H. R. 1360

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. Kirk (for himself, Mr. Bass, Mr. Platts, Mr. Shimkus, Mr. Kennedy of Minnesota, and Mr. Dent) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, Ways and Means, Education and the Workforce, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, 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; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the
5 “Fairness in Asbestos Injury Resolution Act of 2005” or
6 the “FAIR Act of 2005”.


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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

Sec. 102. Advisory Committee on Asbestos Disease Compensation.
Sec. 103. Medical Advisory Committee.
Sec. 104. Claimant assistance.
Sec. 105. Physicians Panels.
Sec. 106. Program startup.
Sec. 107. Authority of the Administrator.

Subtitle B—Asbestos disease compensation procedures

Sec. 111. Essential elements of eligible claim.
Sec. 112. General rule concerning no-fault compensation.
Sec. 113. Filing of claims.
Sec. 114. Eligibility determinations and claim awards.
Sec. 115. Medical evidence auditing procedures.

Subtitle C—Medical criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.
Sec. 132. Medical monitoring.
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TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos defendants funding allocation

Sec. 201. Definitions.
Sec. 202. Authority and tiers.
Sec. 203. Subtiers.
Sec. 204. Assessment administration.

Subtitle B—Asbestos Insurers Commission

Sec. 211. Establishment of Asbestos Insurers Commission.
Sec. 212. Duties of Asbestos Insurers Commission.
Sec. 213. Powers of Asbestos Insurers Commission.
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Sec. 215. Termination of Asbestos Insurers Commission.
Sec. 216. Expenses and costs of Commission.
Subtitle C—Asbestos Injury Claims Resolution Fund

Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
Sec. 222. Management of the Fund.
Sec. 223. Enforcement of payment obligations.
Sec. 224. Interest on underpayment or nonpayment.

TITLE III—JUDICIAL REVIEW

Sec. 301. Judicial review of rules and regulations.
Sec. 302. Judicial review of award decisions.
Sec. 303. Judicial review of participants’ assessments.
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TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. False information.
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Sec. 403. Effect on other laws and existing claims.
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Sec. 408. Violations of environmental and occupational health and safety requirements.
Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

Sec. 501. Prohibition on asbestos containing products.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds the following:

3 (1) A great number of Americans have been exposed to forms of asbestos that can have devastating health effects.

4 (2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

5 (3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited ex-
exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country’s economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the “ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .”. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that “[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.” In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found
that the “elephantine mass of asbestos cases . . . de-
fi es customary judicial administration and calls for
national legislation.” That finding was again recog-
nized in 2003 by the Court in Norfolk & Western

(7) This crisis, and its significant effect on the
health and welfare of the people of the United
States, on interstate and foreign commerce, and on
the bankruptcy system, compels Congress to exercise
its power to regulate interstate commerce and create
this legislative solution in the form of a national as-
bestos injury claims resolution program to supersede
all existing methods to compensate those injured by
asbestos, except as specified in this Act.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly adminis-
tered fund to provide the necessary resources for a
fair and efficient system to resolve asbestos injury
claims that will provide compensation for legitimate
present and future claimants of asbestos exposure as
provided in this Act;

(2) provide compensation to those present and
future victims based on the severity of their injuries,
while establishing a system flexible enough to accom-
modate individuals whose conditions worsens;
(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

**SEC. 3. DEFINITIONS.**

In this Act, the following definitions shall apply:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) **ASBESTOS.**—The term “asbestos” includes—

(A) chrysotile;
(B) amosite;
(C) crocidolite;
(D) tremolite asbestos;
(E) winchite asbestos;
(F) richterite asbestos;
(G) anthophyllite asbestos;
(H) actinolite asbestos;
(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any
asbestiform variety, type, or component thereof;
and

(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term “asbestos claim” means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims alleging damage or injury to tangible property, or claims for benefits under a
workers’ compensation law or veterans’ benefits program.

(4) Asbestos claimant.—The term “asbestos claimant” means an individual who files a claim under section 113.

(5) Civil action.—The term “civil action” means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers’ compensation law, or a proceeding for benefits under any veterans’ benefits program.

(6) Collateral source compensation.—The term “collateral source compensation” means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) Eligible disease or condition.—The term “eligible disease or condition” means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease,
disabling asbestosis disease, mesothelioma, lung can-
cer I, lung cancer II, lung cancer III, and other can-
cers.

(8) **Fund.**—The term “Fund” means the As-
bestos Injury Claims Resolution Fund established
under section 221.

(9) **Insurance Receivership Proceeding.**—
The term “insurance receivership proceeding” means
any State proceeding with respect to a financially
impaired or insolvent insurer or reinsurer including
the liquidation, rehabilitation, conservation, super-
vision or ancillary receivership of an insurer under
State law.

(10) **Law.**—The term “law” includes all law,
judicial or administrative decisions, rules, regula-
tions, or any other principle or action having the ef-
fect of law.

(11) **Participant.**—

(A) **In General.**—The term “participant”
means any person subject to the funding re-
quirements of title II, including—

(i) any defendant participant subject
to liability for payments under subtitle A
of that title;
(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) Exception.—

(i) In General.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) Applicability.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).
(12) **PERSON.**—The term “person”—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(13) **STATE.**—The term “State” means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(14) **SUBSTANTIALLY CONTINUES.**—The term “substantially continues” means that the business operations have not been significantly modified by the change in ownership.

(15) **SUCCESSOR IN INTEREST.**—The term “successor in interest” means any person that acquires assets, and substantially continues the business operations, of a participant. The factors to be
considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(16) VETERANS’ BENEFITS PROGRAM.—The term “veterans’ benefits program” means any pro-
gram for benefits in connection with military service
administered by the Veterans’ Administration under
title 38, United States Code.

(17) WORKERS’ COMPENSATION LAW.—The
term “workers’ compensation law”—

(A) means a law respecting a program ad-
ministered by a State or the United States to
provide benefits, funded by a responsible em-
ployer or its insurance carrier, for occupational
diseases or injuries or for disability or death
caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor
Workers’ Compensation Act (33 U.S.C. 901 et
seq.) and chapter 81 of title 5, United States
Code; and

(C) does not include the Act of April 22,
1908 (45 U.S.C. 51 et seq.), commonly known
as the Federal Employers’ Liability Act, or
damages recovered by any employee in a liabil-
ity action against an employer.
TITLE I—ASBESTOS CLAIMS RESOLUTION
Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the “Office”), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).

(b) APPOINTMENT OF ADMINISTRATOR.—
(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with non-governmental entities;
(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund’s investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund’s assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and
conditions, including pledging the assets of
or payments to the Fund as collateral;
(F) promulgating such rules, regulations,
and procedures as may be necessary and appro-
priate to implement the provisions of this Act;
(G) making such expenditures as may be
necessary and appropriate in the administration
of this Act;
(H) excluding evidence and disqualifying or
debarring any attorney, physician, provider of
medical or diagnostic services, including labora-
tories and others who provide evidence in sup-
port of a claimant’s application for compensa-
tion where the Administrator determines that
materially false, fraudulent or fictitious state-
ments or practices have been submitted or en-
gaged in by such individuals or entities; and
(I) having all other powers incidental, nec-
essary, or appropriate to carrying out the func-
tions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each in-
fraction relating to paragraph (1)(H), the Adminis-
trator also may impose a civil penalty not to exceed
$10,000 on any person or entity found to have sub-
mited or engaged in a materially false, fraudulent
or fictitious statement or practice under this Act.

The Administrator shall prescribe appropriate regu-
lations to implement paragraph (1)(H).

(3) Selection of Deputy Administrators.—The Administrator shall select a Deputy Ad-
ministrator for Claims Administration to carry out
the Administrator’s responsibilities under this title
and a Deputy Administrator for Fund Management
to carry out the Administrator’s responsibilities
under title II of this Act. The Deputy Administra-
tors shall report directly to the Administrator and
shall be in the Senior Executive Service.

(d) Expeditious Determinations.—The Adminis-
trator shall prescribe rules to expedite claims for asbestos
claimants with exigent circumstances.

(e) Audit and Personnel Review Procedures.—The Administrator shall establish audit and per-
sonnel review procedures for evaluating the accuracy of
eligibility recommendations of agency and contract per-
sonnel.

(f) Application of FOIA.—

(1) In General.—Section 552 of title 5,
United States Code (commonly referred to as the
Freedom of Information Act) shall apply to the Of-
office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY.—Any person may designate any record submitted under this section as a confidential commercial or financial record for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential. Information on reserves and asbestos-related liabilities submitted by any participant for the purpose of the allocation of payments under subtitles A and B of title II shall be deemed to be confidential financial records.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the “Advisory Committee”).

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows—
(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 8 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation pro-
gram, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, or administering a compensation or insurance program. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 25 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;
(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years,
as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).
(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Com-
mittee or while otherwise serving at the request of the Ad-
ministrator, and while serving away from their homes or
regular places of business, shall be allowed travel and meal
expenses, including per diem in lieu of subsistence, as au-
thorized by section 5703 of title 5, United States Code,
for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator may establish
a Medical Advisory Committee to provide expert advice re-
garding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the
Medical Advisory Committee shall be individuals who, for
each of the 5 years before their appointments, earned
more than 25 percent of their income by serving in mat-
ters related to asbestos litigation as consultants or expert
witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after
the enactment of this Act, the Administrator shall estab-

lish a comprehensive asbestos claimant assistance program
to—

(1) publicize and provide information to poten-
tial claimants about the availability of benefits for
eligible claimants under this Act, and the procedures
for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants; and

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.
(d) **LEGAL ASSISTANCE.**—

(1) **IN GENERAL.**—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) **LIST OF QUALIFIED ATTORNEYS.**—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) **NOTICE.**—

(A) **NOTICE BY ADMINISTRATOR.**—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) **NOTICE BY ATTORNEYS.**—Before a person becomes a client of an attorney with respect to an asbestos claim that attorney shall
provide notice to that person of pro bono services for legal assistance available for that claim.

(c) ATTORNEY’S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in paragraph (2) of an award made under this Act on such claim.

(2) APPLICABLE PERCENTAGE LIMITATIONS.—

(A) IN GENERAL.—The percentage limitation under paragraph (1) shall be—

(i) 2 percent for the filing of an initial claim; and

(ii) 10 percent with respect to any claim under appellate review.

(B) EXCEPTION.—The Administrator may by rule adopt a lower percentage limitation for particular classes of cases if the Administrator finds that—

(i) the percentage limitation otherwise applicable under this paragraph would result in unreasonably high compensation to claimants’ representatives in such cases; and
(ii) such lower percentage limitation would be reasonable and would not unduly limit the availability of representatives to claimants.

(3) **Penalty.**—Any representative of an asbestos claimant who violates this subsection shall be fined not more than $5,000.

