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To protect financial institutions from liability for damages caused by failure to remove asbestos from a residential or commercial building in which the financial institution holds a security interest if an accredited asbestos management planner has recommended in-place management of the asbestos, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1993

Mr. SCHUMER introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, and Banking, Finance and Urban Affairs

A BILL

To protect financial institutions from liability for damages caused by failure to remove asbestos from a residential or commercial building in which the financial institution holds a security interest if an accredited asbestos management planner has recommended in-place management of the asbestos, 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.**

4 This Act may be cited as the “Asbestos Management
5 Incentive Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Although asbestos is hazardous, the risk of
4 asbestos-related disease depends upon exposure to
5 airborne asbestos fibers.

6 (2) Data available to the Environmental Protec-
7 tion Agency suggest that average airborne asbestos
8 levels in buildings are very low. Accordingly, the
9 health risk to most building occupants also appears
10 to be very low.

11 (3) The Environmental Protection Agency has
12 estimated that only 20 percent of all buildings (in-
13 cluding public and commercial buildings, residential
14 apartment buildings of 10 units or more, and Fed-
15 eral buildings) contain friable asbestos-containing
16 material.

17 (4) The Environmental Protection Agency has
18 found that removal of asbestos is often not the best
19 course of action to reduce asbestos exposure. In fact,
20 by releasing asbestos-containing material fibers into
21 the air, an improper or unnecessary removal can cre-
22 ate a dangerous situation where none previously ex-
23 isted and could result in a net increase in human ex-
24 posures and risks.

25 (5) The Environmental Protection Agency re-
26 quires asbestos removal only to prevent significant

1 public exposure to airborne asbestos fibers during
2 building demolition or renovation activities.

3 (6) Many lending institutions require the re-
4 moval of asbestos, regardless of its condition, from
5 commercial buildings before approving loans secured
6 by those buildings because of the potential liability
7 for the health of the occupants or property damages
8 for failure to remove the asbestos.

9 (7) The Environmental Protection Agency rec-
10 ommends a pro-active, in-place management pro-
11 gram whenever intact asbestos-containing material is
12 discovered.

13 (8) The American Medical Association's Council
14 on Scientific Affairs has stated that "it is better
15 that society use its limited financial resources in
16 learning how to live safely with [asbestos] than in
17 attempting to remove it totally from the environ-
18 ment."

19 (9) The September 1991 report of the Health
20 Effects Institute's Asbestos Literature Review Panel
21 stated that "there does not appear to be sufficient
22 risk to the health of general occupants to justify ar-
23 bitrarily removing intact asbestos-containing mate-
24 rial from well-maintained buildings". The report also
25 acknowledged that "because custodial and mainte-

1 nance workers may be transiently exposed to higher
2 levels of asbestos, their added life-time risk of cancer
3 may be appreciably higher.”

4 **SEC. 3. EFFECT OF ASBESTOS INSPECTION ON LENDING IN-**
5 **STITUTIONS.**

6 (a) LIABILITY IMMUNITY.—A lending institution that
7 makes a loan or other extension of credit secured by a
8 mortgage or other lien on a commercial building shall not
9 be liable, from the time the loan or other extension of cred-
10 it is made until it is renegotiated or a superseding loan
11 or other extension of credit is made, under any Federal,
12 State, or local law to any person for injuries, costs, dam-
13 ages, expenses, loss, or other obligation (including claims
14 for indemnification or contribution and claims by third
15 parties for death, personal injury, illness or loss of or dam-
16 age to property or economic loss) which results from the
17 presence of asbestos-containing material in the building in
18 any case in which—

19 (1) the building was constructed during the 5-
20 year period ending on the date that the loan or other
21 extension of credit is made, and the building’s con-
22 struction manager certifies that the building con-
23 tains no asbestos-containing material; or

24 (2) the building—

1 (A) is one for which an asbestos inspection
2 was conducted in accordance with section 6
3 after January 1, 1989, and during the 5-year
4 period ending on the date that the loan or other
5 extension of credit is made (as demonstrated by
6 appropriate documentation);

7 (B) has not been significantly rebuilt or
8 renovated in the area that contains asbestos-
9 containing material since that inspection was
10 completed;

11 (C) is one in which that portion of asbes-
12 tos-containing material which the management
13 planner recommended for removal has been re-
14 moved in accordance with the Occupational
15 Safety and Health Act and the regulations pro-
16 mulgated pursuant to section 7(a); and

17 (D) is one in which an operations and
18 maintenance program is currently being con-
19 ducted in accordance with section 8 and the
20 regulations promulgated pursuant to section
21 7(a) for remaining asbestos-containing mate-
22 rials which the management planner rec-
23 ommended be handled in place.

24 (b) LIMITATION.—The immunity from liability pro-
25 vided in subsection (a) shall not apply if—

1 (1) the lending institution requires removal of
2 asbestos-containing material that the management
3 planner has recommended be handled in place; or

4 (2) the lending institution requires an asbestos
5 inspection of the building despite the fact that—

6 (A) the loan applicant demonstrates, with
7 appropriate documentation, that the conditions
8 in subsection (a)(1) or (a)(2) have been satis-
9 fied; or

10 (B) the loan applicant demonstrates, with
11 appropriate documentation, that all asbestos-
12 containing material has been removed from the
13 building.

