

105TH CONGRESS
2D SESSION

H. R. 3905

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1998

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of 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 Compensation Act of 1998”.

6 (b) **TABLE OF CONTENTS.**—

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1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (1) Asbestos personal injury litigation is unfair
4 and inefficient, and imposes a crushing burden on
5 litigants and taxpayers alike.

6 (2) Asbestos litigation has already led to the
7 bankruptcy of more than 15 companies, representing
8 the great majority of the former asbestos industry.

9 (3) The extraordinary volume of asbestos litiga-
10 tion is straining State and Federal courts at enor-
11 mous taxpayer expense, with more than 150,000
12 such lawsuits currently pending in the tort system
13 and tens of thousands of new cases filed every year.

14 (4) Asbestos litigation has resulted in arbitrary
15 verdicts, with individuals receiving widely varying re-
16 coveries despite similar medical conditions.

17 (5) Asbestos litigation is a mature tort. The
18 legal, medical, and scientific issues have been repeat-
19 edly tried and retried in the courts for many years.

20 (6) Currently, statutes of limitations can force
21 claimants to bring premature lawsuits in order to
22 avoid losing their claim for compensation. Moreover,

1 in order to obtain compensation for non-malignant
2 disease, claimants often must give up their right to
3 obtain compensation later on, if they develop an as-
4 bestos-related cancer.

5 (7) Litigation has not been able to provide com-
6 pensation to claimants swiftly. On the contrary, ac-
7 cording to the U.S. Judicial Conference's Ad Hoc
8 Committee on Asbestos Litigation, the volume and
9 complexity of asbestos cases have resulted in the vio-
10 lation of a basic tenet of American justice: speedy
11 and inexpensive resolution of cases.

12 (8) Litigation has also proved to be an extraor-
13 dinarily costly means of resolving claims of asbestos-
14 related disease. Less than 50 percent of the total
15 cost of asbestos litigation actually goes to com-
16 pensate claimants, while the remainder is eaten up
17 in attorneys' fees and other litigation costs.

18 (9) In many courts, the vast majority of pend-
19 ing asbestos claims are filed by individuals who suf-
20 fer no present asbestos-related impairment. These
21 claims divert the resources of defendants from com-
22 pensating individuals who are suffering from serious
23 asbestos-related disease.

24 (10) Punitive damages also divert the resources
25 of defendants from compensating impaired claim-

1 ants. Moreover, punitive damages give a few claim-
2 ants huge windfalls in addition to compensatory
3 damages.

4 (11) In an effort to cope with the overwhelming
5 tide of asbestos cases, a few courts have resorted to
6 mass consolidated trials and other aggregative meth-
7 ods of dealing with asbestos claims. Unfortunately,
8 mass consolidations only serve to magnify the irra-
9 tionality of a litigation system that awards massive
10 amounts to the unimpaired while threatening the
11 ability of seriously ill people to obtain compensation
12 in the future.

13 **TITLE I—ASBESTOS**
14 **RESOLUTION CORPORATION**

15 **SEC. 101. ESTABLISHMENT.**

16 There is established a nonprofit corporation, to be
17 known as the “Asbestos Resolution Corporation”.

18 **SEC. 102. POWERS OF THE CORPORATION.**

19 (a) The Corporation shall have all of the powers
20 granted to nonprofit corporations under the District of
21 Columbia Nonprofit Corporation Act (D.C. Code §§ 29–
22 501 et seq.).

23 (b) In addition to the powers granted under sub-
24 section (a) the Corporation shall have the power to—

1 (1) hire or appoint employees and to retain the
2 services of other entities to provide such employees;

3 (2) contract for services, including the services
4 of physicians and other medical professionals, hear-
5 ing examiners, mediators, arbitrators, financial ex-
6 perts or consultants, accountants, and attorneys;

7 (3) receive voluntary contributions of funds,
8 goods, and services in order to carry out its pur-
9 poses;

10 (4) appoint one or more exceptional medical
11 claims panels, as described in section 206(a);

12 (5) adopt rules, policies, and procedures govern-
13 ing recovery of costs from and allocation of costs to
14 defendants and respondents;

15 (6) adopt rules, policies, and procedures for the
16 fair and efficient conduct of medical review and al-
17 ternative dispute resolution;

18 (7) conduct audits of information submitted to
19 it, including inspection of laboratories performing
20 medical tests and verification of quality assurance
21 and quality control procedures; and

22 (8) to sue and be sued in its corporate name.

23 **SEC. 103. BOARD OF DIRECTORS.**

24 (a) MEMBERSHIP.—The Corporation shall be man-
25 aged by a Board of Directors consisting of 7 members ap-

1 pointed by the President, by and with the advice and con-
2 sent of the Senate. The President shall designate the
3 chairman of the Board. No more than 4 directors may
4 be members of the same political party. Directors shall
5 be distinguished private citizens of the United States. The
6 President shall submit 7 nominations under this section
7 to the Senate not later than 4 months after the date of
8 the enactment of this Act.

9 (b) TERMS.—Each director shall be appointed for a
10 term of 6 years from the expiration of his predecessor’s
11 term, except that, of the directors first appointed—

12 (1) three shall be appointed for a term of 3
13 years,

14 (2) three shall be appointed for a term of 6
15 years, and

16 (3) the chairman shall be appointed for a term
17 of 6 years.

18 The terms of office of the directors first appointed shall
19 begin on the date of enactment. A director may continue
20 to serve until his successor has been appointed and con-
21 firmed.

22 (c) VACANCY.—A vacancy on the Board shall be filled
23 in the same manner as the original appointment. A direc-
24 tor appointed to fill a vacancy occurring before the expira-
25 tion of the term for which the member’s predecessor was

1 appointed shall be appointed for the remainder of that
2 term. A vacancy shall not affect the power of the Board.

3 (d) REMOVAL.—Directors may be removed for cause
4 by the President.

5 (e) COMPENSATION; EXPENSES.—

6 (1) The compensation of directors other than
7 the chairman shall not exceed \$50,000 per year, and
8 the compensation of the chairman shall not exceed
9 \$75,000 per year.

10 (2) Directors may be reimbursed of reasonable
11 travel and other expenses incurred in connection
12 with their services to the Corporation pursuant to
13 policies adopted by the Board.

14 (f) PERSONAL LIABILITY OF DIRECTORS.—A direc-
15 tor shall not be personally liable for any act or omission
16 within the scope of the director's service as a member of
17 the Board. The liability of a director shall not be limited
18 as provided in this subsection if the director engaged in
19 willful misconduct or a knowing violation of the criminal
20 law.

21 (g) AUDIT COMMITTEE.—The Board shall establish
22 an Audit Committee which shall conduct an annual audit
23 of the finances of the Corporation and provide an annual
24 report to the Board regarding the financial condition of
25 the Corporation.

1 (h) EXCLUSIVE AUTHORITY.—The Board shall have
2 the exclusive authority to—

3 (1) adopt rules, consistent with this Act, re-
4 garding the assessment and recovery of costs, the
5 qualifications of physicians, the organization and op-
6 eration of the Medical Advisory Board, and the con-
7 duct of the alternative dispute resolution process;

8 (2) adopt guidelines, upon the recommendation
9 of the Medical Advisory Board, for implementing the
10 provisions of this Act regarding exceptional medical
11 cases;

12 (3) recommend the inclusion of new diseases in
13 the “other cancer” eligible medical category if it
14 finds, upon the recommendation of the Medical Ad-
15 visory Board at a meeting expressly called for that
16 purpose, that there is a medical consensus that the
17 disease is caused by exposure to asbestos; and

18 (4) adopt and amend bylaws.

19 **SEC. 104. OFFICERS.**

20 The Corporation shall have a chief executive officer
21 and such other officers as may be named and appointed
22 by the Board at rates of compensation and terms of serv-
23 ice fixed by the Board. Officers of the Corporation may
24 not simultaneously serve on the Board.

1 **SEC. 105. MEDICAL ADVISORY BOARD.**

2 (a) The Board shall appoint a Medical Advisory
3 Board to provide advice on medical matters, including re-
4 tention, supervision, and removal of physicians; establish-
5 ment of guidelines regarding exceptional medical claims;
6 the appropriateness of adding new diseases to the “other
7 cancer” eligible medical category; and such other medical
8 matters as may be referred to the Medical Advisory Board
9 by the Board.