**Sec. 105. Physicians Panels.**

(a) **Appointment.**—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels as necessary to carry out this Act.

(b) **Formation of Panels.**—

(1) **In General.**—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.
(2) EXPERTISE.—Each panel shall be composed of members having the particular expertise deter-
mined necessary by the Administrator, randomly se-
lected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Each panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occup-
pational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Phys-
sicians Panel, has earned no more than 25 percent of his or her income as an employee of a partici-
pating defendant or insurer or a law firm repre-
senting any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.
(d) Duties.—Members of the Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) Compensation.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of the Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) Federal Advisory Committee Act.—A panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) Interim Regulations.—Not later than 90 days after the enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under title I and the operation of the Fund under title II, including procedures for the expediting of exigent claims.

(b) Interim Personnel.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration may make available to the Ad-
ministrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program. Such relevant experience shall include, but not be limited to, experience with the review of workers’ compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) Exigent Health Claims.—

(1) In general.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of exigent claims.

(2) Eligible Exigent Health Claims.—A claim shall qualify for treatment as an exigent health claim if the claimant is living and the claimant provides—

(A) documentation that a physician has diagnosed the claimant as having mesothelioma;

or
(B) a declaration or affidavit, from a physician who has examined the claimant within
120 days before the date of such declaration or affidavit, that the physician has diagnosed the
claimant as being terminally ill from an asbestos-related illness and having a life expectancy
of less than 1 year.

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—
The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being
promulgated relating to claims processing, the Interim Ad-
ministrator may prioritize claims processing, without re-
gard to the time requirements prescribed in subtitle B of
this title, based on severity of illness and likelihood that
the illness in question was caused by exposure to asbestos.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdic-
tion of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attend-
ance of witnesses within a radius of 100 miles;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers,
documents, and other evidence.

Subtitle B—Asbestos Disease
Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an as-
bestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accord-
ance with section 113; and

(2) prove, by a preponderance of the evidence,
that the claimant suffers from an eligible disease or
condition, as demonstrated by evidence that meets
the requirements established under subtitle C.
SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term “personal representative” shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect December 31, 2003.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if an individual fails to file a claim with the Office under this section within 4 years after the date on which the individual first—
(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition, any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS.—If an asbestos claimant has any timely filed asbestos claim that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file a claim under this section within 4 years after such date of enactment or be barred from receiving any award under this title. For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(A) a non-contingent right to the payment of future installments of a fixed award; or
(B) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust’s funding adequacy or projected claims experience.

(3) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Except as provided in subparagraph (C), any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.
(C) Exception.—Any amounts paid or to be paid for a prior claim for a non-malignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claim for a malignant disease (Levels VI through X), unless the malignancy was diagnosed, or the asbestos claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, before the date on which the non-malignancy claim was compensated.

(c) Required Information.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a complete employment history of the claimant, accompanied by social security records or a signed release permitting access to such records;
(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant’s physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, Malignant Level VIII, or Malignant Level IX, evidence to support the
assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under this Act satisfies the

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requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) **ADDITIONAL EVIDENCE.**—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) **PROPOSED DECISIONS.**—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant’s representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and
shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) Review of Proposed Decisions.—

(1) Right to hearing.—

(A) In general.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) Conduct of hearing.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representa-
tive shall receive such relevant evidence as the
claimant adduces and such other evidence as
the representative determines necessary or use-
ful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may re-
quest a subpoena but the decision to grant
or deny such a request is within the discre-
tion of the representative of the Adminis-
trator. The representative may issue sub-
poenas for the attendance and testimony of
witnesses, and for the production of books,
records, correspondence, papers or other
relevant documents. Subpoenas are issued
for documents only if they are relevant and
cannot be obtained by other means, and
for witnesses only where oral testimony is
the best way to ascertain the facts.

(ii) REQUEST.—A claimant may re-
quest a subpoena only as part of the hear-
ing process. To request a subpoena, the re-
quester shall—

(I) submit the request in writing
and send it to the representative as
early as possible, but no later than 30
days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an
opportunity to submit any written evidence or argument which he or she believes relevant.

(d) **Final Decisions.**—

(1) **In General.**—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (c).

(2) **Time and Content.**—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(e) **Representation.**—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

**SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.**

(a) **In General.**—
(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have
a right to appeal such determination under pro-
cedures issued by the Administrator.

(b) **Review of Certified B-readers.—**

(1) **In general.—** At a minimum, the Adminis-
trator shall prescribe procedures to randomly assign
claims for evaluation by an independent certified B-
reader of x-rays submitted in support of a claim, the
cost of which shall be borne by the Office.

(2) **Disagreement.—** If an independent cer-
tified B-reader assigned under paragraph (1) dis-
agrees with the quality grading or ILO level as-
signed to an x-ray submitted in support of a claim,
the Administrator shall require a review of such x-
rays by a second independent certified B-reader.

(3) **Effect on claim.—** If neither certified B-
reader under paragraph (2) agrees with the quality
grading and the ILO grade level assigned to an x-
ray as part of the claim, the Administrator shall
take into account the findings of the 2 independent
B readers in making the determination on such
claim.

(4) **Certified B-readers.—** The Adminis-
trator shall maintain a list of a minimum of 50 cer-
tified B-readers eligible to participate in the inde-
pendent reviews, chosen from all certified B-readers.
When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, Malignant Level VIII, Malignant Level IX, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.
(2) **Review.**—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) **Consent.**—The Administrator may require the performance of blood tests or any other appropriate medical test where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, Malignant Level VII, Malignant Level VIII, Malignant Level IX, or as an exceptional medical claim, the cost of which shall be borne by the Office.

(4) **Penalty for False Statements.**—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

**Subtitle C—Medical Criteria**

**Sec. 121. Medical Criteria Requirements.**

(a) **Definitions.**—In this section, the following definitions shall apply:
1 (1) **Asbestosis determined by pathology.**—The term “asbestosis determined by pathology” means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases”, Vol. 106, No. 11, App. 3 (October 8, 1982).

2 (2) **Bilateral asbestos-related nonmalignant disease.**—The term “bilateral asbestos-related nonmalignant disease” means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

3 (A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

4 (B) bilateral pleural plaques;

5 (C) bilateral pleural thickening; or

6 (D) bilateral pleural calcification.

7 (3) **Bilateral pleural disease of B2.**—The term “bilateral pleural disease of B2” means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least \( \frac{1}{4} \) of the projection of the lateral chest wall.

8 (4) **Certified B-reader.**—The term “certified B-reader” means an individual who is certified by the National Institute of Occupational Safety and
Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) **DIFFUSE PLEURAL THICKENING.**—The term “diffuse pleural thickening” means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) **DLCO.**—The term “DLCO” means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) **FEV1.**—The term “FEV1” means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) **FVC.**—The term “FVC” means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) **ILO GRADE.**—The term “ILO grade” means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all
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as established from time to time by the International

Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term

“lower limits of normal” means the fifth percentile

of healthy populations as defined in the American

Thoracic Society statement on lung function testing


and any future revision of the same statement.

(11) NONSMOKER.—The term “nonsmoker”

means that the claimant never smoked.

(12) PO2.—The term “PO2” means the partial

pressure (tension) of oxygen, which measures the

amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The

term “pulmonary function testing” means

spirometry testing that is in material compliance

with the quality criteria established by the American

Thoracic Society and is performed on equipment

which is in material compliance with the standards

of the American Thoracic Society for technical qual-

ity and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE

to asbestos.—

(A) IN GENERAL.—The term “substantial

occupational exposure” means employment in
an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii) such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term “on a regular basis” means on a frequent or recurring basis.

(15) TLC.—The term “TLC” means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—
(A) IN GENERAL.—The term “weighted occupational exposure” means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant’s primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant’s primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.
(D) Very Heavy Exposure.—Subject to subparagraph (E), each year that a claimant’s primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) Dates of Exposure.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as \( \frac{1}{2} \) its value. Each year after 1986 shall be counted as \( \frac{1}{10} \) its value.

(F) Other Claims.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history or other information to substantiate non-compliance with the Occupational Safety and Health Administration standard (such as lack
of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986 or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) Medical Evidence.—

(1) Latency.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant’s exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) Diagnostic Guidelines.—All diagnoses of asbestos-related diseases shall be based upon—
(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant’s medical records which shall include—

(i) pathological evidence of the non-malignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through X, in the case of a claimant who was living at the time the claim was filed—
(i) a physical examination by the claimant’s physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through X, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant’s medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;
(C) laboratory tests;
(D) tissue samples;
(E) results of medical examinations;
(F) reviews of other medical evidence; and
(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.
(2) **GENERAL EXPOSURE REQUIREMENTS.**—In order to establish exposure to asbestos, a claimant shall present meaningful and credible evidence—

(A) by an affidavit of the claimant;

(B) by an affidavit of a coworker or family member, if the claimant is deceased and such evidence is found in proceedings under this title to be reasonably reliable;

(C) by invoices, construction, or similar records; or

(D) any other credible evidence.

(3) **TAKE-HOME EXPOSURE.**—

(A) **IN GENERAL.**—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) **REVIEW.**—Except for claims for disease Level X (mesothelioma), all claims alleging
take-home exposure shall be submitted as an exceptional medical claim under section 121(f) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2003. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—The Administrator shall prescribe rules identifying specific industries, occupations within those industries, and time periods for which substantial occupational exposure (as defined under section 121(a)) shall be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation during such time periods. The Administrator may provide evidence to rebut this presumption.
(d) Asbestos Disease Levels.—

(1) Nonmalignant Level I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) Nonmalignant Level II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size either ss, st, or tt and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and
(D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size either ss, st, or tt and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—
(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size either ss, st, or tt and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and
(ii) excluding other more likely causes
of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive
Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related
nonmalignant disease with ILO grade of 1/1 or
greater and showing small irregular opacities of
shape or size either ss, st, or tt and present in
both lower lung zones, or asbestosis determined
by pathology, or diffuse pleural thickening, or
bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 per-
cent or FVC less than 50 percent, and FEV1/
FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of pre-
dicted, plus a FEV1/FVC ratio not less than 65
percent; or

(iii) PO2 less than 55 mm/Hg, plus a
FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years
of substantial occupational exposure to asbes-
tos; and

(D) supporting medical documentation—
(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—

(A) IN GENERAL.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—

All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more prob-
able than not that asbestos exposure was a sub-
stantial contributing factor in causing the other
cancer in question. If the claimant meets the
requirements of subparagraph (A), there shall
be a presumption of eligibility for the scheduled
value of compensation unless there is evidence
determined by the Physicians Panel that rebuts
that presumption.

