safety, a court shall not enter, by stipulation  
6 or otherwise, an order otherwise authorized restricting the  
7 disclosure of information obtained through discovery, an  
8 order otherwise authorized approving a settlement agree-  
9 ment that would restrict the disclosure of such informa-  
10 tion, or an order otherwise authorized restricting access  
11 to court records unless in connection with such order the  
12 court has first made independent findings of fact that—

13 (A) such order would not restrict the disclosure  
14 of information which is relevant to the protection of  
15 public health or safety; or

16 (B)(i) the public interest in the disclosure of  
17 past, present, or potential public health or safety  
18 hazards is outweighed by a specific and substantial

1 interest in maintaining the confidentiality of the in-  
2 formation or records in question; and

3 (ii) the requested order is no broader than nec-  
4 essary to protect the confidentiality interest as-  
5 serted.

6 (2) No order entered as a result of the operation of  
7 paragraph (1), other than an order approving a settlement  
8 agreement, may continue in effect after the entry of final  
9 judgment, unless at the time of, or after, such entry the  
10 court makes a separate finding of fact that the require-  
11 ments of paragraph (1) continue to be met.

12 (b) In any health care lawsuit in which the pleadings  
13 state facts that are relevant to the protection of public  
14 health or safety, a court shall not enforce any provision  
15 of an agreement between or among parties, or enforce an  
16 order entered as a result of the operation of subsection  
17 (a)(1), to the extent that such provision or such order pro-  
18 hibits or otherwise restricts a party from disclosing any  
19 information relevant to such health care lawsuit to any  
20 Federal or State agency with authority to enforce laws  
21 regulating an activity relating to such information.

22 (c)(1) Subject to paragraph (2), a court shall not en-  
23 force any provision of a settlement agreement in any  
24 health care lawsuit in which the pleadings state facts that  
25 are relevant to the protection of public health or safety,

1 between or among parties that prohibits one or more par-  
2 ties from—

3 (A) disclosing the fact that such settlement was  
4 reached or the terms of such settlement (excluding  
5 any money paid) that involve matters relevant to the  
6 protection of public health or safety; or

7 (B) discussing matters relevant to the protec-  
8 tion of public health or safety involved in such  
9 health care lawsuit.

10 (2) Paragraph (1) applies unless the court has made  
11 independent findings of fact that—

12 (A) the public interest in the disclosure of past,  
13 present, or potential public health or safety hazards  
14 is outweighed by a specific and substantial interest  
15 in maintaining the confidentiality of the information  
16 in question; and

17 (B) the requested order is no broader than nec-  
18 essary to protect the confidentiality interest as-  
19 serted.

20 (d) Notwithstanding subsections (a)(1)(B)(i) and  
21 (c)(2)(A), when weighing the interest in maintaining con-  
22 fidentiality under this section, there shall be a rebuttable  
23 presumption that the interest in protecting personally  
24 identifiable information of an individual outweighs the  
25 public interest in disclosure.

1 (e) Nothing in this section shall be construed to per-  
2 mit, require, or authorize the disclosure of classified infor-  
3 mation (as defined under section 1 of the Classified Infor-  
4 mation Procedures Act (18 U.S.C. App.)).



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. Nader**

Page 6, lines 1, 11, and 17, strike "\$250,000" each place it appears and insert the following: "\$1,977,500 (adjusted annually according to the adjustments in the consumer price index to the nearest thousand dollars)".

Page 11, line 14, strike "\$250,000" and insert the following: "\$1,977,500 (adjusted annually according to the adjustments in the consumer price index to the nearest thousand dollars)".



**AMENDMENT TO H.R. 5**  
**OFFERED BY M S. SÁNCHEZ**

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly:

1 **SEC. 9. EXEMPTION FROM DAMAGE LIMITATIONS FOR**  
2 **NURSING HOMES.**

3 (a) **IN GENERAL.**—Section 4(b) and section 7(b)(2)  
4 shall not apply to health care lawsuits against long-term  
5 care facilities.