10 (b) The Medical Advisory Board shall not have fewer
11 than 5 or more than 9 members. Members of the Medical
12 Advisory Board shall be physicians with a demonstrated
13 expertise in asbestos-related conditions. The Medical Advi-
14 sory Board shall include at least one Board-certified pul-
15 monary specialist, Board-certified radiologist, Board-cer-
16 tified oncologist, and Board-certified pathologist. The
17 Board shall adopt such rules and policies regarding the
18 composition and operation of the Medical Advisory Board
19 as may be necessary for its efficient operation, including
20 rules governing appointment and removal of members,
21 terms of office, filling of vacancies, notice and conduct of
22 meetings (including quorum requirements), and com-
23 pensation.

24 (c) The Medical Advisory Board shall be subject to
25 the Federal Advisory Committee Act (5 U.S.C. App.).

1 **SEC. 106. AVOIDANCE OF CONFLICT OF INTEREST.**

2 No director, officer, member of the Medical Advisory
3 Board, employee, contract employee, contractor, or con-
4 sultant to the Corporation may represent any person in
5 any manner in any proceeding before the Corporation. In
6 addition, the Board shall adopt policies and procedures to
7 guard against both actual and apparent conflicts of inter-
8 est.

9 **SEC. 107. ANNUAL REPORTS.**

10 The Corporation shall submit an annual report to the
11 President and the Committee on the Judiciary of the
12 House of Representatives and the Committee on the Judi-
13 ciary of the Senate with respect to its operations, activi-
14 ties, and financial condition on or before December 31 of
15 each year.

16 **TITLE II—MEDICAL ELIGIBILITY**
17 **DETERMINATIONS**

18 **SEC. 201. MEDICAL CRITERIA—NONMALIGNANT CONDI-**
19 **TIONS.**

20 In order to meet the requirements for the nonmalig-
21 nant conditions eligible medical category, a claimant must
22 submit medical information and/or testimonial informa-
23 tion sufficient to demonstrate a latency period of at least
24 12 years, and (a) clinical evidence of asbestosis, (b) patho-
25 logical evidence of asbestosis, or (c) evidence of bilateral
26 pleural thickening with impairment.

1 **SEC. 202. MEDICAL CRITERIA—MESOTHELIOMA.**

2 In order to meet the requirements for the mesotheli-
3 oma eligible medical category, a claimant must submit—

4 (1) a diagnosis of malignant mesothelioma with
5 a primary site in the pleura or peritoneum, which is
6 derived from appropriate tissue, and verified using
7 standardized and accepted criteria of microscopic
8 morphology and/or a variety of appropriate staining
9 techniques; and which is made by either (1) two
10 Board-certified pathologists, or (2) one Board-cer-
11 tified pathologist who is, at the time that the diag-
12 nosis is verified, a member of the U.S.-Canadian
13 Mesothelioma Reference Panel; and

14 (2) medical information and/or testimonial in-
15 formation sufficient to demonstrate a latency period
16 of at least ten (10) years.

17 **SEC. 203. MEDICAL CRITERIA—LUNG CANCER.**

18 In order to meet the requirements for the lung cancer
19 eligible medical category, a claimant must submit (a) a
20 diagnosis by a Board-certified pathologist, Board-certified
21 pulmonary specialist, or Board-certified oncologist of pri-
22 mary lung carcinoma; (b) medical information and/or tes-
23 timonial information sufficient to demonstrate a latency
24 period of at least twelve (12) years; and (c) either—

25 (1) evidence of a non-malignant condition suffi-
26 cient to meet the requirements of section 201; or

1 (2) chest x-rays which, in the opinion of a cer-
2 tified B-reader, demonstrate both asbestos-related
3 bilateral pleural plaques or asbestos-related bilateral
4 pleural thickening and evidence of 15 years of expo-
5 sure to asbestos, to be calculated as specified in sub-
6 paragraphs (A)–(D)—

7 (A) each year that an exposed person’s pri-
8 mary occupation, during a substantial portion
9 of a normal work year for that occupation, in-
10 volved working in areas immediate to where as-
11 bestos-containing products were being installed,
12 repaired, or removed under circumstances that
13 involved regular airborne emissions of visible
14 asbestos dust, shall count as one year;

15 (B) each year that an exposed person’s pri-
16 mary occupation, during a substantial portion
17 of a normal work year for that occupation, in-
18 volved the direct installation, repair, or removal
19 of asbestos-containing products, shall count as
20 2 years;

21 (C) each year that an exposed person’s pri-
22 mary occupation, during a substantial portion
23 of a normal work year for that occupation, in-
24 volved the direct manufacture of asbestos-con-
25 taining products using raw asbestos fiber, or

1 the direct installation, repair, or removal of as-
2 bestos-containing products in a shipyard during
3 World War II, shall count as 4 years;

4 (D) for purposes of calculating years of ex-
5 posure under this paragraph, each year of expo-
6 sure prior to 1976 shall be counted fully; each
7 year of exposure from 1976 through 1979 shall
8 be counted one-half; and exposures after 1979
9 shall not be counted, except that—

10 (i) for each year from 1972 through
11 1975, for which it is demonstrated by a
12 preponderance of the evidence that the ex-
13 posed person's exposure to asbestos in his
14 or her occupation was, during a substantial
15 portion of that work year, in compliance
16 with the OSHA 8-hour time-weighted aver-
17 age airborne concentration for asbestos ex-
18 posure at that time, then that year shall
19 count one-half for purposes of calculating
20 the years of exposure for purposes of this
21 paragraph;

22 (ii) for each year from 1976 through
23 1979 for which a claimant demonstrates,
24 by a preponderance of the evidence, that
25 the exposed person's exposure to asbestos

1 in his or her occupation was, during a sub-
2 stantial portion of that work year, in ex-
3 cess of the OSHA 8-hour time-weighted
4 average airborne concentration for asbestos
5 exposure at that time, then that year shall
6 count fully for purposes of calculating the
7 years of exposure for purposes of this
8 paragraph; and

9 (iii) for every year after 1979 for
10 which a claimant demonstrates, by a pre-
11 ponderance of the evidence, that the ex-
12 posed person's exposure to asbestos in his
13 or her occupation was, during a substantial
14 portion of that work year, in excess of the
15 OSHA 8-hour time-weighted average air-
16 borne concentration for asbestos exposure
17 at that time, then that year shall count
18 one-half for purposes of calculating years
19 of exposure for purposes of this paragraph.

20 **SEC. 204. MEDICAL CRITERIA—OTHER CANCER.**

21 In order to meet the requirements in the other cancer
22 medical eligible category, a claimant must submit (a) a
23 diagnosis by a Board-certified pathologist, Board-certified
24 pulmonary specialist, or Board-certified oncologist (as ap-
25 propriate for the type of cancer claimed) of primary cancer

1 of the colon or rectum, larynx, esophagus, or stomach; (b)
2 medical and/or testimonial information sufficient to dem-
3 onstrate a latency period of at least 12 years; and (c) evi-
4 dence of a nonmalignant condition sufficient to meet the
5 requirements of section 201.

6 **SEC. 205. PROCEDURE FOR CERTIFICATE OF ELIGIBILITY.**

7 (a) APPLICATION.—The claimant may apply for a
8 certificate of medical eligibility by submitting to the Cor-
9 poration such information as the Corporation may require
10 in a form designated by the Corporation, including:

11 (1) PERSONAL INFORMATION.—The name, ad-
12 dress, date of birth and death (if applicable), smok-
13 ing history, occupational history, and social security
14 number of the exposed person, and the relationship
15 between the exposed person and the claimant if the
16 claimant is not the exposed person.

17 (2) EXPOSURE INFORMATION.—The years of
18 the exposed person's exposure to asbestos or asbes-
19 tos-containing products; identification of the types of
20 asbestos or asbestos-containing products to which
21 the exposed person was exposed; description of the
22 circumstances, intensity, and duration of the expo-
23 sure; and identification of the worksites or other
24 such locations where such exposures occurred.

1 (3) MEDICAL INFORMATION.—The eligible med-
2 ical category or categories for which the claimant is
3 applying; all medical diagnoses, reports and records
4 that relate to any claimed asbestos-related condition;
5 materials supporting those diagnoses, reports and
6 records that may be required by the Corporation,
7 but in any event including all of the back-up data
8 for any pulmonary function tests on which the
9 claimant relies (including all flow volume loops,
10 spirographs, and any other tracings for any test that
11 is performed); identification of all medical profes-
12 sionals and medical care facilities involved in diag-
13 nosing, treating, testing, counseling, or consulting
14 with the exposed person concerning any medical con-
15 dition within the last five years. The claimant shall
16 also provide such medical releases as the Corpora-
17 tion may require allowing the Corporation to obtain
18 any and all medical information relevant to the de-
19 termination of medical eligibility.