(C) Request for referral to physicians panel.—A claimant filing a claim with
respect to Level VI under this paragraph may
request that the claim be referred to a Physi-
cians Panel for a determination on amount of
award. In making its determination under this
subparagraph, the Physicians Panel shall con-
sider the intensity and duration of exposure,
smoking history, and the quality of evidence re-
lating to exposure and smoking. Claimants shall
bear the burden of producing meaningful and
credible evidence of their smoking history as
part of their claim submission.

(7) Malignant Level VII.—

(A) In general.—To receive Level VII
compensation a claimant shall provide—
(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—All claims filed relating to Level VII under this paragraph shall be referred to a Physicians Panel for a determination on the amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide—
(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification;

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination on amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.
(9) MALIGNANT LEVEL IX.—

(A) IN GENERAL.—To receive Level IX compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) evidence of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size either ss, st, or tt and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) evidence of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size either ss, st, or tt and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos; or
(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level IX under this paragraph may request that the claim be referred to a Physicians Panel for a determination on amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(10) MALIGNANT LEVEL X.—To receive Level X compensation, a claimant shall provide—
(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board cert-
tified pathologist; and

(B) credible evidence of identifiable expo-
sure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers
brought into the home of the claimant by
a worker occupationally exposed to asbes-
tos;

(iii) exposure to asbestos fibers result-
ing from living or working in the proxi-
mate vicinity of a factory, shipyard, build-
ing demolition site, or other operation that
regularly released asbestos fibers into the
air due to operations involving asbestos at
that site; or

(iv) other identifiable exposure to as-
bestos fibers, in which case the claim shall
be reviewed by a Physicians Panel under
section 121(f) for a determination of eligi-
bility.

(e) INSTITUTE OF MEDICINE STUDY.—

(1) IN GENERAL.—Not later than 2 years after
date of enactment of this Act, the Institute of Medi-
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cine of the National Academy of Sciences shall com-
complete a study of the causal link between asbestos ex-
posure and other cancers, including colorectal, laryn-
geal, esophageal, pharyngeal, and stomach cancers,
except for mesothelioma and lung cancers. The In-
stitute of Medicine shall issue a report on its find-
ings on causation, which shall be transmitted to
Congress, the Administrator, the Advisory Com-
mittee on Asbestos Disease Compensation or the
Medical Advisory Committee, and the Physicians
Panels. The Administrator and the Physicians Pan-
els may consider the results of the report for pur-
poses of determining whether asbestos exposure is a
substantial contributing factor under section
121(d)(6)(B).

(2) SUBSEQUENT STUDIES.—If the Adminis-
trator has evidence that there have been advance-
ments in science that would require additional study,
the Administrator may request that the Institute of
Medicine conduct a subsequent study to determine if
asbestos exposure is a cause of other cancers.

(f) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not
meet the medical criteria requirements under this
section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under sub-paragraph (A) shall include—

(i) a complete review of the claimant’s medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be
prescribed by rule of the Administrator;
and

(iii) a detailed explanation as to why
the claim meets the requirements of para-
graph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator
shall refer all applications and supporting docu-
mentation submitted under paragraph (2) to a
Physicians Panel for review for eligibility as an
exceptional medical claim.

(B) STANDARD.—A claim shall be des-
ignated as an exceptional medical claim if the
claimant, for reasons beyond the control of the
claimant, cannot satisfy the requirements under
this section, but is able, through comparably re-
liable evidence that meets the standards under
this section, to show that the claimant has an
asbestos-related condition that is substantially
comparable to that of a medical condition that
would satisfy the requirements of a category
under this section.

(C) ADDITIONAL INFORMATION.—A Physi-
cians Panel may request additional reasonable
testing to support the claimant’s application.
(D) CT Scan.—A claimant may submit a CT Scan in addition to an x-ray.

(5) Approval.—

(A) In General.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant may be eligible to seek compensation.

(B) Referral.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall proceed to determine whether the claimant meets the requirements for compensation under this Act.

(6) Resubmission.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) Rules.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.
(8) **LIBBY, MONTANA.**—All claims filed by Libby, Montana claimants shall be designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, and before making an eligibility determination for a Libby, Montana claimant, the Physicians Panel shall review the current medical and scientific literature relating to the study, diagnosis, and treatment of asbestos-related diseases resulting from exposure to asbestos and other fibers found in and around Libby, Montana, including public health assessments prepared by the Agency for Toxic Substances and Disease Registry for the Libby Asbestos Site. The Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, when making a determination of eligibility and designating the disease category.

**Subtitle D—Awards**

**SEC. 131. AMOUNT.**

(a) **IN GENERAL.**—An asbestos claimant who meets the requirements of section 111 shall be entitled to an
award in an amount determined by reference to the benefit table contained in subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121, shall be eligible for an award according to the following schedule:

<table>
<thead>
<tr>
<th>Level</th>
<th>Scheduled Condition or Disease</th>
<th>Scheduled Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Asbestosis/Pleural Disease</td>
<td>Medical Monitoring</td>
</tr>
<tr>
<td>II</td>
<td>Mixed Disease With Impairment</td>
<td>$35,000</td>
</tr>
<tr>
<td>III</td>
<td>Asbestosis/Pleural Disease B</td>
<td>$100,000</td>
</tr>
<tr>
<td>IV</td>
<td>Severe Asbestosis</td>
<td>$400,000</td>
</tr>
<tr>
<td>V</td>
<td>Disabling Asbestosis</td>
<td>$850,000</td>
</tr>
<tr>
<td>VI</td>
<td>Other Cancer</td>
<td>$200,000</td>
</tr>
<tr>
<td>VII</td>
<td>Lung Cancer One</td>
<td>individual evaluation; smokers receive $50,000; ex-smokers receive $150,000; non-smokers receive $625,000</td>
</tr>
<tr>
<td>VIII</td>
<td>Lung Cancer With Pleural Disease</td>
<td>smokers receive $275,000; ex-smokers $700,000; non-smokers receive $800,000</td>
</tr>
<tr>
<td>IX</td>
<td>Lung Cancer With Asbestosis</td>
<td>smokers receive $575,000; ex-smokers receive $850,000; non-smokers receive $1,050,000</td>
</tr>
<tr>
<td>X</td>
<td>Mesothelioma</td>
<td>$1,050,000</td>
</tr>
</tbody>
</table>

(2) DEFINITIONS.—In this section—

(A) the term “nonsmoker” means a claimant who never smoked; and

(B) the term “ex-smoker” means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) VALUES WITHIN LEVELS RELATING TO LUNG CANCER.—
(A) **IN GENERAL.**—In setting values for levels relating to lung cancer, the Administrator shall develop a matrix of classes for each of Levels VII, VIII, and IX based on—

(i) the smoking history of the claimant, including whether the claimant currently or in the past smoked tobacco products, the duration of smoking, pack years, and whether the claimant has quit smoking and for how long;

(ii) the age of the claimant at diagnosis with claim values increased proportionately for claimants who are younger than the average life span and reduced for those who are older; and

(iii) the level and duration of asbestos exposure with those receiving the highest total dose (level x duration) receiving greater values.

(B) **DETERMINATION OF EXPOSURE.**—Levels of exposure shall be based on research in the fields of epidemiology and industrial hygiene.

(4) **MEDICAL MONITORING.**—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible
for medical monitoring reimbursement as provided under section 132.

(5) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2006, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2004.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term “consumer price
index” means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) Relation to Statute of Limitations.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) Costs.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant’s physician, x-ray tests, and pulmonary function tests every 3 years.

(c) Regulations.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and
(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) Structured Payments.—

(1) In general.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) Payment period and amount.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) Extension of payment period.—

(A) In general.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall sol-
vency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which they are entitled under this title in the form of an annuity.
(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

e) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation.
(b) **EXCLUSIONS.**—In no case shall statutory benefits under workers’ compensation laws and veterans’ benefits programs be deemed as collateral source compensation for purposes of this section.

**TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND**

**Subtitle A—Asbestos Defendants Funding Allocation**

**SEC. 201. DEFINITIONS.**

In this subtitle, the following definitions shall apply:

(1) **AFFILIATED GROUP.**—The term “affiliated group”—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) **CLASS ACTION TRUST.**—The term “class action trust” means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—
(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(3) DEBTOR.—The term “debtor”—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor’s case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree clos-
ing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) **Indemnifiable cost.**—The term “indemnifiable cost” means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) **Indemnitee.**—The term “indemnitee” means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with
respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term “indemnitor” means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term “prior asbestos expenditures”—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person’s behalf with respect to such as-
bestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers’ Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) Trust.—The term “trust” means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.
(9) **ULTIMATE PARENT.**—The term “ultimate parent” means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

**SEC. 202. AUTHORITY AND TIERS.**

(a) **LIABILITY FOR PAYMENTS TO THE FUND.**—

(1) **IN GENERAL.**—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and sub-tiers assigned to defendant participants.

(2) **AGGREGATE PAYMENT OBLIGATIONS LEVEL.**—Subject only to section 204(m), and notwithstanding any other provision of this Act, the total payments required of all defendant participants over the life of the Fund shall not exceed $90,000,000,000. The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.
(3) Ability to enter reorganization.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) Tier I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) Treatment of Tier I Business Entities in Bankruptcy.—

(1) Definition.—In this subsection, the term “bankrupt business entity” means a person that is not a natural person that—

(A) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;
(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(C) the bankruptcy court presiding over the business entity’s case determines, after notice and a hearing upon motion filed by the entity within 30 days of the effective date of this Act, which motion shall be supported by—

(i) an affidavit or declaration of the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of the business entity; and

(ii) copies of the entity’s public statements and securities filings made in connection with the entity’s filing for chapter 11 protection that asbestos liability was not the sole or precipitating cause of the entity’s chapter 11 filing. Notice of such motion shall be as directed by the bankruptcy court and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity’s chapter 11 filing. The bankruptcy court shall hold a hearing and make its deter-
mination with respect to the motion within
60 days after the date the motion is filed.
In making its determination, the bank-
ruptcy court shall take into account the af-
fidavits, public statements, and securities
filings, and other information, if any, sub-
mitted by the entity and all other facts and
circumstances presented by an objecting
party. Any review of this determination
must be an expedited appeal and limited to
whether the decision was against the
weight of the evidence.

