S.  _____

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To improve women’s access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such services.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Care Act of 2004”.

SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) In general.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifesta-
tion of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have dis- covered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the com- mencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

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

(c) MINORS.—An action by a minor shall be com- menced within 3 years from the date of the alleged mani- festation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on be- half of the injured minor.
SEC. 3. COMPENSATING PATIENT INJURY.

(a) Unlimited Amount of Damages for Actual Economic Losses in Health Care Lawsuits.—In any health care lawsuit, nothing in this Act shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) Additional Noneconomic Damages.—In any health care lawsuit, the amount of noneconomic damages recovered, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) No Discount of Award for Noneconomic Damages.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction...
shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) Fair Share Rule.—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

SEC. 4. MAXIMIZING PATIENT RECOVERY.

(a) Court Supervision of Share of Damages Actually Paid to Claimants.—

(1) In general.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.
(2) Contingency fees.—

   (A) In general.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

   (B) Limitation.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

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

   (ii) 33 1/3 percent of the next $50,000 recovered by the claimant(s).

   (iii) 25 percent of the next $500,000 recovered by the claimant(s).

   (iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) Applicability.—

   (1) In general.—The limitations in subsection (a) shall apply whether the recovery is by judgment,
settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was sub-
stantially familiar with applicable standards of
care and practice as they relate to the act or
omission which is the subject of the lawsuit on
the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care law-
suit, if the claim of the plaintiff involved treatment
that is recommended or provided by a physician
(allopathic or osteopathic), an individual shall not be
qualified to be an expert witness under this sub-
section with respect to issues of negligence con-
cerning such treatment unless such individual is a
physician.

(3) OTHER HEALTH CARE PROVIDERS.—With
respect to a lawsuit described in paragraph (1), a
court shall not permit an expert in one health care
provider field to testify against a defendant in an-
other health care provider field unless, in addition to
a showing of substantial familiarity in accordance
with paragraph (1)(B), there is a showing that the
standards of care and practice in the two health care
provider fields are similar.

(4) LIMITATION.—The limitations in this sub-
section shall not apply to expert witnesses testifying
as to the degree or permanency of medical or phys-
ical impairment.
SEC. 5. PROMOTING FAIRNESS IN RECOVERING HEALTH
BENEFITS AND PREVENTING DOUBLE RECOVERIES.

(a) In General.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) Preservation of Current Law.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) Application of Provision.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 6. PUNITIVE DAMAGES.

(a) Punitive Damages Permitted.—

(1) In General.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person de-
liberately failed to avoid unnecessary injury that
such person knew the claimant was substantially
certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punit-
tive damages shall be included in a health care law-
suit as initially filed. A court may allow a claimant
to file an amended pleading for punitive damages
only upon a motion by the claimant and after a find-
ing by the court, upon review of supporting and op-
posing affidavits or after a hearing, after weighing
the evidence, that the claimant has established by a
substantial probability that the claimant will prevail
on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of
any party in a health care lawsuit, the trier of fact
shall consider in a separate proceeding—

(A) whether punitive damages are to be
awarded and the amount of such award; and

(B) the amount of punitive damages fol-
lowing a determination of punitive liability.

If a separate proceeding is requested, evidence rel-
evant only to the claim for punitive damages, as de-
determined by applicable State law, shall be inadmis-
sible in any proceeding to determine whether com-
pensatory damages are to be awarded.
(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

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

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

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

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and
(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT COMPLY WITH FDA STANDARDS.—

(1) IN GENERAL.—No punitive damages may be awarded against the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product used in direct connection with the provision of obstetrical or gynecological services, or emergency or trauma care services based on a claim that such product caused the claimant’s harm where—

(A)(i) such medical product was subject to premarket approval or clearance by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such medical product which caused the claimant’s harm or the adequacy of the
packaging or labeling of such medical product;
and

(ii) such medical product was so approved or cleared; or

(B) such medical product is generally recognized among qualified experts as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable Food and Drug Administration regulations, including without limitation those related to packaging and labeling, unless the Food and Drug Administration has determined that such medical product was not manufactured or distributed in substantial compliance with applicable Food and Drug Administration statutes and regulations.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug or device (including blood products) approved by the Food and Drug Administration for use in direct connection with the provision of obstetrical or gynecological services, or emergency or trauma care services shall not be named as a party to a product liability lawsuit invoking such drug or device and shall not be
liable to a claimant in a class action lawsuit against
the manufacturer, distributor, supplier, marketer,
promoter, or seller of such drug or device.

(3) PACKAGING.—In a health care lawsuit for
harm which is alleged to relate to the adequacy of
the packaging or labeling of a drug which is required
to have tamper-resistant packaging under regula-
tions of the Secretary (including labeling regulations
related to such packaging), the manufacturer, dis-
tributor, supplier, marketer, promoter, or seller of
the drug shall not be held liable for punitive dam-
ages unless such packaging or labeling is found by
the trier of fact by clear and convincing evidence to
be substantially out of compliance with such regula-
tions.

(4) EXCEPTION.—Paragraph (1) shall not
apply in any health care lawsuit in which—

(A) a person, before or after premarket ap-
proval or clearance of such medical product,
knowingly misrepresented to or withheld from
the Food and Drug Administration information
that is required to be submitted under the Fed-
eral Food, Drug, and Cosmetic Act (21 U.S.C.
301 et seq.) or section 351 of the Public Health
Service Act (42 U.S.C. 262) that is material
and is causally related to the harm which the claimant allegedly suffered; or

(B) a person made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval or clearance of such medical product.

SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

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

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.
SEC. 8. EFFECT ON OTHER LAWS.

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

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

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

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and
(B) any rule of law prescribed by this Act in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 9. STATE FLEXIBILITY AND PROTECTION OF STATES RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this Act shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—
(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) Preemption of Certain State Laws.—No provision of this Act shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 3(b).

(c) Protection of State’s Rights and Other Laws.—

(1) In General.—Any issue that is not governed by a provision of law established by or under this Act (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) Rule of Construction.—Nothing in this Act shall be construed to—
(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections for a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product from liability, loss, or damages than those provided by this Act;

(B) notwithstanding any other provision of this section, preempt or supercede any State law that provides for a specific monetary limit on total damages (including compensatory damages) that may be awarded in a health care lawsuit regardless of whether such monetary limit is greater or lesser than is provided for under this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 10. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution
system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) Claimant.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) Collateral Source Benefits.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;
(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses
of any kind or nature. Such term includes economic
damages and noneconomic damages, as such terms
are defined in this section.

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

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

(7) **EMERGENCY MEDICAL CONDITION.**—The
term “emergency medical condition” means a med-
ical condition manifesting itself by acute symptoms
of sufficient severity (including severe pain) such
that the absence of immediate medical attention
could reasonably be expected to result in placing the
health of the individual (or, with respect to a preg-
nant woman, the health of the woman or her unborn
child) in serious jeopardy, serious impairment to
bodily functions, or serious dysfunction of any bodily
organ or part.

(8) EMERGENCY OR TRAUMA CARE SERVICES.—
The term “emergency or trauma care services”
means health care goods and services that are fur-
nished to an individual with an emergency medical
condition, including the initial response to the emer-
gency medical condition, screening, stabilization and
treatment of the emergency medical condition.

(9) HEALTH CARE GOODS OR SERVICES.—The
term “health care goods or services” means—

(A) any obstetrical or gynecological goods
or services provided by a health care organiza-
tion, provider, or by any individual working
under the supervision of a health care provider,
that relates to the diagnosis, prevention, care,
or treatment of any obstetrical or gynecological-
related human disease or impairment, or the as-
essment of the health of human beings; and

(B) any goods or services provided by a
health care organization, provider, or by any in-
dividual working under the supervision of a
health care provider, that are involved in the
provision of emergency or trauma care services.
(10) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of obstetrical or gynecological goods or services affecting interstate commerce, or emergency or trauma care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) obstetrical or gynecological goods or services affecting interstate commerce, or emergency or trauma care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a physician or other health care provider who delivers obstetrical or gynecological services, or emergency or trauma care services, a health care organization (only with respect to obstetrical or gynecological services or emergency or trauma care services), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product (only with respect to a medical product used in connection with obstetrical or gynecological services or emergency or trauma care services), regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the num-
ber of claims or causes of action, in which the claim-
ant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY ACTION**.—The
term “health care liability action” means a civil ac-
tion brought in a State or Federal Court or pursu-
ant to an alternative dispute resolution system,
against a physician or other health care provider
who provides obstetrical or gynecological services or
emergency or trauma care services, a health care or-
ganization (only with respect to obstetrical or gyne-
cological services or emergency or trauma care serv-
ces), or the manufacturer, distributor, supplier,
marketer, promoter, or seller of a medical product
(only with respect to a medical product used in con-
nection with obstetrical or gynecological services or
emergency or trauma care services), regardless of
the theory of liability on which the claim is based,
or the number of plaintiffs, defendants, or other par-
ties, or the number of causes of action, in which the
claimant alleges a health care liability claim.

(12) **HEALTH CARE LIABILITY CLAIM**.—The
term “health care liability claim” means a demand
by any person, whether or not pursuant to ADR,
against a physician or other health care provider
who delivers obstetrical or gynecological services or
emergency or trauma care services, a health care organization (only with respect to obstetrical or gynecological services or emergency or trauma care services), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product (only with respect to a medical product used in connection with obstetrical or gynecological services or emergency or trauma care services), including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) obstetrical or gynecological services or emergency or trauma care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(13) Health care organization.—The term “health care organization” means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(14) 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 services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(15) 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.

(16) MEDICAL PRODUCT.—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

(17) NONECONOMIC DAMAGES.—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputa-
tion, and all other nonpecuniary losses of any kind
or nature.

(18) **OBSTETRICAL OR GYNECOLOGICAL SERVICES.** — The term “obstetrical or gynecological services” means services for pre-natal care or labor and delivery, including the immediate postpartum period (as determined in accordance with the definition of postpartum used for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)).

(19) **PUNITIVE DAMAGES.** — The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a physician or other health care provider who delivers obstetrical or gynecological services or emergency or trauma care services, or against a manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product (subject to section 6(c)). Punitive damages are neither economic nor noneconomic damages.

(20) **RECOVERY.** — The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the 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.

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

SEC. 11. APPLICABILITY; EFFECTIVE DATE.

This Act shall apply to any health care lawsuit
brought in a Federal or State court, or subject to an alter-
native dispute resolution system, that is initiated on or
after the date of the enactment of this Act, except that
any health care lawsuit arising from an injury occurring
prior to the date of enactment of this Act shall be gov-
erned by the applicable statute of limitations provisions
in effect at the time the injury occurred.