20 (4) EXCEPTIONAL MEDICAL CLAIMS.—The
21 claimant may concede that the claim cannot meet
22 the requirements of any eligible medical category
23 and state that the claimant intends to apply to an
24 exceptional medical claims panel for designation as
25 an exceptional medical claim. In that event, the Cor-

1 poration shall refer the claim to an exceptional medi-
2 cal claim panel and the application will be governed
3 by the provisions of section 206.

4 (b) NOTIFICATION OF ACCEPTANCE.—The Corpora-
5 tion shall notify the claimant within 30 days following re-
6 ceipt of the application either that the application is ac-
7 cepted for processing or that the application is materially
8 incomplete and cannot be processed until additional infor-
9 mation is provided. Any notice that an application is mate-
10 rially incomplete shall describe the missing information.
11 Issuance of a notice of acceptance shall not preclude the
12 Corporation from requesting additional information re-
13 garding a claim if the Corporation subsequently concludes
14 that such information is necessary to make a decision on
15 medical eligibility.

16 (c) RECORDS FROM THIRD PERSONS.—The Corpora-
17 tion may at any time obtain medical, employment, or other
18 relevant records concerning an exposed person from per-
19 sons other than the claimant. If it seeks such additional
20 records, it shall give notice to the claimant, and shall upon
21 request and at the claimant's expense, furnish copies of
22 all records obtained to the claimant.

23 (d) ADDITIONAL MEDICAL TESTING.—If the Cor-
24 poration reasonably believes that it cannot determine, on
25 the basis of the available medical information, whether an

1 exposed person meets the medical criteria for one of the
2 eligible medical categories, the Corporation may at any
3 time, at its option and expense, require the exposed person
4 to undergo appropriate, reasonable, and noninvasive medi-
5 cal examination or testing (excluding any sort of computed
6 tomography (CT) scan).

7 (e) TESTIMONIAL INFORMATION UNDER OATH.—All
8 testimonial information provided to the Corporation in
9 connection with a claim, other than information in any
10 medical report or records, shall be made under oath, or
11 by sworn affidavit, or by written declaration subscribed
12 to as true under penalty of perjury.

13 (f) DETERMINATION OF MEDICAL ELIGIBILITY.—As
14 soon as practicable and, in any event, no later than 60
15 days after issuance of a notice of acceptance, the Corpora-
16 tion shall issue either a certificate of medical eligibility
17 stating each eligible medical category for which the claim-
18 ant qualifies or a finding of noneligibility. The Corporation
19 may extend the time if necessary to secure additional in-
20 formation that is essential to the determination of medical
21 eligibility. If the claim is rejected wholly or in part, the
22 certificate of eligibility or finding of noneligibility shall be
23 accompanied by a brief written statement of reasons.

24 (g) RECONSIDERATION.—

1 (1) The claimant may seek reconsideration of
2 the Corporation's determination under subsection (f)
3 by submitting to the Corporation a written request
4 for reconsideration within 60 days from the date of
5 the Corporation's determination under subsection
6 (f). The Corporation may extend the time for sub-
7 mitting a request for reconsideration upon the claim-
8 ant's request. The request for reconsideration shall
9 include a statement of the grounds for reconsider-
10 ation and shall be accompanied by any additional
11 evidence on which the claimant relies.

12 (2) The Corporation shall refer a request for re-
13 consideration to a panel of two physicians with ex-
14 pertise in the medical issue or issues raised by the
15 claimant. The panel of physicians may request fur-
16 ther information from the applicant or from third
17 parties, or may require additional medical examina-
18 tion or testing, in accordance with the provisions of
19 subsections (c) and (d).

20 (3) The panel of physicians shall consider the
21 issues raised by the request for reconsideration de
22 novo on the basis of all of the evidence before the
23 Corporation. If the panel of physicians agrees on the
24 disposition of the request for reconsideration, it will
25 render a decision. If the panel is not in agreement,

1 the Corporation will appoint to the panel a third
2 physician with expertise in the issues raised by the
3 claimant, and the panel thus augmented will render
4 a decision.

5 (4) If the panel approves the request for recon-
6 sideration, wholly or in part, the Corporation shall
7 issue a certificate of medical eligibility for the eligi-
8 ble medical categories for which the panel finds that
9 the claimant qualifies. If the panel denies the re-
10 quest for reconsideration, or if the certificate of eli-
11 gibility on reconsideration rejects any claim made by
12 the claimant, wholly or in part, the panel shall pro-
13 vide a brief written statement of reasons.

14 (5) The Corporation shall act upon a request
15 for reconsideration as soon as practicable but in any
16 event within 30 days: *Provided*, That the Corpora-
17 tion may extend the time if necessary to secure addi-
18 tional information that is essential to the disposition
19 of the request for reconsideration.

20 (h) REAPPLICATION.—A claimant may file a new ap-
21 plication under this title at any time. Any such new appli-
22 cation filed within one year following the date on which
23 the Corporation issued a final finding of noneligibility
24 shall identify the previous application and any relevant
25 changes in circumstances.

1 **SEC. 206. EXCEPTIONAL MEDICAL CLAIMS.**

2 (a) **EXCEPTIONAL MEDICAL CLAIMS PANEL.**—The
3 Corporation shall establish one or more exceptional medi-
4 cal claims panels. Each exceptional medical claims panel
5 shall be comprised of five physicians, including two Board-
6 certified pulmonary specialists, a Board-certified radiolo-
7 gist (who is either a certified B-reader or a specialist in
8 computed tomography), and two Board-certified patholo-
9 gists. Each exceptional medical claims panel shall deter-
10 mine whether claims referred to it meet the requirements
11 of this section for designation as exceptional medical
12 claims.

13 (b) **TIME TO APPLY.**—A claimant may apply to the
14 Corporation for designation of his claim as an exceptional
15 medical claim if the claimant—

16 (1) concedes (either before or after a deter-
17 mination is made under section 205(f)) that the
18 claim does not meet the medical criteria in sections
19 201–204; or

20 (2) seeks designation of the claim as an excep-
21 tional medical claim within 60 days after a deter-
22 mination on reconsideration under section 205(g)
23 that the claim does not meet the medical criteria in
24 sections 201–204, wholly or in part.

25 However, the Corporation shall not accept any application
26 for designation as an exceptional medical claim if a claim-

1 ant has filed an action under section 208 for review of
2 the Corporation's determination on reconsideration or has
3 commenced alternative dispute resolution procedures
4 under title III.

5 (c) CONTENTS OF APPLICATION.—The application
6 for designation as an exceptional medical claim shall in-
7 clude the information required by the Corporation under
8 section 205(a) and shall, in addition, be supported by the
9 report of a Board-certified internist, Board-certified pul-
10 monary specialist, Board-certified pathologist, or Board-
11 certified oncologist, as appropriate for the eligible medical
12 category claimed. The physician's report shall contain a
13 complete review of the exposed person's medical history
14 and current condition, such additional material by way of
15 analysis and documentation as shall be prescribed by the
16 Corporation, and a detailed explanation why the claim
17 meets the standard for acceptance as an exceptional medi-
18 cal claim set forth in subsection (d).

19 (d) STANDARD FOR ACCEPTANCE.—The exceptional
20 medical claims panel shall designate a claim as an excep-
21 tional medical claim only if the claimant cannot satisfy
22 the requirements for a given eligible medical category for
23 reasons beyond his or her control but demonstrates,
24 through clear and convincing evidence, that the exposed
25 person has an asbestos-related condition that is substan-

1 tially comparable to the condition of an exposed person
2 who would satisfy the requirements of a given eligible
3 medical category.

4 (e) FURTHER TESTING.—The exceptional medical
5 claims panel may order additional appropriate, reasonable,
6 and non-invasive testing or examination of the exposed
7 person (including computed tomography (CT) scanning).
8 Tests ordered by an exceptional medical claims panel shall
9 be at the expense of the Corporation.

10 (f) DECISION.—The decision of the exceptional medi-
11 cal claims panel shall not be subject to further review
12 within the Corporation. If the exceptional medical claims
13 panel decides that a claim should be designated, wholly
14 or in part, as an exceptional medical claim, the Corpora-
15 tion shall issue a certificate of medical eligibility which
16 shall designate the claim as an exceptional medical claim
17 and state the eligible medical category or categories for
18 which the claim qualifies by virtue of that designation.

19 **SEC. 207. CONFIDENTIALITY.**

20 The Corporation shall observe the requirements of 5
21 U.S.C. § 552a with respect to information that it receives
22 regarding a claimant or exposed person. The production
23 of this information to respondents in accordance with sec-
24 tion 303(c) shall be deemed a routine use of the informa-
25 tion within the meaning of 5 U.S.C. § 552a(a)(7).