(2) PROCEEDING WITH REORGANIZATION
PLAN.—A bankrupt business entity may proceed
with the filing, solicitation, and confirmation of a
plan of reorganization that does not comply with the
requirements of this Act, including a trust and chan-
neling injunction described in section 524(g) of title
11, United States Code, notwithstanding any other
provisions of this Act, if—

(A) on request of a party in interest or on
a motion of the court, and after a notice and
a hearing, the bankruptcy court presiding over
the chapter 11 case of the bankrupt business
entity determines that—
(i) confirmation is necessary to permit
the reorganization of that entity and as-
sure that all creditors and that entity are
treated fairly and equitably; and

(ii) confirmation is clearly favored by
the balance of the equities; and

(B) an order confirming the plan of reor-
ganization is entered by the bankruptcy court
within 9 months after the date of enactment of
this Act or such longer period of time approved
by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court
does not make the required determination, or if an
order confirming the plan is not entered within 9
months after the effective date of this Act or such
longer period of time approved by the bankruptcy
court for cause shown, the provisions of this Act
shall apply to the bankrupt business entity notwith-
standing the certification. Any timely appeal under
title 11, United States Code, from a confirmation
order entered during the applicable time period shall
automatically extend the time during which this Act
is inapplicable to the bankrupt business entity, until
the appeal is fully and finally resolved.

(4) OFFSETS.—
(A) Payments by Insurers.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described in section 524(g) of title 11, United States Code, an insurer who makes payments to the trust, shall obtain a dollar for dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) Contributions to Fund.—Any cash payments by a bankrupt business entity, if any, to a trust described in section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) Tiers II Through VI.—Except as provided in subsection (b) of this section and section 204, persons or affiliated groups are included in Tier II, III, IV, V, or VI according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.
(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group,

unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter
of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pend-ency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunc-tion power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or un-dertaking by any such debtor or any third party with respect to the treatment of any asbestos
claim filed in a debtor’s bankruptcy case or
with respect to a debtor before the date of en-
actment of this Act, whenever such debtor’s
case is either still pending, if such case is pend-
ing under a chapter other than chapter 11 of
title 11, United States Code, or subject to con-
firmation or substantial consummation of a
plan of reorganization under chapter 11 of title
11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Any
plan of reorganization, agreement, understanding, or
undertaking by any debtor or any third party under
paragraph (1) of this subsection, to the extent it re-
lates to any asbestos claim, shall be of no force or
effect, and no person shall have any right or claim
with respect to any of the foregoing.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise
provided under subsections (b), (d), and (l) of sec-
tion 204, persons or affiliated groups shall be in-
cluded within Tiers I through VII and shall pay
amounts to the Fund in accordance with this sec-
tion.

(2) REVENUES.—
(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor’s revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidi-
aries of that debtor, except that the pro forma
revenues of a person that is included in Subtier
2 of Tier I shall not be included in calculating
the revenues of any debtor that is a direct or
indirect majority owner of such Subtier 2 per-
son. If a debtor or affiliated group includes a
person in respect of whose liabilities for asbes-
tos claims a class action trust has been estab-
lished, there shall be excluded from the 2002
revenues of such debtor or affiliated group—

(i) all revenues of the person in re-
spect of whose liabilities for asbestos
claims the class action trust was estab-
lished; and

(ii) all revenues of the debtor and af-
iliated group attributable to the historical
business operations or assets of such per-
son, regardless of whether such business
operations or assets were owned or con-
ducted during the year 2002 by such per-
son or by any other person included within
such debtor and affiliated group.

(b) Tier I Subtiers.—
(1) **IN GENERAL.**—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) **SUBTIER 1.**—

(A) **IN GENERAL.**—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) **PAYMENT.**—Each debtor included in Subtier 1 shall pay on an annual basis 1.5184 percent of the debtor’s 2002 revenues.

(C) **OTHER ASSETS.**—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor’s funding obligation would render the debtor’s reorganization infeasible.

(D) **LIABILITY.**—

(i) **IN GENERAL.**—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor,
the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3.—
(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person’s total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

(ii) allowable priority claims under section 507 of title 11, United States Code; and

(iii) allowable secured claims.

(5) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any per-
son included within a debtor and affiliated group
that has been included in Tier I (exclusive of any as-
sets needed to pay previously incurred expenses and
asbestos claims reduced to a final order or judgment
within the meaning of section 403(d)(1) before the
date of enactment of this Act) shall be transferred
to the Fund not later than 6 months after the date
of enactment of this Act.
(e) Tier II Subtiers.—
(1) In general.—Each person or affiliated
group in Tier II shall be included in 1 of the 5
subtiers of Tier II, based on the person’s or affili-
ated group’s revenues. Such subtiers shall each con-
tain as close to an equal number of total persons
and affiliated groups as possible, with—
(A) those persons or affiliated groups with
the highest revenues included in Subtier 1;
(B) those persons or affiliated groups with
the next highest revenues included in Subtier 2;
(C) those persons or affiliated groups with
the lowest revenues included in Subtier 5;
(D) those persons or affiliated groups with
the next lowest revenues included in Subtier 4;
and
(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person’s or affiliated group’s revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;
(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) Payments.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) Tier IV subtiers.—

(1) In general.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person’s or affiliated group’s revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.
(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.
(B) Subtier 2: $2,475,000.
(C) Subtier 3: $1,650,000.
(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person’s or affiliated group’s revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,100,000.
(B) Subtier 2: $550,000.
(C) Subtier 3: $220,000.

(g) TIER VI SUBTIERS.—
(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person’s or affiliated group’s revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $550,000.

(B) Subtier 2: $275,000.

(C) Subtier 3: $110,000.

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Federal Employers’ Liability Act (45 U.S.C. 51 et seq.) as
a result of operations as a common carrier by
railroad; and

(B) has paid (including any payments
made by others on behalf of such person or af-
iliated group) not less than $5,000,000 in set-
tlement, judgment, defense, or indemnity costs
relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment re-
requirement for persons or affiliated groups included
in Tier VII shall be in addition to any payment re-
requirement applicable to such person or affiliated
group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated
group in Tier VII with revenues of $5,000,000,000
or more is included in Subtier 1 and shall make an-
ual payments of $10,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated
group in Tier VII with revenues of less than
$5,000,000,000, but not less than $3,000,000,000 is
included in Subtier 2 and shall make annual pay-
ments of $5,000,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated
group in Tier VII with revenues of less than
$3,000,000,000, but not less than $500,000,000 is
included in Subtier 3 and shall make annual pay-
ments of $500,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this sub-
section, the revenues of a joint venture shall be
included on a pro rata basis reflecting relative
joint ownership to calculate the revenues of the
parents of that joint venture. The joint venture
shall not be responsible for a contribution
amount under this subsection.

(B) LIABILITY.—For purposes of this sub-
section, the liability under the Act of April 22,
1908 (45 U.S.C. 51 et seq.), commonly known
as the Federal Employers’ Liability Act, shall
be attributed to the parent owners of the joint
venture on a pro rata basis, reflecting their rel-
ative share of ownership. The joint venture
shall not be responsible for a payment amount
under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Subject to subsection (m), each
defendant participant or affiliated group shall pay to the
Fund in the amounts provided under this subtitle as ap-
appropriate for its tier and subtier each year until the earlier

to occur of the following:

(1) The participant or affiliated group has sat-

ished its obligations under this subtitle during the

first 23 annual payment cycles of the operation of

the Fund.

(2) The amount received by the Fund from de-

fendant participants, excluding any amounts rebated

to defendant participants under subsection (d),

equals the maximum aggregate payment obligation

of section 202(a)(2).

(b) Small Business Exemption.—Notwith-

standing any other provision of this subtitle, a person or

affiliated group that is a small business concern (as de-

fined under section 3 of the Small Business Act (15

U.S.C. 632)), on December 31, 2002, is exempt from any

payment requirement under this subtitle and shall not be

included in the subtier allocations under section 203.

(c) Procedures.—The Administrator shall pre-

scribe procedures on how amounts payable under this sub-

title are to be paid, including, to the extent the Adminis-

trator determines appropriate, procedures relating to pay-

ment in installments.

(d) Adjustments.—
(1) In general.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator’s determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant’s payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) Financial hardship adjustments.—

(A) In general.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such ad-
justment by demonstrating that the amount of
its payment obligation under the statutory allo-
cation would constitute a severe financial hard-
ship.

(B) Term.—Subject to the annual avail-
ability of funds in the defendant hardship and
inequity adjustment account established under
subsection (j), a financial hardship adjustment
under this subsection shall have a term of 3
years.

(C) Renewal.—After an initial hardship
adjustment is granted under this paragraph, a
defendant participant may renew its hardship
adjustment by demonstrating that it remains
justified.

(D) Reinstatement.—Following the ex-
piration of the hardship adjustment period pro-
vided for under this section and during the
funding period prescribed under subsection (a)
or (m), the Administrator shall annually deter-
mine whether there has been a material change
in the financial condition of the defendant par-
ticipant such that the Administrator may, con-
sistent with the policies and legislative intent
underlying this Act, reinstate under terms and
conditions established by the Administrator any part or all of the defendant participant’s payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund; or

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that
neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant; and

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant’s payment obligation based on inequity by demonstrating that not less than 95 percent of such person’s prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person’s manufacture and sale of railroad locomotives and related products is temporally and causally remote. For purposes of this clause, a person’s manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products.
by an entity dissolved more than 25 years before the date of enactment of this Act.

(B) Payment Rate.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant’s gross revenues for the year ending December 31, 2002.

(C) Term.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) Renewal.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) Reinstatement.—

(i) In general.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a) or (m), the Administrator shall annually determine whether there has been a material change in conditions which would support
a finding that the amount of the defendant participant’s payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $250,000,000, except to the extent additional monies are available for such adjustments as a result of carryover of prior years’ funds under sub-
section (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A).

(5) ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submis-
sions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) Election.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as
any other amount for which the affiliated group
may be liable under sections 223 and 224) from
any member of the affiliated group;

(C) all members of the affiliated group
shall be identified in the submission under sub-
section (i) and shall certify compliance with this
subsection and the Administrator’s regulations
implementing this subsection; and

(D) the obligations under this subtitle shall
not change even if, after the date of enactment
of this Act, the beneficial ownership interest be-
tween any members of the affiliated group shall
change.

(3) CAUSE OF ACTION.—Notwithstanding sec-
tion 221(e), this Act shall not preclude actions
among persons within an affiliated group with re-
spect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
TURES.—

(1) IN GENERAL.—For purposes of determining
a defendant participant’s prior asbestos expendi-
tures, the Administrator shall prescribe such rules
as may be necessary or appropriate to assure that
payments by indemnitors before December 31, 2002,
shall be counted as part of the indemnitor’s prior as-
bestos expenditures, rather than the indemnitee’s prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on
behalf of or for the benefit of the indemnitee any indemnifiable cost.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—Except as provided under subsection (m), the aggregate annual payments of defendant participants to the Fund shall be at least $2,500,000,000 for each calendar year in the first 23 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) of this section is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f) and (g) of this section) fail in any year to raise at least $2,500,000,000 net of any adjustments under subsection (d), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment net of any adjustments under subsection (d), the Administrator may assess
a guaranteed payment surcharge under subsection (l).

(i) Procedures for Making Payments.—

(1) Initial Year: Tiers II–VI.—

(A) In General.—Not later than 180 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2); and

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified
for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier.