14 (c) EXCLUSION.—The immunity from liability pro-
15 vided in subsection (a) shall not apply to a subsidiary of
16 a lending institution in any case in which the lending insti-
17 tution makes a loan or other extension of credit secured
18 by a mortgage or other lien on a commercial building, and
19 the subsidiary is the person to which the loan or other
20 extension of credit is made. For purposes of this sub-
21 section, the term “subsidiary” means any company that
22 is owned or controlled, directly or indirectly, by a lending
23 institution.

24 (d) EFFECTIVE DATE.—This section shall take effect
25 upon the promulgation of regulations by the Adminis-

1 trator of the Environmental Protection Agency pursuant
2 to section 7(a).

3 **SEC. 4. LIABILITY IN THE EVENT OF FORECLOSURE.**

4 In the case of a lending institution that is immune
5 from liability with respect to a commercial building under
6 section 3 and acquires title to such building through fore-
7 closure or other exercise of rights under a security inter-
8 est, the immunity from liability shall continue in effect so
9 long as the lending institution maintains the operations
10 and maintenance program for the building in accordance
11 with the regulations promulgated pursuant to section 7(a),
12 the Environmental Protection Agency asbestos guidance
13 documents, and this Act.

14 **SEC. 5. CONSTRUCTION OF ACT.**

15 The requirement by a lending institution that a loan
16 applicant conduct an asbestos inspection in accordance
17 with this Act of a building to be secured by a loan, and
18 the conducting of an operations and maintenance program
19 in the building after foreclosure or other exercise of rights
20 under a security interest, shall not be construed as partici-
21 pation in the management of the building by the lending
22 institution and shall be considered to be an activity carried
23 out by the lending institution solely to protect the institu-
24 tion's security interest.

1 **SEC. 6. ASBESTOS INSPECTION REQUIREMENTS.**

2 (a) IN GENERAL.—For purposes of this Act, an as-
3 bestos inspection of a commercial building, if the loan ap-
4 plicant chooses to obtain one, shall be conducted by a
5 qualified management planner for the purpose of deter-
6 mining whether asbestos-containing material is present in
7 the building. If an inspection reveals the presence of asbes-
8 tos-containing material, the management planner shall
9 recommend specific response actions for each individual
10 area of the building where such material is found. The
11 recommendations shall be made in accordance with the
12 regulations promulgated pursuant to section 7(a) and with
13 the Environmental Protection Agency asbestos guidance
14 documents.

15 (b) MANAGEMENT PLANNER QUALIFICATIONS.—For
16 purposes of this Act, a qualified management planner is
17 a person who meets all of the following requirements:

18 (1) The person must be accredited, pursuant to
19 title II of the Toxic Substances Control Act, as an
20 inspector and management planner for asbestos-con-
21 taining material in a public or commercial building.

22 (2) The person must not own or control or be
23 under the control of (A) any entity which carries out
24 response actions for asbestos-containing material
25 from buildings, (B) any owner or manager of the
26 building being inspected, or (C) any lending institu-

1 commercial buildings for purposes of this Act only. The
2 regulations shall include—

3 (1) detailed guidelines for management plan-
4 ners to determine whether asbestos-containing mate-
5 rial should be removed or managed in place in a
6 public or commercial building;

7 (2) appropriate practices for conducting oper-
8 ations and maintenance programs in public or com-
9 mercial buildings in which asbestos-containing mate-
10 rial is managed in place; and

11 (3) standards, applicable to persons complying
12 with section 8(1), for periodic surveillance of asbes-
13 tos-containing material that is managed in place in
14 commercial buildings, including standards for the
15 training of maintenance and custodial staff working
16 in such buildings that are equivalent to the stand-
17 ards for the training of maintenance and custodial
18 staff of local educational agencies under title II of
19 the Toxic Substances Control Act.

20 (b) REVISION OF ENVIRONMENTAL PROTECTION
21 AGENCY ASBESTOS GUIDANCE DOCUMENTS.—The Ad-
22 ministrator of the Environmental Protection Agency shall
23 periodically update, revise, and republish the Environ-
24 mental Protection Agency asbestos guidance documents.

1 **SEC. 8. OPERATION AND MAINTENANCE REQUIREMENTS.**

2 For purposes of section 3(a)(2)(D), the following re-
3 quirements must be met after an asbestos inspection of
4 the building concerned is conducted:

5 (1) The owner or operator shall ensure that the
6 remaining asbestos-containing material is visually in-
7 spected, not less frequently than every 6 months, by
8 a member of the maintenance or custodial staff, or
9 another person, who has undergone training in ac-
10 cordance with the standards contained in the regula-
11 tions promulgated pursuant to section 7(a)(4).