1 **SEC. 208. JUDICIAL REVIEW.**

2 (a) The district courts of the United States shall have
3 exclusive jurisdiction, without regard to the amount in
4 controversy or the citizenship of the parties, of any action
5 to review a determination of the Corporation (1) after re-
6 consideration under section 205(g) or (2) with respect to
7 designation as an exceptional medical claim under section
8 206. A determination under section 205(f) shall not be
9 reviewable.

10 (b) An action for review under this section shall be
11 commenced within 60 days after the determination on re-
12 consideration as to which review is sought or the decision
13 that the claimant does not qualify as an exceptional medi-
14 cal claim, whichever it later. However, no action for review
15 under this section may be commenced while an application
16 for designation as an exceptional medical claim is pending.

17 (c) The court shall uphold the determination of the
18 Corporation if it is supported by substantial evidence on
19 the record as a whole and is not contrary to law. Due
20 account shall be taken of the rule of prejudicial error.

21 (d) In applying the standard set forth in subsection
22 (c), the record shall consist of the information submitted
23 to the Corporation or the exceptional medical claims panel
24 by the claimant, records and other information obtained
25 by the Corporation or exceptional medical claims panel re-
26 lating to the claim, and the results of any medical tests

1 administered at the direction of the Corporation or excep-
2 tional medical claims panel.

3 **TITLE III—ALTERNATIVE**
4 **DISPUTE RESOLUTION**

5 **SEC. 301. RULES OF PROCEDURE.**

6 (a) The Board shall establish rules of procedure for
7 the alternative dispute resolution process. Such rules of
8 procedure shall be designed to ensure that claims will be
9 resolved in a prompt, efficient, fair, and inexpensive way
10 and shall include—

11 (1) reasonable time limits and rules regarding
12 the time at which actions of the Corporation become
13 final;

14 (2) procedures relating to the notification of re-
15 spondents, including reasonable and limited discov-
16 ery;

17 (3) procedures for the disclosure of information
18 necessary for settlement, including the timing of dis-
19 closure and determination of the information that
20 must be disclosed;

21 (4) rules regarding protection of confidential in-
22 formation;

23 (5) procedures for the selection of arbitrators;

24 (6) arbitration procedures designed to further
25 the objective of prompt, efficient, fair and inexpen-

1 sive dispute resolution including simplified pleadings,
2 reasonable limitations on discovery, resolution of
3 pre-hearing motions including motions for summary
4 disposition, appropriate, evidentiary rules, and effi-
5 cient conduct of hearings; and

6 (7) procedures for just and reasonable sanctions
7 to ensure compliance with the Corporation's rules
8 and orders.

9 (b) Parties shall have the right to be represented by
10 counsel at all phases of the alternative dispute resolution
11 process.

12 (c) By presenting to the Corporation any statement,
13 motion, or other paper, counsel and the party represented
14 by that counsel warrant that to the best of their knowl-
15 edge, information, and belief, formed after reasonable in-
16 quiry—

17 (1) it is not being presented for any improper
18 purpose;

19 (2) the claims, defenses, or other legal conten-
20 tions therein are warranted by existing law or by a
21 nonfrivolous argument for the extension, modifica-
22 tion, or reversal of existing law of the establishment
23 of new law;

24 (3) the allegations and other factual contentions
25 have evidentiary support; and

1 (4) the denials of factual contentions are war-
2 ranted on the evidence.

3 (d) The Corporation may contract with providers of
4 alternative dispute resolution services to provide mediation
5 or arbitration under this part. To the extent appropriate
6 and consistent with this Act, the Board may adopt the
7 rules of procedure of such contract service providers.

8 **SEC. 302. MOTIONS OFFICERS.**

9 Upon issuance of a certificate of eligibility, the Cor-
10 poration shall assign a motions officer to the claim. The
11 motions officer shall have the authority to determine all
12 procedural issues in the alternative dispute resolution
13 process except such matters as may be within the author-
14 ity of a mediator or arbitrator assigned to the claim. With-
15 out limitation, the motions officer may—

16 (1) determine whether notice shall be provided
17 to any respondent under section 303 or section 304,

18 (2) issue subpoenas to parties and non-parties
19 for testimony and documents, in accordance with the
20 terms of section 308,

21 (3) enter scheduling orders and other orders to
22 control the progress of the proceedings,

23 (4) resolve discovery disputes, and

1 (5) exercise any other authority conferred by
2 procedural rules, policies, or procedures established
3 by the Corporation.

4 **SEC. 303. NOTICE TO RESPONDENTS.**

5 (a) Within such time after receiving a final certificate
6 of eligibility as the Corporation may provide, a claimant
7 shall provide to the Corporation the name and address of
8 each person that claimant alleges is responsible for his as-
9bestos-related injury and for each such person a verified
10 particularized statement in a form prescribed by the Cor-
11poration of the basis for the allegation that that person
12 is or may be responsible for his injury. This particularized
13 statement shall include as applicable the dates of exposure
14 for each relevant time period; the worksite or other place
15 of exposure; the nature and frequency of the exposure; if
16 the exposure was occupational, the name of the exposed
17 person's employer and a description of the exposed per-
18son's job and working conditions; the asbestos-containing
19 product(s) or material(s) to which the claimant was ex-
20 posed at each place of exposure; and any other information
21 that the Corporation may require by rule or otherwise in
22 all or in particular classes of cases.

23 (b) The Corporation will promptly notify each person
24 identified by the claimant pursuant to subsection (a) of
25 this section, and for whom a complete particularized state-

1 ment has been submitted, that it has been named as a
2 respondent. The Corporation will at the same time provide
3 to each respondent a copy of all particularized statements
4 submitted to the Corporation under subsection (a).

5 (c) The Corporation shall provide to each respondent,
6 on request and at the respondent's expense, a copy of all
7 information submitted to the Corporation by the claimant,
8 records and other information obtained by Corporation re-
9 lating to the claim and the results of any medical tests
10 administered at the Corporation's direction. However, the
11 Corporation shall not provide the information described in
12 this subsection to the respondent until it has received a
13 protective order, signed by or on behalf of the respondent,
14 in a form prescribed by the Corporation, that will preserve
15 the confidentiality of medical, employment, and other in-
16 formation that the Corporation reasonably designates as
17 confidential.

18 (d) For good cause shown and subject to reasonable
19 limitations, a motions officer may allow discovery for the
20 purpose of obtaining information necessary to allow the
21 claimant to provide a particularized statement under sub-
22 section (a). The motions officer may grant reasonable ex-
23 tensions of time for naming respondents in order to allow
24 for the completion of discovery under this subsection.

1 **SEC. 304. ADDITIONAL RESPONDENTS.**

2 (a) Any respondent notified pursuant to section 303
3 may, within such time as the Corporation may provide,
4 identify additional respondents and request the Corpora-
5 tion to notify these additional respondents by providing
6 to the Corporation the particularized statement required
7 under section 303(a) with respect to each such newly iden-
8 tified respondent. For purposes of this subsection, a re-
9 spondent may accept as true any assertion made by the
10 claimant in a particularized statement submitted under
11 section 303(a), unless the respondent knows or with rea-
12 sonable investigation should know that that assertion is
13 untrue.

14 (b) the Corporation will promptly provide to each ad-
15 ditional person identified pursuant to subsection (a) the
16 particularized statement required under subsection (a)
17 and the information provided to original respondents
18 under section 303(b) and 303(c), subject to receiving the
19 signed protective order described in section 303(c).

20 (c) Additional respondents notified under this section
21 shall have the same right to add further additional re-
22 spondents as is conferred upon originally named respo-
23 ndents under subsection (a).

24 (d) For good cause shown and subject to reasonable
25 limitations, a motions officer may allow discovery for the
26 purpose of obtaining information necessary to allow a re-

1 spondent to provide the information required under sub-
2 section (a). The motions officer may grant reasonable ex-
3 tensions of time for naming additional respondents in
4 order to allow for the completion of discovery under this
5 subsection.

6 (e) The Corporation shall provide notice to all parties
7 when the time period for adding additional respondents
8 has expired. No new party shall be added to the proceed-
9 ing thereafter except on motion for good cause.

10 **SEC. 305. GRACE PERIOD.**

11 The Corporation shall establish a grace period not to
12 exceed 60 days after expiration of the time for adding ad-
13 ditional respondents, during which the parties will be en-
14 couraged to reach voluntary settlements without the need
15 for mediation.

16 **SEC. 306. MEDIATION.**

17 (a) APPOINTMENT OF MEDIATOR.—Upon expiration
18 of the grace period, the Corporation shall appoint a medi-
19 ator to assist the parties who have not settled in the grace
20 period in settling the claim.