(B) RELIEF.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation where the participant shows that it is likely to qualify for a financial hardship adjustment, and that failure to provide interim relief would cause severe irreparable harm. The Administrator’s refusal to grant such relief is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 90 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;
(D) in the case of debtors falling within Subtier 1 of Tier I, a statement of the debtor’s 2002 revenues, determined in accordance with section 203(a)(2), and a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B); and

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated.

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).
(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accord-
ance with this subsection no later than the ear-
lier of—

(i) 30 days after the receipt of direct
notice; or

(ii) 30 days after the publication of
notice in the Federal Register.

(B) CERTIFICATION.—The response sub-
mitted under subparagraph (A) shall be signed
by a responsible corporate officer, general part-
ner, proprietor, or individual of similar author-
ity, who shall certify under penalty of law the
completeness and accuracy of the information
submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The
response submitted under subparagraph (A)
shall include, on behalf of the defendant partici-
pant or affiliated group, a consent to the Ad-
ministrator’s audit authority under section
221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—Not later than 60 days
after receiving a response under paragraph (5),
the Administrator shall send the person a notice
of initial determination identifying the tier and
subtier, if any, into which the person falls and
the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(B) No response; incomplete response.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) Payments.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under
paragraph (10) shall not stay the obligation of
the participant to make the payment specified
in the Administrator’s notice.

(7) Exemptions for information re-
quired.—

(A) Prior asbestos expenditures.—In
lieu of submitting information related to prior
asbestos expenditures as may be required for
purposes of this subtitle, a non-debtor defend-
ant participant may consent to be assigned to
Tier II.

(B) Revenues.—In lieu of submitting in-
formation related to revenues as may be re-
quired for purposes of this subtitle, a non-debt-
or defendant participant may consent to be as-
signed to Subtier 1 of the defendant partici-
pant’s applicable tier.

(8) New information.—

(A) Existing participant.—The Admin-
istrator shall adopt procedures for requiring ad-
ditional payment, or refunding amounts already
paid, based on new information received.

(B) Additional participant.—If the
Administrator, at any time, receives information
that an additional person may qualify as a de-
fendant participant, the Administrator shall re-
quire such person to submit information nec-
essary to determine whether that person is re-
quired to make payments, and in what amount,
under this subtitle and shall make any deter-
mination or take any other act consistent with
this Act based on such information or any other
information available to the Administrator with
respect to such person.

(9) SUBPOENAS.—The Administrator may re-
quest the Attorney General to subpoena persons to
compel testimony, records, and other information
relevant to its responsibilities under this section. The
Attorney General may enforce such subpoena in ap-
propriate proceedings in the United States district
court for the district in which the person to whom
the subpoena was addressed resides, was served, or
transacts business.

(10) REHEARING.—A defendant participant has
a right to obtain rehearing of the Administrator’s
determination under this subsection of the applicable
tier or subtier and of the Administrator’s determina-
tion under subsection (d) of a financial hardship or
inequity adjustment, if the request for rehearing is
filed within 30 days after the defendant participant’s
receipt of notice from the Administrator of the deter-
mination. A defendant participant may not file an
action under section 303 unless the defendant par-
ticipant requests a rehearing under this paragraph.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUST-
MENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total pay-
ments by defendant participants in any given year
exceed the minimum aggregate annual payments
under subsection (h) of this section, excess monies
up to a maximum of $250,000,000 in any such year
shall be placed in a defendant hardship and inequity
adjustment account established within the Fund by
the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from
the defendant hardship and inequity adjustment ac-
count shall be preserved and administered like the
remainder of the Fund, but shall be reserved and
may be used only—

(A) to make up for any relief granted to a
defendant participant for severe financial hard-
ship or demonstrated inequity under subsection
(d) of this section or to reimburse any defend-
ant participant granted such relief after its pay-
ment of the amount otherwise due; and
(B) if the condition set forth in subsection (a)(2) of this section is met, for any purpose that the Fund may serve under this Act, unless the Administrator shall have published a final certification requiring a contingent call under subsection (m)(3)(D).

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), in the event there are excess monies paid by defendant participants in any given year, such monies—

(A) may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guar-
anteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment set forth in subsection (h) net of any adjustments under subsection (d) is reached each year; and

(B) if the condition set forth in subsection (a)(2) of this section is met, for any purpose that the Fund may serve under this Act, unless the Administrator shall have published a final certification requiring a contingent call under subsection (m)(3)(D).

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment net of any adjustments under subsection (d) in any given year, the Administrator may impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate an-
annual payment net of any adjustments under subsection (d), as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant’s relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(2) Certification.—

(A) In general.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) Notice and comment.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) Final certification.—

(i) In general.—The Administrator shall publish a notice of the final certification in the Federal Register after consid-
eration of all comments submitted under subparagraph (B).

(ii) Written notice.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant’s payment, including the amount of any surcharge.

(m) Contingent Call for Mandatory Additional Payments.—

(1) In general.—Notwithstanding section 202(a)(2) and subsection (a) of this section, the Administrator may require additional payments to the Fund by defendant participants, subsequent to the payment by defendant participants of the maximum aggregate payment obligation in section 202(a)(2), as provided in this subsection.

(2) Contingent call payments.—If the Administrator has certified or certifies the necessity of additional payments as provided in paragraph (3), the Administrator may require the defendant participants to pay in accordance with paragraph (5) up to an aggregate maximum of $10,000,000,000 of additional payments subsequent to the payment by de-
fendant participants of the maximum aggregate pay-
ment obligation in section 202(a)(2).

(3) CONTINGENT CALL CERTIFICATION.—

(A) IN GENERAL.—Before invoking the au-
thority to require additional mandatory pay-
ments under this subsection, the Administrator
shall certify, after consultation with appropriate
experts, that the entirety of the contingent call
amount invoked is necessary to meet the
Fund's obligations.

(B) INITIAL NOTICE.—Before making any
certification under subparagraph (A), the Ad-
ministrator shall publish a notice in the Federal
Register of the proposed certification, including
a description and explanation of the Adminis-
trator's analysis supporting the certification of
the Administrator.

(C) COMMENTS FROM DEFENDANT PAR-
ticipants.—Not later than 60 days after the
publication of the notice under subparagraph
(B), a defendant participant may provide the
Administrator with additional information to
support a determination that all or some of the
additional payments from defendant partici-
pants set forth in the notice are or are not re-
quired.

(D) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator
shall publish a final notice in the Federal
Register after consideration of all com-
ments submitted under subparagraph (C).

(ii) WRITTEN NOTICE.—If the Admin-
istrator certifies the need for the contin-
gent call for additional payments, the Ad-
ministrator shall provide each defendant
participant with written notice of that de-
fendant participant’s schedule of payments
under this subsection.

(4) BORROWING CAPACITY.—To the extent pro-
vided in section 221(b)(3), the Administrator may
borrow against the mandatory additional payments
required under this subsection at any time after
issuing the final certification under paragraph (3).

(5) ALLOCATION.—Any additional payments to
the Fund by defendant participants under this sub-
section shall be allocated among them in proportion
to the amounts provided under sections 202 and 203
(as modified by subsections (b), (d), (f), and (g) of
this section). If the Administrator determines that
the full amount of funding that would otherwise be
generated in any year by the funding provisions of
sections 202, 203, and 204 is not required for pur-
poses of this subsection, the Administrator shall re-
duce the amounts paid by all defendant participants
on the same basis.

(6) ENFORCEMENT.—The additional payments
required under this subsection may be enforced in
the same manner and to the same extent as the en-
forcement of payments under section 223.

Subtitle B—Asbestos Insurers
Commission

SEC. 210. DEFINITION.

In this subtitle, the term “captive insurance com-
pany” means a company—

(1) whose entire beneficial interest is owned on
the date of enactment of this Act, directly or indi-
rectly, by a defendant participant or by the ultimate
parent or the affiliated group of a defendant partici-

(2) whose primary commercial business during
the period from calendar years 1940 through 1986
was to provide insurance to its ultimate parent or
affiliated group, or any portion of the affiliated
group or a combination thereof; and
(3) that was incorporated or operating no later than December 31, 2002.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) Establishment.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the “Commission”) to carry out the duties described in section 212.

(b) Membership.—

(1) Appointment.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Qualifications.—

(A) Expertise.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) Conflict of Interest.—

(i) In general.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission may be a former employee or shareholder
of any insurer participant, unless that is 
fully disclosed.

(ii) DEFINITION.—In clause (i), the

term “shareholder” shall not include a 
broadly based mutual fund that may, from 
time-to-time include the stocks of insurer 
participants as a portion of its overall 
holdings.

(C) FEDERAL EMPLOYMENT.—A member 
of the Commission may not be an officer or em-
ployee of the Federal Government, except by 
reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall 
be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commiss-
ion shall be filled in the same manner as the origi-

nal appointment.

(5) CHAIRMAN.—The President shall select a 
Chairman from among its members.

(e) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days 
after the date on which all members of the Commiss-
ion have been appointed, the Commission shall hold 
its first meeting.
(2) Subsequent meetings.—The Commission shall meet at the call of the Chairman as necessary to accomplish the duties under section 212.

(3) Quorum.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) Determination of Insurer Payment Obligations.—

(1) In general.—

(A) Definitions.—For the purposes of this Act, the terms “insurer” and “insurer participant” shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) Procedures for determining insurer payments.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such
methodology to determine the individual pay-
ment for each insurer participant. The method-
ology may include 1 or more allocation formulas
to be applied to all insurer participants or
groups of similarly situated participants. The
Commission’s rule shall include a methodology
for adjusting payments by insurer participants
to make up, during any applicable payment
year, any amount by which aggregate insurer
payments fall below the level required in para-
graph (3)(C). Under this procedure, not later
than 120 days after the initial meeting of the
Commission, the Commission shall commence a
rulemaking proceeding under section 213(a) to
propose and adopt a methodology for allocating
payments among insurer participants. In pro-
posing an allocation methodology, the Commis-
sion may consult with such actuaries and other
experts as it deems appropriate. After hearings
and public comment on the proposed allocation
methodology, the Commission shall as promptly
as possible promulgate a final rule establishing
such methodology. After promulgation of the
final rule, the Commission shall determine the
individual payment of each insurer participant
under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission’s and Administrator’s authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission’s and Administrator’s authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—

The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000.
(B) Accounting Standards.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) Captive Insurance Companies.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) Several Liability.—Unless otherwise provided under this Act, each insurer participant’s obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability and the
future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) **PAYMENT CRITERIA.**—

(A) **INCLUSION IN INSURER PARTICIPANT CATEGORY.**—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(B) **INSURER PARTICIPANT ALLOCATION METHODOLOGY.**—

(i) **IN GENERAL.**—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers’ compensation), such factors as—
(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—

The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer’s reserves when the reinsurer’s financial results are included as part of the direct insurer’s...
United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For year 1, $2,700,000,000.
(ii) For year 2, $2,700,000,000.
(iii) For year 3 through 5, $5,075,000,000 annually.
(iv) For years 6 through 17, $1,625,000,000 annually.
(v) For years 18 through 21, $1,350,000,000 annually.
(vi) For years 22 through 26, $1,080,000,000 annually.
(vii) For year 27, $100,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related li-
abilities from a Lloyds syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.