6 (b) **DEFINITION.**—For purposes of this section, the  
7 term “long-term care facility” means—

8 (1) any skilled nursing facility as defined in  
9 1819(a) of the Social Security Act;

10 (2) any nursing facility as defined in 1919(a) of  
11 the Social Security Act; or

12 (3) a public facility, proprietary facility, or fa-  
13 cility of a private nonprofit corporation that—

14 (A) makes available to adult residents sup-  
15 portive services to assist the residents in car-  
16 rying out activities such as bathing, dressing,  
17 eating; getting in and out of bed or chairs,  
18 walking, going outdoors, using the toilet, or ob-  
19 taining or taking medication; and

1 (B) provides a dwelling place (which may  
2 contain a full kitchen and bathroom) for resi-  
3 dents in order to deliver supportive services de-  
4 scribed in subparagraph (A), that includes com-  
5 mon rooms and other facilities appropriate for  
6 the provision of such services to residents of the  
7 facility;  
8 but excludes a facility, or portion of a facility, that either  
9 does not provide the services described in subparagraph  
10 (A) or has as its primary purpose to educate or to treat  
11 substance abuse problems.



**AMENDMENT TO H.R. 5****OFFERED BY MS. CHU, MR. CONYERS, AND  
MR. JOHNSON OF GEORGIA**

Page 15, insert after line 18 the following and redes-

ignate succeeding sections accordingly:

**1 SEC. 9. RESTORING THE APPLICATION OF ANTITRUST  
2 LAWS TO HEALTH SECTOR INSURERS.**

3 (a) AMENDMENT TO MCCARRAN-FERGUSON ACT.—  
4 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),  
5 commonly known as the McCarran-Ferguson Act, is  
6 amended by adding at the end the following:

7 “(c) Nothing contained in this Act shall modify, im-  
8 pair, or supersede the operation of any of the antitrust  
9 laws with respect to the business of health insurance. For  
10 purposes of the preceding sentence, the term ‘antitrust  
11 laws’ has the meaning given it in subsection (a) of the  
12 first section of the Clayton Act, except that such term in-  
13 cludes section 5 of the Federal Trade Commission Act to  
14 the extent that such section 5 applies to unfair methods  
15 of competition.”.

16 (b) RELATED PROVISION.—For purposes of section  
17 5 of the Federal Trade Commission Act (15 U.S.C. 45)  
18 to the extent such section applies to unfair methods of  
19 competition, section 3(c) of the McCarran-Ferguson Act

1 shall apply with respect to the business of health insurance  
2 without regard to whether such business is carried on for  
3 profit, notwithstanding the definition of "Corporation"  
4 contained in section 4 of the Federal Trade Commission  
5 Act.



**AMENDMENT TO H.R. 5**

**OFFERED BY MS. WASSERMAN SCHULTZ  
AND MR. JOHNSON OF GEORGIA**

Page 15, insert after line 18 the following and red-

esignate succeeding sections accordingly:

1 **SEC. 9. EXEMPTION FROM LIMITATIONS ON DAMAGES FOR**

2 **ACTIONS BY MINORS.**

3 Section 4(b), section 4(d), section 6, and section

4 7(b)(2) shall not apply to a health care lawsuit by a minor

5 (as determined under applicable State law).



**AMENDMENT TO H.R. 5**

**OFFERED BY MS. WASSERMAN SCHULTE AND  
MR. JOHNSON OF GEORGIA**

Page 5, beginning on line 8, strike "within 3 years" through "a longer period." on line 13 and insert the following: "not later than the date that is 3 years after the latest of the date of the alleged manifestation of the injury, the date that the injury was discovered, or the date on which the minor reaches the age of majority in accordance with applicable State law."



**AMENDMENT TO H.R. 5**

**OFFERED BY MS. WASSERMAN SCULTE AND  
MR. JOHNSON OF GEORGIA**

Page 5, beginning on line 8, strike "within 3 years" through "a longer period." on line 13 and insert the following: "not later than the date that is 3 years after the latest of the date of the alleged manifestation of the injury, the date that the injury was discovered, or the date on which the minor reaches the age of majority (as determined under applicable State law)."