21 (b) DISCLOSURE OF INFORMATION NECESSARY FOR
22 SETTLEMENT.—Within such time after appointment of a
23 mediator as the Corporation shall prescribe, each party
24 shall serve upon all other nonsettling parties a statement
25 of information required for settlement. The information

1 to be included in such statements shall be determined by
2 the Corporation to be reasonably necessary for the parties
3 to evaluate the claim. Information previously provided by
4 any party may be incorporated by reference and need not
5 be resubmitted. Nothing in this subsection shall be con-
6 strued to require the disclosure of any information privi-
7 leged under applicable law.

8 (c) TIME LIMITS.—Mediation shall be completed
9 within 60 days following the appointment of the mediator.
10 The time period may be extended by the mediator if the
11 claimant has failed to provide the information required
12 under subsection (b), if such extension is necessary to
13 allow for simultaneous mediation of a group of claims, or
14 for other good cause. The time period may also be ex-
15 tended for a period not to exceed 60 days if in the judg-
16 ment of the mediator, the claimant’s final demand under
17 subsection (e) is not made in good faith, given the legal
18 and factual basis of the claim.

19 (d) CONFIDENTIALITY.—All statements made by any
20 party in mediation shall be confidential and shall not be
21 admissible in any trial or arbitration except as allowed
22 under rule 408 of the Federal Rules of Evidence.

23 (e) GOOD FAITH OFFERS AND DEMANDS.—Fifteen
24 days prior to the close of the mediation period, claimant
25 shall provide to each non-settling respondent or jointly-

1 represented group of respondents a final good faith de-
2 mand of settlement. Five days later each respondent or
3 jointly represented group of respondents shall make a final
4 good faith offer in reply. If a respondent or jointly-rep-
5 resented group of respondents fails to make a settlement
6 offer under this section, it shall be deemed to have made
7 a settlement offer of zero dollars. During the remaining
8 10-day period, or any extension thereof, the mediator shall
9 work with the parties in a further effort to settle the claim.

10 (f) **RELEASE FROM MEDIATION.**—At the close of the
11 mediation period, the mediator shall issue to the claimant
12 a release from mediation. After issuance of a release from
13 mediation, the claimant may commence a civil action or
14 may elect arbitration under section 307.

15 **SEC. 307. ARBITRATION.**

16 (a) **ELECTION TO ARBITRATE.**—A claimant may
17 elect arbitration under this section by serving notice of
18 such election within 30 days following release from medi-
19 ation on all respondents that have not previously settled.
20 All such respondents will be parties to the arbitration.

21 (b) **FEDERAL ARBITRATION ACT.**—All arbitrations
22 hereunder shall be subject to the Federal Arbitration Act
23 (9 U.S.C. §§ 1–6, 8–16), except that, the provisions of this
24 Act and rules adopted by the Corporation under this Act

1 shall be effective notwithstanding any inconsistent provi-
2 sion of the Federal Arbitration Act.

3 (c) ARBITRATION BY SPECIAL AGREEMENT.—Noth-
4 ing in this section shall be construed as prohibiting con-
5 sensual arbitration pursuant to a special agreement en-
6 tered into by the claimant and one or more of the respond-
7 ents. The terms of such a special agreement will prevail,
8 as to the parties thereto, over the provisions of this section
9 (other than subsection (h)) and any rules adopted pursu-
10 ant to section 301.

11 (d) STATUTORY ARBITRATION.—In the absence of a
12 special agreement to arbitrate, arbitrations shall be con-
13 ducted under rules adopted by the Corporation pursuant
14 to section 301.

15 (e) SUBPOENA POWERS OF ARBITRATORS.—Arbitra-
16 tors may issue subpoenas to parties and non-parties for
17 testimony and documents in accordance with the terms of
18 section 308.

19 (f) LAW TO BE APPLIED.—Unless otherwise pro-
20 vided in this Act, the arbitrator shall, with respect to each
21 respondent, apply the law, including the law relating to
22 choice of law, that would be applied by a court designated
23 by the claimant which would have jurisdiction over that
24 respondent. However, if a respondent demonstrates to the
25 satisfaction of the arbitrator that the court designated by

1 the claimant would dismiss or transfer under forum non
2 conveniens or a similar doctrine, then the arbitrator shall
3 apply the law of the state which has the most significant
4 relationship to the occurrence and the parties.

5 (g) PRESUMPTION APPLICABLE TO MEDICAL DETER-
6 MINATION.—A finding of medical eligibility by the Cor-
7 poration shall be presumed correct and shall be conclusive
8 unless rebutted by clear and convincing evidence, except
9 that, to the extent that the finding of medical eligibility
10 is based upon evidence of exposure to asbestos, proof with
11 respect to such exposure shall be determined in accordance
12 with applicable state law.

13 (h) AWARDS.—The arbitrator shall issue awards with
14 respect to each respondent within time periods set by the
15 Corporation. The awards shall be accompanied by findings
16 of fact and conclusions of law. Each respondent shall be
17 jointly and severally liable to the claimant to the extent
18 provided by applicable state law:

19 (1) Where joint and several liability exists
20 under applicable state law, the arbitrator shall deter-
21 mine the total joint and several liability of all re-
22 spondents that have not been released by the claim-
23 ant or dismissed from the proceeding. The arbitrator
24 shall, in addition, determine the amount allocable to
25 each such respondent based on principles of com-

1 parative fault or responsibility. Any respondent who
2 has obtained a release from the claimant prior to the
3 issuance of the arbitrator's award shall be fully pro-
4 tected from claims for contribution or indemnity; but
5 the award against the remaining respondents shall
6 be reduced by the consideration paid or the amount
7 stated in the release, whichever is greater. The total
8 award, reduced by the aggregate of such reductions
9 for all respondents receiving a release, shall then be
10 allocated among the remaining respondents accord-
11 ing to the arbitrator's allocation of comparative
12 shares of fault or responsibility.

13 (2) Where joint and several liability has been
14 abolished under applicable state law, the arbitrator
15 shall determine in accordance with that law the sev-
16 eral share of liability of each respondent that has
17 not been released or dismissed from the proceeding.

18 (3) Where joint and several liability has been
19 abolished under applicable state law with respect to
20 only a portion of damages, the arbitrator shall deter-
21 mine in accordance with state law the several share
22 of liability of each respondent that has not been re-
23 leased or dismissed from the proceeding, and shall in
24 addition determine in accordance with state law the
25 total joint and several liability of all such respond-

1 ents. Allocation of the joint and several portion of
2 the award among the respondents, and reduction of
3 the total award on account of settlements, shall be
4 as set forth in paragraph (h)(1), except that only
5 the joint and several portion of an award may be
6 reduced by amounts paid in settlement by released
7 persons and only that portion of the amount paid
8 by any released person in settlement with respect to
9 the joint and several portion of damages shall be so
10 applied to reduce the award.

11 (i) CONTRIBUTION RIGHTS RETAINED BY RESPOND-
12 ENTS IN ADR.—The entry of an arbitration award
13 against any respondent shall give rise to a right of con-
14 tribution on the part of that respondent against any joint
15 tortfeasor whose liability is extinguished by the award
16 without the necessity that the award be enforced as a
17 court judgment. A settlement between a respondent and
18 the claimant that extinguishes in whole or in part the li-
19 ability of a joint tortfeasor shall not extinguish the settling
20 respondent's right of contribution against that joint
21 tortfeasor.

22 (j) PENALTY FOR INADEQUATE OFFER IN MEDI-
23 ATION.—If the final offer made by any respondent or
24 jointly-represented group of respondents under section
25 306(e) is more than 25 percent less than the share of the

1 total liability (exclusive of prejudgment interest, if any)
2 awarded in arbitration against that respondent or against
3 all the members of a jointly-represented group of respond-
4 ents, the arbitrator shall add a 10-percent penalty to the
5 award against such respondent or each member of such
6 group of respondents. This penalty shall not be taken into
7 consideration in determining the maximum allowable at-
8 torneys' fees under section 503.

9 (k) CONSOLIDATIONS.—Claims with respect to mul-
10 tiple exposed persons shall not be consolidated for hearing
11 on the merits without the consent of all parties.