(ii) INCLUDED RUNOFF ENTITIES.—

Subject to clause (i), a runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on ex-
ceptional circumstances or severe financial hardship.

(ii) **Financial Adjustments.**—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission’s methodology would jeopardize the solvency of such participant.

(iii) **Exceptional Circumstance Adjustment.**—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission’s allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subsection (b)(4)(A) and (C); or
(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but adjustments shall not reduce the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and (3)(C).

(iv) Time period of adjustment.—

Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(b) Procedure for notifying insurer participants of individual payment obligations.—

(1) Notice to participants.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the
amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—
(A) In general.—Within 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission’s request for information. An insurer participant’s payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(B) No response; incomplete response.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) Commission review, revision and finalization of initial payment determinations.—

(A) Comments from insurer participants.—Not later than 30 days after receiving a notice of initial determination from the Com-
mission, an insurer participant may provide the Commission with additional information to support limited adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a
provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.
(6) Escrow Payments.—Without regard to an insurer participant’s payment obligation under this section, any escrow or similar account established before the enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) Notice to Insurer Participants of Final Payment Determinations.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(e) Insurer Participants Voluntary Allocation Agreement.—

(1) In General.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, re-insurer participants licensed or domiciled in the United States, or other reinsurer participants, may
submit an allocation agreement, approved by all of
the participants in the applicable group, to—

(A) the Commission;

(B) the Committee on the Judiciary of the
Senate; and

(C) the Committee on the Judiciary of the
House of Representatives.

(2) Allocation agreement.—To the extent
the participants in any such applicable group volun-
tarily agree upon an allocation arrangement, any
such allocation agreement shall only govern the allo-
cation of payments within that group and shall not
determine the aggregate amount due from that
group.

(3) Certification.—The Commission shall de-
determine whether an allocation agreement submitted
under subparagraph (A) meets the requirements of
this subtitle and, if so, shall certify the agreement
as establishing the allocation methodology governing
the individual payment obligations of the partici-
pants who are parties to the agreement. The author-
ity of the Commission under this subtitle shall, with
respect to participants who are parties to a certified
allocation agreement, terminate on the day after the
Commission certifies such agreement. Under sub-
section (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to
make interim payments to the Fund to assure ade-
quate funding by insurer participants during such
period.

(2) AMOUNT OF INTERIM PAYMENTS.—During
any applicable year, the Administrator may require
insurer participants to make aggregate interim pay-
ments not to exceed the annual aggregate amount
specified in subsection (a)(3)(C).

(3) ALLOCATION OF PAYMENTS.—Interim pay-
ments shall be allocated among individual insurer
participants on an equitable basis as determined by
the Administrator. All payments required under this
subparagraph shall be credited against the partici-
pant’s ultimate payment obligation to the Fund es-
established by the Commission. If an interim payment
exceeds the ultimate payment, the Fund shall pay
interest on the amount of the overpayment at a rate
determined by the Administrator. If the ultimate
payment exceeds the interim payment, the partici-
pant shall pay interest on the amount of the under-
payment at the same rate. Any participant may seek
an exemption from or reduction in any payment re-
quired under this subsection under the financial
hardship and exceptional circumstance standards es-
tablished in subsection (a)(3)(D).
(4) Appeal of interim payment decisions.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) Transfer of authority from the Commission to the Administrator.—

(1) In general.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) Financial hardship and exceptional circumstance adjustments.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjust-
ment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant’s required payment shall be in proportion to such participant’s share of the aggregate payment obligation of all insurer participants.

(3) FINANCIAL SECURITY REQUIREMENTS.— Whenever an insurer participant’s A.M. Best’s claims payment rating or Standard and Poor’s financial strength rating falls below A−, and until such time as either the insurer participant’s A.M. Best’s Rating or Standard and Poor’s rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best’s claims
payment rating or Standard & Poor’s financial strength rating of at least A+.

(g) **JUDICIAL REVIEW.**—The Commission’s rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

**SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

(a) **RULEMAKING.**—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) **HEARINGS.**—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission’s adoption of a final regulation.

(c) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such depart-
ment or agency shall furnish such information to the Com-
mission.

(d) POSTAL SERVICES.—The Commission may use
the United States mails in the same manner and under
the same conditions as other departments and agencies of
the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or
dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibil-
ities, the Commission may enter into such contracts and
agreements as the Commission determines necessary to
obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of
the Commission shall be compensated at a rate equal to
the daily equivalent of the annual rate of basic pay pre-
scribed for level IV of the Executive Schedule under sec-
tion 5315 of title 5, United States Code, for each day (in-
cluding travel time) during which such member is engaged
in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Com-
misson shall be allowed travel expenses, including per
diem in lieu of subsistence, at rates authorized for employ-
ees of agencies under subchapter I of chapter 57 of title
5, United States Code, while away from their homes or
regular places of business in the performance of services for the Commission.

(c) **Staff.**—

(1) **In General.**—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) **Compensation.**—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) **Detail of Government Employees.**—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.
(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—
(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b); and

(4) administrative expenses to carry out the provisions of this Act.

(b) Borrowing Authority.—

(1) In general.—The Administrator is authorized to borrow from time-to-time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund’s liquidity.

(2) Federal Financing Bank.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285) as needed for performance of the Administrator’s duties under this Act for the first 2 years.
(3) Borrowing capacity.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants (including any contingent call mandatory additional payments under section 204(m)) during the subsequent 7 years.

(4) Repayment obligations.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.

(c) Lockbox for Severe Asbestos-Related Injury Claimants.—

(1) In general.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants
eligible for an award under the criteria of Level X.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—
(1) In general.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) False, fraudulent, or fictitious statements or practices.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) No Private Right of Action.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.
SEC. 222. MANAGEMENT OF THE FUND.

(a) In General.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries, including those provided in subsection (c), and to otherwise defray the reasonable expenses of administering the Fund.

(b) Investments.—

(1) In General.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) Strategy.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;
(D) general economic conditions at the
time of the investment;

(E) the possible effect of inflation or defla-
tion on Fund assets;

(F) the role that each investment or course
of action plays with respect to the overall assets
of the Fund;

(G) the expected amount to be earned (in-
cluding both income and appreciation of cap-
ital) through investment of amounts in the
Fund; and

(H) the needs of asbestos claimants for
current and future distributions authorized
under this Act.

(c) MESOTHELIOMA RESEARCH AND TREATMENT
CENTERS.—

(1) IN GENERAL.—The Administrator shall pro-
vide $1,000,000 from the Fund for each of fiscal
years 2004 through 2008 for each of up to 10 meso-
ethelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Centers shall—

(A) be chosen by the Director of the Na-
tional Institutes of Health;

(B) be chosen through competitive peer re-
view;
(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans, who have suffered excessively from mesothelioma;

(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

(G) be participants in the National Mesothelioma Registry; and

(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after
demand and 30 days opportunity to cure the default, there
shall be a lien in favor of the United States for the amount
of the delinquent payment (including interest) upon all
property and rights to property, whether real or personal,
belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or
insolvency proceeding, the lien imposed under subsection
(a) shall be treated in the same manner as a lien for taxes
due and owing to the United States for purposes of the
provisions of title 11, United States Code, or section
3713(a) of title 31, United States Code. The United
States Bankruptcy Court shall have jurisdiction over any
issue or controversy regarding lien priority and lien perfec-
tion arising in a bankruptcy case due to a lien imposed
under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there
has been a refusal or failure to pay any liability im-
posed under this Act, the Administrator may bring
a civil action in the United States District Court for
the District of Columbia, or any other appropriate
lawsuit or proceeding outside of the United States—
(A) to enforce the liability and any lien of
the United States imposed under this section;
(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest, to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney’s fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (e), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an
insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.
(3) Recoverability of Contribution.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) No Credit or Offset.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) Cooperation.—Insureds and cedents shall cooperate with the Administrator’s reasonable requests for assistance in any such proceeding. The
positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) Bar on United States Business.—If any direct insurer or reinsurer refuses to furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) Credit for Reinsurance.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution
or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.
(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking “or” at the end;

(2) in paragraph (5), by striking “prohibition.” and inserting “prohibition; or”; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

“(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.”.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 per-
percentage points, for the period from such last date to the
date paid.

**TITLE III—JUDICIAL REVIEW**

**SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

(a) **EXCLUSIVE JURISDICTION.**—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) **PERIOD FOR FILING PETITION.**—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

**SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

(a) **IN GENERAL.**—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) **EXCLUSIVE JURISDICTION.**—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.
(c) **Standard of Review.**—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

**Sec. 303. Judicial Review of Participants’ Assessments.**

(a) **Exclusive Jurisdiction.**—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) **Period for Filing Action.**—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall com-
mence any action within 30 days after a decision on re-

hearing under section 204(i)(10), and any insurer partici-

pant who receives a notice of a payment obligation under

section 212(b) shall commence any action within 30 days

after receiving such notice.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States

District Court for the District of Columbia shall have ex-

clusive jurisdiction over any action for declaratory or in-

junctive relieve challenging any provision of this Act. An

action under this section shall be filed not later than 60
days after the date of enactment of this Act or 60 days
after the final action by the Administrator or the Commis-
sion giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action

shall be reviewable on appeal directly to the Supreme

Court of the United States. Such appeal shall be taken

by the filing of a notice of appeal within 30 days, and

the filing of a jurisdictional statement within 60 days, of

the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty

of the United States District Court for the District of Co-
lumbia and the Supreme Court of the United States to

advance on the docket and to expedite to the greatest pos-
sible extent the disposition of the action and appeal.
SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) No Stays.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) Exclusivity of Review.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) Constitutional Review.—

(1) In general.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) Period for filing appeal.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) In General.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:
§1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

(a) Fraud relating to asbestos injury claims resolution fund.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

(b) False statement relating to asbestos injury claims resolution fund.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statements or representations; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant’s payment obligation under title I or II of the Fairness in Asbestos Injury Reso-
olution Act of 2005 shall be fined under this title or
imprisoned not more than 10 years, or both.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of sections for chapter 63 of title 18, United
States Code, is amended by adding at the end the fol-
lowing:

“1348. Fraud and false statements in connection with participation in Asbestos
Injury Claims Resolution Fund.”.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title
11, United States Code, is amended—

(1) in paragraph (17), by striking “or” at the
end;

(2) in paragraph (18), by striking the period at
the end and inserting “; or”; and

(3) by inserting after paragraph (18) the fol-
lowing:

“(19) under subsection (a) of this section of the
enforcement of any payment obligations under sec-
tion 204 of the Fairness in Asbestos Injury Resolu-
tion Act of 2005, against a debtor, or the property
of the estate of a debtor, that is a participant (as
that term is defined in section 3 of that Act).”.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Sec-
tion 365 of title 11, United States Code, is amended by
adding at the end the following:
“(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.”.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

“(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

“(2) For purposes of paragraph (1), the term ‘asbestos payment obligation’ means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.”.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:
“(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor’s payment obligations assessed against the participant under title II of that Act.”.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(i) PARTICIPANT DEBTORS.—

“(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

“(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

“(B) is subject to a case under this title that is pending—

“(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

“(ii) at any time during the 1-year period preceding the date of enactment of that Act.