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly:

**1 SEC. 9. EXEMPTION FROM LIMITATIONS ON DAMAGES FOR  
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4 7(b)(2) shall not apply to a health care lawsuit by a minor  
5 (as determined under applicable State law).



**AMENDMENT TO H.R. 5**  
**OFFERED BY M S. JACKSON LEE**

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly:

1 **SEC. 9. EXEMPTION FOR HEALTH CARE LAWSUITS FOR IR-**  
2 **REVERSIBLE INJURY.**

3 Section 4(b) and section 7(b)(2) shall not apply to  
4 health care lawsuits based upon the provision of or use  
5 of (or the failure to provide or use) health care services  
6 or medical products if such provision, use, or failure re-  
7 sults in irreversible or life altering injury, including the  
8 loss of a limb or the loss of reproductive capacity.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. COHEN**

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly:

**1 SEC. 9. EXEMPTION FROM DAMAGE LIMITATIONS FOR CERTAIN HEALTH CARE LAWSUITS.**

2  
3 Section 4(b) and section 7(b)(2) shall not apply to  
4 health care lawsuits based upon the leaving of a foreign  
5 object inside a patient or performing an operation or surgical  
6 procedure on the wrong patient or body part.



**AMENDMENT TO H.R. 5**  
**OFFERED BY M.R. SCOTT OF VIRGINIA**

Page 6, beginning on line 19, strike subsection (d).



**AMENDMENT TO H.R. 5**

**OFFERED BY MR. SCOTT OF VIRGINIA**

Page 8, beginning on line 14, strike section 6 and redesignate succeeding sections accordingly.

Page 16, beginning on line 11, strike paragraph (3) and redesignate succeeding paragraphs accordingly.



**AMENDMENT TO H.R. 5**

**OFFERED BY MR. QUIGLEY**

Page 11, beginning on line 18, strike subsection (c).



**AMENDMENT TO H.R. 5**

**OFFERED BY M.R. JOHNSON**

Page 18, lines 23 and 24, strike "State or Federal court or pursuant to an alternative dispute resolution system" and insert "Federal court".

Page 19, lines 14 and 15, strike "State or Federal court or pursuant to an alternative dispute resolution system" and insert "Federal court".



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. JOHNSON OF GEORGIA**

Page 25, insert after line 7 the following:

- 1           (3) Notwithstanding paragraph (1) or (2), this
- 2           Act shall not preempt any applicable State constitu-
- 3           tional provision.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. JOHNSON**

Beginning on page 11, line 20, strike paragraph (1) and redesignate succeeding paragraphs accordingly.

Beginning on page 14, line 10, strike paragraph (4).

Page 18, beginning on line 25, strike “, a health care organization” through “seller of a medical product” on page 19, line 2.

Page 19, beginning on line 16, strike “, a health care organization” through “seller of a medical product” on line 18.

Page 20, beginning on line 1, strike “, health care organization” through “seller of a medical product” on line 3.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. DEUTCH**

Page 18, line 25, strike "against" and insert  
"against or by".



**AMENDMENT TO H.R. 5**

**OFFERED BY MR. BERMAN OF CALIFORNIA**  
**Chu**

At the end of the bill, add the following new section:

1 **SEC. \_\_\_\_ . APPLICABILITY.**

2       Nothing in this Act shall apply in a State unless the  
3 agency of the State that is responsible for licensing or dis-  
4 ciplining health care providers and the agency of the State  
5 that is responsible for licensing or disciplining health care  
6 organizations have in effect policies and procedures ensur-  
7 ing the following:

8           (1) That each such agency must promptly make  
9       available to the public the identity of the health care  
10       provider or health care organization, the amount of  
11       the obligation, and the basis of the health care  
12       claim, whenever—

13           (A) a health care provider or health care  
14       organization becomes obligated, by judgment or  
15       settlement, to pay more than \$10,000 on any  
16       health care claim;

17           (B) a health care provider or health care  
18       organization revokes, terminates, or restricts  
19       employment or privileges of a doctor for a med-  
20       ical disciplinary reason, denies a doctor's appli-

1            cation for staff privileges for a medical discipli-  
2            nary reason, or receives a doctor's resignation  
3            following notice of an impending investigation  
4            based on a medical disciplinary reason.