12 **SEC. 308. SUBPOENA POWERS OF MOTIONS OFFICERS AND**
13 **ARBITRATORS.**

14 A motions officer or an arbitrator may summon in
15 writing any person to attend before him as a witness, or
16 to appear for a deposition, and in a proper case to bring
17 with him any book, record, document, or paper which may
18 be deemed material as evidence in the case. The fees for
19 such attendance shall be the same as the fees of witnesses
20 before masters of the United States courts. A summons
21 under this section shall issue in the name of the motions
22 officer or arbitrator, shall be signed by the motions officer
23 or arbitrator, shall be directed to the person summoned,
24 and shall be served in accordance with rule 45(b)(1) of
25 the Federal Rules of Civil Procedure. If any person so

1 summoned to testify or produce documents shall refuse or
2 neglect to obey said summons, upon petition the United
3 States District Court for the District of Columbia or for
4 the district in which the testimony is to be taken or the
5 document production is to take place may compel the at-
6 tendance of such person before the motions officer or arbi-
7 trator, or his appearance for a deposition, or the produc-
8 tion of documents, or may punish said person for con-
9 tempt in the same manner provided by law for securing
10 the attendance of witnesses or their punishment for ne-
11 glect or refusal to attend in the courts of the United
12 States.

13 **TITLE IV—CIVIL ACTIONS**

14 **SEC. 401. PREREQUISITES FOR CIVIL ACTION.**

15 Subject to section 702, no civil action asserting any
16 asbestos claim may be filed or maintained unless the plain-
17 tiff has obtained a certificate of medical eligibility and re-
18 lease from mediation.

19 **SEC. 402. INDIVIDUAL TRIALS.**

20 No class action suit, joinder of parties, aggregation
21 of claims, consolidation of actions, extrapolation, or other
22 device to determine multiple asbestos claims on a collective
23 basis shall be permitted without the consent of each de-
24 fendant. Any defendant in a civil action that involves a
25 violation of this subsection may remove such action to an

1 appropriate Federal district court. The district courts of
2 the United States shall have jurisdiction of all civil actions
3 removed pursuant to this section without regard to diver-
4 sity of citizenship or amount in controversy.

5 **SEC. 403. CERTIFICATE OF MEDICAL ELIGIBILITY PRE-**
6 **SUMED CORRECT.**

7 A finding of medical eligibility by the Corporation
8 shall be presumed correct and shall be conclusive unless
9 rebutted by clear and convincing evidence, except that, to
10 the extent that a finding of medical eligibility is based on
11 evidence of exposure to asbestos, the burden of proof with
12 respect to such exposure shall be determined in accordance
13 with applicable state law.

14 **SEC. 404. PENALTY FOR INADEQUATE OFFER IN MEDI-**
15 **ATION.**

16 If the final offer made by any respondent or jointly-
17 represented group of respondents under section 306(e) is
18 more than 25 percent less than the several share of liabil-
19 ity (exclusive of prejudgment interest, if any) assigned by
20 the jury or other fact-finder to that respondent or to all
21 the members of a jointly represented group of respon-
22 dents, the court shall award a 10% penalty as to each such
23 respondent or member of a jointly-represented group of
24 respondents. This penalty shall not be taken into consider-

1 ation in determining the maximum allowable attorneys'
2 fees under section 503.

3 **TITLE V—RULES APPLICABLE**
4 **TO ARBITRATIONS AND CIVIL**
5 **ACTIONS**

6 **SEC. 501. ELEMENTS OF PROOF; RELIEF.**

7 Subject to section 702 and notwithstanding any other
8 provision of law, the following shall apply in all civil ac-
9 tions and arbitrations involving an asbestos claim:

10 (1) BASIC REQUIREMENT OF ELIGIBLE MEDI-
11 CAL CONDITION.—No person shall recover in any
12 civil action or arbitration damages or other relief
13 with respect to an asbestos claim unless such person
14 establishes, by evidence meeting the requirements of
15 section 201, 202, 203, 204, or 206, as appropriate,
16 the existence of an eligible medical condition.

17 (2) EMOTIONAL DISTRESS; MEDICAL MONITOR-
18 ING.—No damages or other relief shall be awarded
19 in any civil action or arbitration involving an asbes-
20 tos claim for emotional distress or any other form
21 of mental or emotional harm, or for medical mon-
22 itoring or surveillance, based wholly or in part on
23 exposure to asbestos unless the requirements of sub-
24 section (a) are met in addition to any other require-
25 ment under applicable law for recovery of damages

1 or other relief for emotional distress or medical mon-
2 itoring or surveillance.

3 (3) **ENHANCED RISK.**—No damages or other re-
4 lief shall be awarded in any civil action or arbitra-
5 tion involving an asbestos claim solely for increased
6 risk of cancer or other disease.

7 (4) **PUNITIVE DAMAGES.**—No punitive damages
8 shall be awarded in any civil action or arbitration in-
9 volving an asbestos claim.

10 **SEC. 502. TIMELINESS DEFENSES ABOLISHED.**

11 No defense to an asbestos claim based on a statute
12 of limitations or statute of repose, laches, or any other
13 defense based on the timeliness of the claim shall be recog-
14 nized or allowed in any civil action or arbitration unless
15 such claim was untimely as of the date of enactment of
16 this Act.

17 **SEC. 503. ATTORNEYS' FEES.**

18 Notwithstanding any provision of other law or con-
19 tract, the aggregate fee, including all expenses and other
20 charges, of a claimant's attorneys in any civil action or
21 arbitration involving an asbestos claim, shall not exceed
22 twenty-five percent of the damages or other payments re-
23 ceived by that plaintiff in settlement or pursuant to a
24 judgment or award.

1 **SEC. 504. EFFECT ON SUBSEQUENT ACTIONS.**

2 (a) Notwithstanding any other provision of law, a
3 judgment or settlement of an asbestos claim for a non-
4 malignant condition satisfying the requirements of section
5 201 shall not preclude a subsequent claim with respect
6 to the same exposed person for a malignant condition sat-
7 isfying the requirements of section 202, 203, 204, or 206,
8 as applicable.

9 (b) Subsection (a) shall not be construed to invalidate
10 any provision of a settlement agreement entered into prior
11 to the date of enactment.

12 **TITLE VI—FUNDING**

13 **SEC. 601. COSTS OF MEDICAL REVIEW AND OVERHEAD AND**
14 **ADMINISTRATION.**

15 (a) PROVISIONAL ALLOCATION.—

16 (1) ESTIMATE OF COSTS.—On or before August
17 1 of each year, the Corporation shall estimate its
18 costs (exclusive of the cost of mediation and arbitra-
19 tion that may be recovered under section 602) for
20 the following fiscal year beginning October 1. In es-
21 timating its costs under this section, the Corporation
22 shall make reasonable allowances for contingencies
23 and shall state separately those costs directly related
24 to medical review and those costs directly related to
25 general overhead and administration of the Corpora-
26 tion.

1 (2) ALLOCATION TO RESPONDENTS.—The Cor-
2 poration shall proportionally allocate the costs esti-
3 mated pursuant to paragraph (1) among all persons
4 named as a respondent during the 12-month period
5 ending the preceding June 30 and shall notify each
6 such person of the amount due pursuant to such al-
7 location. In this section, a person shall be considered
8 named as a respondent if notice was provided to
9 such person under section 303 or 304. In making
10 this allocation, the Corporation shall calculate the
11 following: (i) for each individual respondent, the
12 total number of proceedings in which the respondent
13 has been named, and (ii) the total combined number
14 of proceedings for all respondents. For purposes of
15 this calculation, all claims, including derivative
16 claims, relating to one exposed person shall be
17 counted as one proceeding for each respondent
18 named in the proceeding. The total number of pro-
19 ceedings for each respondent shall be divided by the
20 total combined number of proceedings for all re-
21 spondents to determine the percentage of costs allo-
22 cable to each individual respondent. The Corporation
23 shall not allocate any of the costs estimated pursu-
24 ant to paragraph (1) to any respondent whose allo-
25 cable share of the costs, in the absence of such ex-

1 clusion, is less than a de minimis percentage estab-
2 lished by the Corporation. Any such unallocated per-
3 centage(s) shall be reallocated to the remaining re-
4 spondents based upon their original allocation per-
5 centages.

6 (3) PAYMENT OF ESTIMATED SHARE OF
7 COSTS.—Each respondent shall pay to the Corpora-
8 tion its allocated share of the estimated costs within
9 30 days after the date of notification of its allocated
10 share.

11 (b) FINAL ALLOCATION.—On or before November 30
12 of each year, the Corporation shall determine its total
13 costs (exclusive of the cost of mediation and arbitration
14 that may be recovered from respondents under section
15 602) for the prior fiscal year ending September 30 and
16 will allocate those costs proportionally, in the manner de-
17 scribed in subsection (a)(2), among persons who were
18 named as respondents in that fiscal year. In making an
19 allocation under this subsection, the Corporation shall
20 state separately those costs directly attributable to the
21 medical review process and those costs directly attrib-
22 utable to general overhead and administration of the Cor-
23 poration. If the amount allocated to any person under this
24 subsection is greater than the amount deposited by such
25 person under subsection (a)(2) with respect to the preced-

1 ing fiscal year, that person shall pay the deficiency to the
2 Corporation within 30 days after receiving a notice of defi-
3 ciency from the Corporation. If the amount allocated to
4 any person under this subsection is less than the amount
5 deposited by such person under subsection (a)(2) for the
6 preceding fiscal year, the Corporation shall promptly re-
7 fund the difference to that respondent.