“(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness
in Asbestos Injury Resolution Act of 2005 shall make payments in accordance with sections 202 and 203 of that Act.

“(3) Treatment of payment obligations.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

“(A) constitute costs and expenses of administration of a case under section 503 of this title;

“(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

“(C) not be stayed;

“(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

“(E) not be impaired or discharged in any current or future case under this title.”.

(f) Treatment of Trusts.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

“(j) Asbestos Trusts.—

“(1) In general.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury
Claims Resolution Fund (referred to in this subsection as the ‘Fund’) as established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a ‘trust’ under section 201 of that Act.

“(2) TRANSFER OF TRUST ASSETS.—

“(A) IN GENERAL.—

“(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries
of the trust from which the assets were transferred.

“(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

“(B) Authority to refuse assets.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

“(C) Allocation of trust assets.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the
United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

“(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

“(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum
cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

“(3) INJUNCTION.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to
immediate appeal under section 1291(a) of title 28. Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and no longer subject to any appeal or review, (i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation, or (ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

“(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective applica-
tion to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 1291(a) of title 28.”.

(g) No Avoidance of Transfer.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

“(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.”.
(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

“(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.”.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or run-off participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by
a direct insurer, reinsurer or runoff participant in
an insurance receivership proceeding be approved by
a court, receiver or other person. Payments of as-
se ssments by any direct insurer or reinsurer partici-
pant under this Act shall not be subject to the avoid-
ance powers of a receiver or a court in or relating
to an insurance receivership proceeding.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The
provisions of this Act shall supersede any and all Federal
and State laws insofar as they may relate to any asbestos
claim, including any claim described in subsection (d)(2).

(b) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Any agreement, under-
standing, or undertaking by any person or affiliated
group with respect to the treatment of any asbestos
claim that requires future performance by any party,
insurer of such party, settlement administrator, or
escrow agent shall be superseded in its entirety by
this Act.

(2) NO FORCE OR EFFECT.—Any such agree-
ment, understanding, or undertaking by any such
person or affiliated group shall be of no force or ef-
f ect, and no person shall have any rights or claims
with respect to any of the foregoing.
(c) **Exclusive Remedy.**—The remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (d)(2), under any Federal or State law.

(d) **Bar on Asbestos Claims.**—

(1) **In General.**—No asbestos claim, including any claim described in subsection (d)(2), may be pursued and no pending asbestos claim may be maintained in any Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act.

(2) **Certain Specified Claims.**—

(A) **In General.**—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judg-
ment only against insurers or in bankrupt-

(ii) relating to the defense, investigation, handling, litigation, settlement or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission or failure to detect, disclose or warn re-
lating to the presence or health effects
of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort or otherwise; or

(iv) by any third party, and premised on any theory, allegation or cause of action, for reimbursement of health care costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or
(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim, including a claim described in subsection (d)(2), in any Federal or State court, except actions for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act, is preempted by this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and re-
placed with an order of dismissal within 30
days after the filing of a motion by any party
to the action advising the court of the provi-
sions of this Act, any party may remove the
case to the district court of the United States
for the district in which such action is pending.

(B) Time limits.—For actions originally
filed after the date of enactment of this Act, the
notice of removal shall be filed within the time
limits specified in section 1441(b) of title 28,
United States Code.

(C) Procedures.—The procedures for re-
moval and proceedings after removal shall be in
accordance with sections 1446 through 1450 of
title 28, United States Code, except as may be
necessary to accommodate removal of any ac-
tions pending (including on appeal) on the date
of enactment of this Act.

(D) Jurisdiction.—The jurisdiction of
the district court shall be limited to—

   (i) determining whether removal was
   proper; and

   (ii) determining whether the claim
   presented is an asbestos claim as defined
   by this Act.
(6) CREDITS.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim including a claim described under paragraph (2) for which, before the date of enactment of this Act, there had been no order or judgment duly entered by a court no longer subject to any appeal or review, is not subject to the exclusive remedy or pre-emption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment. The Administrator shall require participants seeking credit under this section to demonstrate that the participant timely pursued all available remedies, including remedies available under this section to obtain dismissal of the claim, and that the participant notified the Admin-istrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section. The Admin-istrator may require such participant to furnish such further information as is necessary and appropriate to establish eligibility for and the amount of the
credits. The Administrator may intervene in any action in which a credit may be due under this section.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term “deemed erosion amount” means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term “early sunset” means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required in section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term “earned erosion amount” means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants’ funding obligations end, of those amounts which, at the time of the early
sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

<table>
<thead>
<tr>
<th>Year After Enactment In Which Defendant Participant's Funding Obligation Ends:</th>
<th>Applicable Percentage:</th>
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</thead>
<tbody>
<tr>
<td>10 .................................................................</td>
<td>70.78</td>
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<tr>
<td>11 .................................................................</td>
<td>68.75</td>
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<td>12 .................................................................</td>
<td>67.06</td>
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<td>13 .................................................................</td>
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<td>64.40</td>
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<td>63.33</td>
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<td>58.11</td>
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<tr>
<td>26 .................................................................</td>
<td>59.51</td>
</tr>
</tbody>
</table>

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term “remaining aggregate products limits” means aggregate limits that apply to insurance coverage granted under the “products hazard”, “completed operations hazard”, or “Products—Completed Operations Liability” in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and
(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term “scheduled payment amounts” means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term “unearned erosion amount” means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of
59.64 percent of each defendant participant’s scheduled payment amount.

(B) No erosion upon contingent call.—Any contingent payment required by the Administrator of any defendant participant shall not be deemed to erode remaining aggregate product limits.

(C) No assertion of claim.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer or reinsurer’s payments to the Fund or the erosion deemed to occur under this section.

(D) Policies without certain limits or with exclusion.—Other than under subparagraph (F), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(E) Treatment of consolidation election.—If an affiliated group elects consolidation as provided in section 204(f), the
total erosion of limits for the affiliated group
under paragraph (2)(A) shall not exceed 59.64
percent of the scheduled payment amount of
the single payment obligation for the entire af-
filiated group. The total erosion of limits for
any individual defendant participant in the af-
filiated group shall not exceed its individual
share of 59.64 percent of the affiliated group’s
scheduled payment amount, as measured by the
individual defendant participant’s percentage
share of the affiliated group’s prior asbestos ex-
penditures.

(F) RULE OF CONSTRUCTION.—Notwith-
standing any other provision of this section,
nothing in this Act shall be deemed to erode re-
aining aggregate products limits of a defend-
ant participant that can demonstrate by a pre-
ponderance of the evidence that 75 percent of
its prior asbestos expenditures were made in de-
fense or satisfaction of asbestos claims alleging
bodily injury arising exclusively from the expo-
sure to asbestos at premises owned, rented, or
controlled by the defendant participant (a
“premises defendant”). In calculating such per-
centage, where expenditures were made in de-
fense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant’s products and to asbestos at premises owned, rented or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. In the event that a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—
(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants’ policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant’s right to seek coverage for asbestos claims under an insurer participant’s policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).
(4) Restoration of aggregate product limits upon early sunset.—

(A) Restoration.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) Method of restoration.—The unearned erosion amount will be deemed restored to each defendant participant’s policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) Tolling of coverage claims.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate product limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) Payments by defendant participant.—Payments made by a defendant participant shall be deemed to erode, exhaust or otherwise satisfy appli-
cable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by non-participating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) Effect on other insurance claims.—
Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) Dispute Resolution Procedure.—

(1) Arbitration.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) Title 9, United States Code.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for
under this section shall be binding on the arbitrator, 
unless the parties agree to the contrary.

(3) Final and Binding Award.—An award by 
an arbitrator shall be final and binding between the 
parties to the arbitration, but shall have no force or 
effect on any other person. The parties to an arbi-
tration may agree that in the event a policy which 
is the subject matter of an award is subsequently de-
determined to be eroded in a manner different from 
the manner determined by the arbitration in a judg-
ment rendered by a court of competent jurisdiction 
from which no appeal can or has been taken, such 
arbitration award may be modified by any court of 
competent jurisdiction upon application by any party 
to the arbitration. Any such modification shall gov-
ern the rights and obligations between such parties 
after the date of such modification.

(c) Effect on Nonparticipants.—

(1) In general.—No insurance company or 
reinsurance company that is not a participant, other 
than a captive insurer, shall be entitled to claim that 
payments to the Fund erode, exhaust, or otherwise 
limit the nonparticipant’s insurance or reinsurance 
obligations.
(2) Other claims.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) Finite Risk Policies Not Affected.—

(1) In general.—Notwithstanding any other provision of this Act, this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1996, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as “finite risk” policies.

(2) Limitation.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides cov-
eral for required payments to a Federal trust fund
established by a Federal statute to resolve asbestos
injury claims.

(e) Effect on Certain Insurance and Reinsur-
ance Claims.—

(1) No coverage for fund assessments.—
No participant or captive insurer may pursue an in-
surance or reinsurance claim against another partici-
pant or captive insurer for payments to the Fund re-
quired under this Act, except under a contract spe-
cifically providing insurance or reinsurance for re-
quired payments to a Federal trust fund established
by a Federal statute to resolve asbestos injury
claims or, where applicable, under finite risk policies
under subsection (d).

(2) Certain insurance assignments void-
ed.—Any assignment of any rights to insurance cov-
erage for asbestos claims to any person who has as-
serted an asbestos claim before the effective date, or
to any trust, person or other entity not part of an
affiliated group as defined in section 201(1) of this
Act established or appointed for the purpose of pay-
ing asbestos claims which were asserted before the
effective date, or by any Tier I defendant partici-
pant, before any sunset of this Act, shall be null and
void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403 of this Act;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by subsection (e) (1) or (2) of this section; or

(C) the limits of insurance otherwise available to such participant in respect of asbestos
claims are deemed to be eroded under subsection (a) of this section.