5            (2) That whenever a health care provider or  
6            health care organization fails to disclose to such  
7            agency information covered by paragraph (1), such  
8            agency must impose on such provider or such orga-  
9            nization one or more significant disciplinary meas-  
10           ures.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MS. WATERS**

Page 19, line 10, strike "or".

Page 19, line 11, strike "antitrust." and insert  
"antitrust; or which involves a preexisting condition ex-  
clusion (as defined such term is defined in section  
2704(b)(1)(A) (42 U.S.C. 300gg-3(b)(1)(A)))".



**AMENDMENT TO H.R. 5**  
**OFFERED BY MS. WATERS OF CALIFORNIA**

After section 9, insert the following (and make such technical and conforming changes as may be appropriate):

1 **SEC. 10. RESTORING THE APPLICATION OF ANTITRUST**  
2 **LAWS TO THE BUSINESS OF MEDICAL MAL-**  
3 **PRACTICE INSURANCE.**

4 (a) **AMENDMENT TO McCARRAN-FERGUSON ACT.**—  
5 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),  
6 commonly known as the McCarran-Ferguson Act, is  
7 amended by adding at the end the following:

8 “(c) Nothing contained in this Act shall modify, im-  
9 pair, or supersede the operation of any of the antitrust  
10 laws with respect to the business of medical malpractice  
11 insurance. For purposes of the preceding sentence, the  
12 term ‘antitrust laws’ has the meaning given it in sub-  
13 section (a) of the first section of the Clayton Act, except  
14 that such term includes section 5 of the Federal Trade  
15 Commission Act to the extent that such section 5 applies  
16 to unfair methods of competition.”.

17 (b) **RELATED PROVISION.**—For purposes of section  
18 5 of the Federal Trade Commission Act (15 U.S.C. 45)

1 to the extent such section applies to unfair methods of  
2 competition, section 3(c) of the McCarran-Ferguson Act  
3 shall apply with respect to the business of medical mal-  
4 practice insurance without regard to whether such busi-  
5 ness is carried on for profit, notwithstanding the definition  
6 of "Corporation" contained in section 4 of the Federal  
7 Trade Commission Act.



**AMENDMENT TO H.R. 5**

**OFFERED BY MS. WATERS OF CALIFORNIA**

Page 12, beginning on line 14, strike clause (ii).



**AMENDMENT TO H.R. 5**  
**OFFERED BY MS. WATERS**

Page 14, line 21, strike “or”.

Page 15, line 2, strike the period at the end and insert “;or”.

Page 15, insert after line 2 the following:

- 1 (C) the medical product that caused the
- 2 harm alleged in the health care lawsuit is defec-
- 3 tive as result of negligence in the manufacture
- 4 or distribution of that medical product.



**AMENDMENT TO H.R. 5**

**OFFERED BY MS. WATERS OF CALIFORNIA**

Page 6, line 4, insert after “to the same injury.” the following: “This subsection shall not apply in the case of any health care lawsuit brought for a catastrophic injury, vegetative state, or death.”.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MS. JACKSON LEE OF TEXAS**

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly:

**1 SEC. 9. REPORTING REQUIREMENT FOR LIABILITY INSUR-**  
**2 ERS.**

3 Any insurance company that increases premiums for  
4 liability insurance for a health care provider for a year  
5 in which health care lawsuits declined in either the number  
6 filed or the in the amount of damages awarded in such  
7 lawsuits shall file a report with the Attorney General that  
8 describes the reason for such increase.



**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. NAOLER**

Page 6, lines 1, 11, and 17, insert after "\$250,000" each place it appears the following: "(adjusted annually according to the adjustments in the consumer price index to the nearest thousand dollars)".

Page 11, line 14, insert after "\$250,000" the following: "(adjusted annually according to the adjustments in the consumer price index to the nearest thousand dollars)".