8 (c) TRANSITIONAL PROVISIONS.—

9 (1) START-UP FUNDING.—Start-up funding will
10 be provided by voluntary contributions within 30
11 days after appointment and confirmation of the first
12 director. Unless the Corporation and the donor oth-
13 erwise agree, the Corporation will refund such con-
14 tributions following receipt of the funds allocated
15 pursuant to the initial determination of costs and as-
16 sessments to defendants provided in subsection
17 (c)(2). Start-up costs include all reasonable and nec-
18 essary expenses of the Corporation incurred prior to
19 the availability of transitional funding under sub-
20 section (c)(2).

21 (2) TRANSITIONAL FUNDING.—

22 (A) NOTICE.—As soon as feasible after a
23 majority of the Board is appointed and con-
24 firmed, the Board shall provide notice request-
25 ing the information listed in subparagraph (B)

1 to each defendant served in any civil action in-
2 volving an asbestos claim pending on the date
3 of enactment. Such notice shall be the best
4 practicable under the circumstances, including
5 publication in the Federal Register and individ-
6 ual notice to any defendant that can be identi-
7 fied through reasonable effort.

8 (B) INFORMATION TO BE PROVIDED.—

9 Within such time as the Corporation may pre-
10 scribe, but in any event not less than 60 days
11 after the date of publication in the Federal
12 Register, every person who was, on the date of
13 enactment, served as a defendant in at least
14 5000 pending civil actions involving asbestos
15 claims shall provide to the Corporation a state-
16 ment containing the following information: the
17 total number of civil actions in which that per-
18 son was named as a defendant and, with re-
19 spect to each civil action, the name of the lead
20 plaintiff, the name of the lead defendant, the
21 court in which the civil action was pending, and
22 the docket number.

23 (C) COUNTING RULES.—For purposes of
24 subparagraph (B):

1 (i) All asbestos claims relating to a
2 single exposed person, including derivative
3 claims, shall be treated as one civil action
4 regardless of the number of plaintiffs or
5 defendants named in the complaint.

6 (ii) In civil actions involving multiple
7 plaintiffs and defendants, each asbestos
8 claim shall be deemed to have been as-
9 serted against each defendant unless the
10 complaint states otherwise.

11 (iii) Third-party defendants shall cal-
12 culate the number of civil actions involving
13 asbestos claims pending against them as if
14 they had been joined as a defendant by the
15 original plaintiff or plaintiffs.

16 (iv) Cross claims, deemed or other-
17 wise, shall not count as a separate civil ac-
18 tion.

19 (D) SIGNATURE.—The statement of infor-
20 mation required under this paragraph shall be
21 signed on behalf of the defendant by a cor-
22 porate officer or (in the case of a defendant
23 that is not a corporation) a senior official com-
24 parable to a corporate officer, authorized to
25 bind such defendant, attesting under penalty of

1 perjury that the information contained therein
2 is true and complete to the best of his knowl-
3 edge and belief after reasonable investigation.

4 (E) ALLOCATION AND PAYMENT.—The
5 Corporation shall proportionally allocate its es-
6 timated costs for a transitional period to in-
7 clude the first two fiscal years after the date of
8 enactment, in substantially the same manner as
9 the allocation described in subsection (a)(2), to
10 the defendants identified in this paragraph and
11 shall notify each such defendant of its propor-
12 tionate share of such estimated transitional
13 costs. Within 45 days following the date of such
14 notice, each such defendant shall pay its share
15 of the estimated transitional costs to the Cor-
16 poration.

17 (3) RECONCILIATION.—On or before November
18 30 following the end of the transitional period, the
19 Corporation shall determine its total costs (exclusive
20 of the cost of mediation and arbitration that may
21 be recovered from respondents under section 602)
22 for the transitional period, including start-up costs,
23 and shall proportionally allocate those costs, in sub-
24 stantially the same manner as the allocation de-
25 scribed in subsection (a)(2), among defendants who

1 were named as respondents during that transitional
2 period. In making an allocation under this sub-
3 section, the Corporation shall state separately those
4 costs directly attributable to the medical review
5 process and those costs directly attributable to gen-
6 eral overhead and administration of the Corporation.
7 If the amount allocated to any respondent under this
8 subsection is greater than the amount deposited by
9 such respondent under paragraph (2), that respon-
10 dent shall pay the deficiency to the Corporation with-
11 in 30 days after receiving a notice of deficiency from
12 the Corporation. If the amount allocated to any re-
13 spondent under this subsection is less than the
14 amount deposited by such respondent under para-
15 graph (2), the difference shall be promptly refunded.

16 **SEC. 602. COST OF MEDIATION AND ARBITRATION.**

17 (a) The cost of mediation shall be charged, on a per
18 capita basis, to each respondent who participated in medi-
19 ation, wholly or in part.

20 (b) In the absence of an agreement among the parties
21 to the contrary, the cost of arbitration shall be charged,
22 on a per capita basis, to each respondent who participated
23 in the arbitration, wholly or in part, except that, the Cor-
24 poration may by rule provide for a reduction in the costs

1 charged to respondents who settle or are dismissed from
2 arbitration prior to the commencement of the hearing.

3 **SEC. 603. INFORMAL DISPUTE RESOLUTION.**

4 (a) The Corporation shall establish expeditious proce-
5 dures for the informal resolution of disputes regarding the
6 assessment of costs under this title. The Corporation may,
7 in its sole discretion, postpone the obligation to pay the
8 disputed assessment, wholly or in part, during the pend-
9 ency of informal dispute resolution procedures.

10 (b) The Corporation may agree to participate in vol-
11 untary alternative dispute resolution procedures, including
12 mediation and arbitration, to resolve disputes regarding
13 assessments.

14 **SEC. 604. JUDICIAL REVIEW; ENFORCEMENT.**

15 (a) The district courts of the United States shall have
16 exclusive jurisdiction, without regard to the amount in
17 controversy or citizenship of the parties, to review any as-
18 sessment of costs made by the Corporation pursuant to
19 this title. The reviewing court shall uphold a challenged
20 assessment unless it determines that that assessment is
21 arbitrary and capricious or otherwise not in accordance
22 with law. No action under this subsection may be com-
23 menced or maintained by any person unless that person
24 has first (1) exhausted the informal dispute resolution
25 procedures provided under section 603 and (2) paid to the

1 Corporation the entire amount assessed to that person by
2 the Corporation, including the amount in dispute.

3 (b) The Corporation shall have the authority to bring
4 an action in the district courts of the United States to
5 enforce any obligation imposed on any person by this title,
6 and the district courts of the United States shall have ex-
7 clusive jurisdiction of such actions without regard to the
8 amount in controversy or citizenship of the parties. The
9 court shall not entertain any defense other than lack of
10 jurisdiction in any action by the Corporation to recover
11 assessments due under this title unless the assessment is
12 fully paid, with interest, in which case the court shall up-
13 hold the Corporation's determination if it is not arbitrary
14 and capricious or otherwise contrary to law. In any action
15 under this subsection in which the Corporation prevails,
16 it shall be entitled to costs, including reasonable attorneys'
17 fees, and interest on any unpaid funds. Interest under this
18 subsection shall be equal to the rate applicable to under-
19 paid taxes under 26 U.S.C. § 6621.

20 **SEC. 605. PENALTIES.**

21 If any person required by section 601 to provide in-
22 formation to the Corporation willfully fails to do so within
23 the time fixed by the Corporation, the person shall forfeit
24 to the Corporation the sum of \$50,000, which forfeiture
25 shall be payable to the Corporation, and shall be recover-

1 able in a civil suit in the name of the Corporation brought
2 under section 604(b).

3 **TITLE VII—APPLICABILITY;**
4 **PENDING CIVIL ACTIONS**

5 **SEC. 701. APPLICABILITY.**

6 Subject to section 702, upon the date of enactment
7 the Act shall apply to any civil action asserting an asbestos
8 claim that has not resulted in a final, non-appealable judg-
9 ment.