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include—

(1) a summary of the claims made during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposure underlying those claims; and

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(2) a summary of the eligibility determinations made by the Office under section 114;
(3) a summary of the awards made from the Fund, including the amount of the awards;

(4) an analysis of the financial condition of the Fund, including an estimation of the Fund’s ability to pay claims for the subsequent 5 years in full and when required, an evaluation of the Fund’s ability to retire its existing debt and assume additional debt, and an evaluation of the Fund’s ability to satisfy other obligations under the program;

(5) a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which they are entitled according to section 133 for each level;

(6) the identity of all participants and a summary of the funding allocations of each participant, including the amounts of all payments to the Fund;

(7) a summary of all financial hardship or inequity adjustments applied for during the fiscal year, and a summary of the adjustments that were made during the fiscal year;

(8) a summary of the investments made under section 222(b);
(9) a summary of all referrals made to law enforcement authorities under section 408 and of any legal actions brought or penalties imposed under section 223;

(10) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(11) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay only those claimants whose injuries are caused by exposure to asbestos;

(12) a summary of the results of audits conducted under section 115; and

(13) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund’s ability to compensate persons with injuries that are caused by exposure to asbestos, he or she
must include in the report an analysis of the reasons for
the situation, a description of the range of reasonable al-
ternatives for responding to the situation, and a rec-
ommendation as to which alternative best serves the inter-
est of claimants and the public. The report may include
a description of changes in the diagnostic, exposure or
medical criteria of section 121 that the Administrator be-
lieves may be necessary to protect the Fund from compen-
sating claims not caused by exposure to asbestos.

(d) **Shortfall Analysis.**—

(1) **In General.**—If the Administrator con-
cludes, on the basis of the information contained in
the annual report submitted under this section, that
the Fund may not be able to pay claims as they be-
come due at any time within the next 5 years, the
Administrator must include in the report an analysis
of the reasons for the situation, an estimation of
when the Fund will no longer be able to pay claims
as they become due, a description of the range of
reasonable alternatives for responding to the situa-
tion, and a recommendation as to which alternative
best serves the interest of claimants and the public.
The report may include a description of changes in
the diagnostic, exposure or medical criteria of sec-
tion 121 that the Administrator believes may be nec-
necessary to protect the Fund. The range of alternatives may include—

(A) triggering the termination of this Act under subsection (f) at any time after 7 years following the date of enactment of this Act, and

(B) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, or changes in award values).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors (such as inadequate return on investments);

(B) the operation of the Fund generally (including the operation of the diagnostic, exposure and medical criteria, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments);

(C) the actual incidence of diseases such as mesothelioma;
(D) compensation of diseases with alternative causes; and

(E) any other factor that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Com-
merce. The Commission shall hold public hearings on the Administrator’s alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator’s recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

(2) Referral.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission shall hold public hearings on the Administrator’s alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator’s recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

(f) Sunset of Act.—

(1) In General.—At any time after 7 years following the date on which the Administrator begins
processing claims, if the Administrator determines that, if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also making its debt repayment obligations and meeting its other obligations under this Act, the provisions of this Act set forth in paragraph (3) shall terminate and be of no further effect 180 days after the Administrator’s determination as to all asbestos claims that have not been resolved by the Fund as of the date of the determination, unless Congress passes legislation continuing the Fund.

(2) RESOLVED CLAIMS.—In the event of sunset, all resolved claims shall be paid in full by the Fund.

(3) TERMINATED PROVISIONS.—Subject to paragraph (4), the provisions of this Act subject to termination under paragraph (1) are titles I (except subtitle A) and II and sections 403 and 404(e)(2).

(4) CONTINUED FUNDING.—If provisions of this Act terminate under paragraph (1), participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund’s
debt, and support the Fund’s continued operation as
needed to pay such claims and debt, the Adminis-
trator may reduce such payments. Any such reduc-
tions shall be allocated among participants in ap-
proximately the same proportion as the liability
under subtitles A and B of title II.

(5) DEFINITIONS.—In this subsection—

(A) the term “sunset claims” means claims
as to which this Act has terminated; and

(B) the term “sunset claimants” means
persons asserting such claims.

(6) SUNSET CLAIMS.—If this Act terminates in
accordance with paragraph (1), then the applicable
statute of limitations for the filing of sunset claims
under subsection (g) shall be deemed tolled for any
past or pending sunset claimants while they were
pursuing claims filed under this Act. For those
claimants who decide to pursue a sunset claim in ac-
cordance with subsection (g), the applicable statute
of limitations shall apply, except that claimants who
filed a claim against the Fund under this Act before
the date of termination shall have 2 years after the
date of termination to file a sunset claim in accord-
ance with subsection (g), whichever is longer.

(g) NATURE OF CLAIM AFTER SUNSET.—
(1) IN GENERAL.—On and after the date of termination under subsection (f), any individual injured as a result of exposure to asbestos, who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f), except—

(A) an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a malignant disease under this subsection, unless the malignancy was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant claim was settled; and

(B) an individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through IX) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on
which the nonmalignant or other malignant
claim was settled.

(2) EXCLUSIVE JURISDICTION.—The United
States district courts shall have exclusive jurisdiction
of all actions under paragraph (1), to the exclusion
of State courts and any other forum. As of the effec-
tive date of a termination of this Act under sub-
section (f), an action under paragraph (1) shall be
the exclusive remedy for any asbestos claim that
might otherwise exist under Federal, State or other
law, regardless of whether such claim arose before or
after the effective date of this Act or of the termi-
nation of this Act, except that claims against the
Fund that have been resolved before the date of the
termination determination under subsection (f) may
be paid by the Fund.

(3) VENUE.—Actions under paragraph (1) shall
be brought only in the United States district court
for the judicial district where the claimant resides or
the exposure is alleged to have occurred.

(4) APPLICABLE LAW.—An action under para-
graph (1) shall be governed by Federal common law,
except that where national uniformity is not required
the court must utilize otherwise applicable State law,
including State statutes, to provide the appropriate
rule of Federal common law.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise spe-
cifically provided in this Act, nothing in this Act may be
construed as creating a cause of action against the United
States Government, any entity established under this Act,
or any officer or employee of the United States Govern-
ment or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act may
be construed to—

(1) create any obligation of funding from the
United States Government, other than the funding
for personnel and support as provided under this
Act; or

(2) obligate the United States Government to
pay any award or part of an award, if amounts in
the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this
Act shall preclude the formation of a fund for the payment
of eligible medical expenses related to treating asbestos-
related disease for current and former residents of Libby,
Montana.
(b) **Health Care From Provider of Choice.**—Nothing in this Act shall be construed to preclude any eligible claimant from receiving health care from the provider of their choice.

**SEC. 408. Violations of Environmental and Occupational Health and Safety Requirements.**

(a) **Asbestos in Commerce.**—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States Attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) **Asbestos as Air Pollutant.**—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been
a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States Attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to—

(1) the United States Attorney for possible criminal prosecution under section 5(a) of such Act (29 U.S.C. 654(a));

(2) the Secretary of Labor for possible civil penalties under section 17 (a) through (d) of such Act (29 U.S.C. 666 (a) through (d)); and
(3) the Assistant Secretary for the Occupational Safety and Health Commission, and the appropriate State authority with jurisdiction to investigate asbestos matters, for possible civil or criminal penalties, including those under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos related-offenses re-
flect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines, are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and
the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines, are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) Denial, Termination, or Alteration of Health Coverage.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) Definitions.—In this section:

(1) Health Insurer.—The term “health insurer” means—

(A) an insurance company, health care service contractor, fraternal benefit organization, insurance agent, third party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or
(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term “health plan” means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for health care, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:
“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.”.

(2) Public Service Health Act.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.”.

(3) Internal Revenue Code of 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.”.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) In General.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

“Subtitle A—General Provisions”;

(2) by adding at the end the following:
Subtitle B—Ban of Asbestos Containing Products

“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

“(a) DEFINITIONS.—In this chapter:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) ASBESTOS.—The term ‘asbestos’ includes—

“(A) chrysotile;

“(B) amosite;

“(C) crocidolite;

“(D) tremolite asbestos;

“(E) winchite asbestos;

“(F) richterite asbestos;

“(G) anthophyllite asbestos;

“(H) actinolite asbestos;

“(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type or component thereof.

“(3) ASBESTOS CONTAINING PRODUCT.—The term ‘asbestos containing product’ means any product (including any part) to which asbestos is deliberately or knowingly added or used because the spe-
specific properties of asbestos are necessary for product
use or function. Under no circumstances shall the
term ‘asbestos containing product’ be construed to
include products that contain de minimus levels of
naturally occurring asbestos as defined by the Ad-
ministrator not later than 1 year after the date of
enactment of this chapter.

“(4) Distribute in commerce.—The term
‘distribute in commerce’—

“(A) has the meaning given the term in
section 3 of the Toxic Substances Control Act
(15 U.S.C. 2602); and

“(B) shall not include—

“(i) an action taken with respect to
an asbestos containing product in connec-
tion with the end use of the asbestos con-
taining product by a person that is an end
user, or an action taken by a person who
purchases or receives a product, directly or
indirectly from an end user; or

“(ii) distribution of an asbestos con-
taining product by a person solely for the
purpose of disposal of the asbestos con-
taining product in compliance with applica-
ble Federal, State, and local requirements.
“(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

“(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

“(A) prohibit persons, from manufacturing, processing, or distributing in commerce asbestos containing products; and

“(B) provide for implementation of subsections (c) and (d); and

“(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

“(c) EXEMPTIONS.—

“(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant an exemption from the requirements of subsection (b), if the Administrator determines that—

“(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

“(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not
present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

“(2) TERMS AND CONDITIONS.—An exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

“(3) GOVERNMENTAL USE.—

“(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

“(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

“(I) use of the asbestos containing product is necessary to the critical functions of the Department;

“(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and
“(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

“(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

“(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

“(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

“(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

“(B) ADMINISTRATIVE PROCEDURE ACT.— Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5,
United States Code (commonly referred to as the ‘Administrative Procedure Act’).

“(4) SPECIFIC EXEMPTIONS.—The following are exempted:

“(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

“(B) Roofing cements, coatings and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

“(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

“(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

“(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and
“(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

“(B) Revocation of exemption.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B) if warranted.

“(d) Disposal.—

“(1) In general.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

“(2) Exemption.—Nothing in paragraph (1)—

“(A) applies to an asbestos containing product that—

“(i) is no longer in the stream of commerce; or
“(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

“(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

“Subtitle A—General provisions”;

and

(2) by adding at the end of the items relating to title II the following:

“Subtitle B—Ban of Asbestos Containing Products

“Sec. 221. Ban of asbestos containing products.”.