12 (2) All remaining accessible asbestos-containing
13 material in public and maintenance areas of the
14 building, including asbestos in thermal system insu-
15 lation and spray-on and trowelled-on asbestos-con-
16 taining material but excluding intact vinyl floor tile
17 and ceiling tile in public areas, shall be prominently
18 labeled. The owner or operator shall ensure that ac-
19 cess to any remaining asbestos-containing material
20 located in inaccessible areas, such as in spaces be-
21 tween floors or walls of the building, is permitted
22 only to persons who have been notified of the pres-
23 ence of the asbestos-containing material.

24 (3) After the inspection referred to in section
25 3(a)(2)(A), a report on the inspection shall be kept
26 on file in the building. Such report shall include an

1 accounting of remaining asbestos-containing mate-
2 rial, any such material recommended for removal,
3 and any removal that has taken place since the pre-
4 vious inspection. Such report shall be available in
5 the building, in the administrative offices or other
6 appropriate place for inspection by tenants and em-
7 ployees in the building, maintenance workers of the
8 building, and building contractors. The inspection
9 report shall be updated after each subsequent in-
10 spection pursuant to paragraph (1) and after any
11 change in condition of asbestos-containing material
12 being managed in place.

13 (4) After each inspection pursuant to para-
14 graph (1), the owner of the building shall notify
15 maintenance workers of the building, either in writ-
16 ing or by posting notice, that an inspection has oc-
17 curred and that an inspection report is available for
18 inspection.

19 **SEC. 9. RELATIONSHIP TO OTHER LAW.**

20 (a) CLEAN AIR ACT.—Nothing in this Act shall be
21 construed or interpreted to preempt, supersede, or other-
22 wise affect any requirement to remove asbestos from a
23 building pursuant to section 112 of the Clean Air Act (42
24 U.S.C. 7412), as implemented through regulations known

1 as the national emission standards for hazardous air pol-
2 lutants (40 C.F.R. 61).

3 (b) LIMITED REQUIREMENTS.—Nothing in this Act
4 shall be construed or interpreted as a general requirement
5 for inspections or operations and maintenance programs
6 in public and commercial buildings. The requirements of
7 sections 6, 7, and 8 are established solely to enable lending
8 institutions to satisfy the conditions of this Act for pur-
9 poses of obtaining immunity from liability under section
10 3.

11 **SEC. 10. DEFINITIONS.**

12 For purposes of this Act, the following definitions
13 apply:

14 (1) The term “asbestos-containing material”
15 has the meaning given that term by section 202(4)
16 of the Toxic Substances Control Act (15 U.S.C.
17 2642(4)).

18 (2) The term “commercial building” means any
19 building that is not a publicly owned building and
20 that is not a school building as defined in section
21 202(13) of the Toxic Substances Control Act, except
22 that such term does not include any residential
23 building of fewer than 10 units that is not part of
24 a complex of other residential buildings under com-
25 mon ownership.

1 (3) The term “EPA asbestos guidance docu-
2 ments” means—

3 (A) the most current version of the publi-
4 cation of the Environmental Protection Agency
5 titled “Guidance for Controlling Asbestos-Con-
6 taining Materials in Buildings” (also known as
7 the “Purple Book”);

8 (B) the most current version of the publi-
9 cation of the Environmental Protection Agency
10 titled “Managing Asbestos in Place” (also
11 known as the “Green Book”); and

12 (C) any other publication of the Environ-
13 mental Protection Agency, including any guid-
14 ance documents published pursuant to section
15 7(a), published for the purpose of enabling
16 building owners to select and apply appropriate
17 asbestos control and abatement actions in their
18 buildings.

19 (4) The term “lending institution” means (A) a
20 bank, savings and loan association, credit union, or
21 similar institution insured by, or subject to the su-
22 pervision, approval, or regulation of, the Board of
23 Governors of the Federal Reserve System, the Fed-
24 eral Deposit Insurance Corporation, the Comptroller
25 of the Currency, the Office of Thrift Supervision, or

1 the National Credit Union Administration; (B) any
2 other person, including an insurance company, that
3 makes direct loans or other extensions of credit se-
4 cured by mortgages or other liens on commercial
5 buildings; (C) any Federal agency to the extent the
6 agency makes direct loans or other extensions of
7 credit secured by mortgages or other liens on com-
8 mercial buildings; and (D) the Federal Deposit In-
9 surance Corporation, the National Credit Union Ad-
10 ministrator Board, and the Resolution Trust Cor-
11 poration, in such corporation's or Board's capability
12 as conservator, receiver, or liquidating agency for
13 any insured depository institution (as that term is
14 defined in section 3 of the Federal Deposit Insur-
15 ance Act). The term does not include any institution
16 or Federal agency engaged primarily in the purchase
17 of mortgage loans.

18 (5) The term "mortgage" means a lien as is
19 commonly given to secure advances on, or the un-
20 paid purchase price of, a commercial building (and
21 related real estate) under the laws of the State in
22 which the building is located, together with the cred-
23 it instrument, if any, secured thereby. The term in-
24 cludes second mortgages and other subsequent liens

1 on a commercial building given to secure advances
2 or loans.

3 (6) The term “response action” has the mean-
4 ing given that term by section 202(11) of the Toxic
5 Substances Control Act (15 U.S.C. 2642(11)).

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HR 1000 IH—2