10 **SEC. 702. PENDING CIVIL ACTIONS.**

11 (a) A certificate of medical eligibility shall not be re-
12 quired in any civil action asserting an asbestos claim if
13 (1) that action was pending upon the date of enactment
14 and (2) a trial commences prior to the operational date.
15 No release from mediation shall be required in any civil
16 action asserting an asbestos claim if the action was pend-
17 ing on the date of enactment, whether or not trial com-
18 mences prior to the operational date.

19 (b) Prior to the operational date, a plaintiff in a civil
20 action asserting an asbestos claim that is pending on the
21 date of enactment may elect to submit that claim to the
22 Corporation for a determination of medical eligibility. Any
23 such election shall be irrevocable.

24 (c) Notwithstanding any other provision of law, the
25 plaintiff in any civil action asserting an asbestos claim who

1 has not obtained a certificate of medical eligibility shall
2 have the burden of establishing the existence of an asbes-
3 tos-related condition that meets the criteria for an eligible
4 medical category pursuant to sections 201–204.

5 **TITLE VIII—MISCELLANEOUS** 6 **PROVISIONS**

7 **SEC. 801. DEFINITIONS.**

8 In this Act:

9 (1) **ALTERNATIVE DISPUTE RESOLUTION PROC-**
10 **ESS.**—The term “alternative dispute resolution proc-
11 ess” means the mediation and voluntary arbitration
12 process established under title III of this Act.

13 (2) **ASBESTOS.**—The term “asbestos” means
14 any number of naturally occurring silicates with the
15 common properties of great resistance to destruction
16 by physical or chemical means and a fibrous configura-
17 tion, including asbestiform varieties of chrysotile,
18 crocidolite, amosite, anthophyllite, tremolite, and ac-
19 tinolite.

20 (3) **ASBESTOS CLAIM.**—The term “asbestos
21 claim” means any claim for damages or other relief,
22 arising out of, based on, or related to the health ef-
23 fects of exposure to asbestos, including any claim for
24 personal injury, death, mental or emotional injury,
25 risk of disease or other injury, or the costs of medi-

1 cal monitoring or surveillance, and including any
2 claim made by or on behalf of any exposed person
3 or any representative, spouse, parent, child, or other
4 relative of any exposed person.

5 (4) ASBESTOS TRUST.—The term “asbestos
6 trust” means a court-supervised trust established to
7 resolve asbestos claims arising directly or indirectly
8 from exposure to asbestos or asbestos-containing
9 products, including a trust created pursuant to the
10 bankruptcy laws of the United States or rule 23 of
11 the Federal Rules of Civil Procedure.

12 (5) BASILAR CRACKLES.—The term “basilar
13 crackles,” sometimes called “rales,” means those
14 sounds described in American Thoracic Society,
15 “The Diagnosis of Nonmalignant Diseases Related
16 to Asbestos,” 134 American Review of Respiratory
17 Disease, 363, 366 (1986).

18 (6) BOARD.—The term “Board” means the
19 Board of Directors of the Asbestos Resolution Cor-
20 poration.

21 (7) BOARD-CERTIFIED INTERNIST.—The term
22 “Board-certified internist” means a physician who is
23 currently certified by the American Board of Inter-
24 nal Medicine in internal medicine.

1 (8) BOARD-CERTIFIED ONCOLOGIST.—The term
2 “Board-certified oncologist” means a physician who
3 is currently certified by the American Board of In-
4 ternal Medicine in the subspecialty of medical oncol-
5 ogy.

6 (9) BOARD-CERTIFIED PATHOLOGIST.—The
7 term “Board-certified pathologist” means a physi-
8 cian who currently holds primary certification in
9 anatomic pathology, or combined anatomic and clinical
10 pathology, from the American Board of Pathol-
11 ogy.

12 (10) BOARD-CERTIFIED PULMONARY SPECIAL-
13 IST.—The term “Board-certified pulmonary special-
14 ist” means a physician who is currently certified by
15 the American Board of Internal Medicine in the sub-
16 specialty of pulmonary disease.

17 (11) BOARD-CERTIFIED RADIOLOGIST.—The
18 term “Board-certified radiologist” means a physician
19 who is currently certified by the American Board of
20 Radiology.

21 (12) BYLAWS.—The term “bylaws” means the
22 code or codes of rules adopted for the regulation or
23 management of the affairs of the Corporation. By-
24 laws shall be consistent with the requirements of this
25 Act and, to the extent consistent with this Act, with

1 the requirements of the District of Columbia Non-
2 profit Corporation Act (D.C. Code §§ 29–501 et
3 seq.).

4 (13) CANCER.—The term “cancer” means any
5 of various malignant neoplasms marked by the pro-
6 liferation of anaplastic cells that tend to invade sur-
7 rounding tissue and metastasize to new body sites
8 and the pathological condition characterized by such
9 growths.

10 (14) CERTIFICATE OF MEDICAL ELIGIBILITY.—
11 The term “certificate of medical eligibility” means a
12 certificate issued by the Corporation to a claimant
13 pursuant to this Act certifying that an exposed per-
14 son meets the requirements of one or more eligible
15 medical categories (or qualifies as an exceptional
16 medical claim with respect to an eligible medical cat-
17 egory).

18 (15) CERTIFIED B-READER.—The term “cer-
19 tified B-reader” means an individual qualified as a
20 “final” or “B-reader” under 42 C.F.R. § 37.51(b)
21 (1997) (and any subsequent revisions thereof) whose
22 certification is current.

23 (16) CHEST X-RAYS.—The term “chest x-rays”
24 means chest radiographs taken in four views (Pos-
25 terior-Anterior, Lateral, and Left and Right Ob-

1 liques) and graded quality 1 for reading according to
2 the criteria established by the ILO; except that, in
3 situations where the claimant is unable to provide
4 quality 1 chest x-rays because of death or because
5 of an inability to have new chest x-rays taken, chest
6 x-rays graded quality 2 will be acceptable.

7 (17) CIVIL ACTION.—The term “civil action”
8 means any action, lawsuit, or proceeding in any
9 state, federal, or tribal court, but does not include
10 (a) a criminal action, (b) an action relating to state
11 or federal worker’s compensation laws, or (c) a pro-
12 ceeding for judicial review of the actions of the Cor-
13 poration.

14 (18) CLAIMANT.—The term “claimant” means
15 any exposed person or his legal representative, and
16 any parent, child, or other relative of an exposed
17 person, or their legal representative, who applies to
18 the Corporation for a certificate of medical eligibility
19 or who invokes the alternative dispute resolution
20 services offered by the Corporation.

21 (19) CLINICAL EVIDENCE OF ASBESTOSIS.—
22 The term “clinical evidence of asbestosis” means a
23 diagnosis of pulmonary asbestosis by a Board-cer-
24 tified internist or Board-certified pulmonary special-

1 ist based on the following minimum objective cri-
2 teria:

3 (A) Chest x-rays which, in the opinion of
4 a certified B-reader, show small irregular opac-
5 ities of ILO grade 1/0 and pulmonary function
6 testing and physical examination that show ei-
7 ther—

8 (i) FVC <80 percent of predicted
9 value with FEV₁/FVC ≥75 percent (actual
10 value); or

11 (ii) TLC <80 percent of predicted
12 value, with either DLCO ≤76 percent of
13 predicted value or bilateral basilar crack-
14 les, and also the absence of any probable
15 explanation for this DLCO result or crack-
16 les finding other than the presence of lung
17 disease.

18 (B) Chest x-rays which, in the opinion of
19 a certified B-reader, show small irregular opac-
20 ities of ILO grade 1/1 or greater; and pul-
21 monary function testing that shows either—

22 (i) FVC <80 percent of predicted
23 value with FEV₁/FVC ≥72 percent (actual
24 value) or, if the individual tested is at least
25 68 years old at the time of the testing,

1 with $FEV_1/FVC \geq 65$ percent (actual value);

2 or

3 (ii) $TLC < 80$ percent of predicted

4 value.

5 (20) COMPENSATORY DAMAGES.—The term
6 “compensatory damages” means damages awarded
7 for economic and non-economic loss.

8 (21) CORPORATION.—The term “Corporation”
9 means the Asbestos Resolution Corporation estab-
10 lished in section 101.

11 (22) DEFENDANT.—The term “defendant”
12 means any party in a civil action that is alleged to
13 be legally responsible for the claimant’s injury.

14 (23) DLCO.—The term “DLCO” means diffus-
15 ing capacity of the lung (carbon monoxide), which is
16 a measure of the volume of carbon monoxide trans-
17 ferred from the alveoli to blood in the pulmonary
18 capillaries for each unit of driving pressure of the
19 carbon monoxide.

20 (24) ECONOMIC LOSS.—The term “economic
21 loss” means any pecuniary loss resulting from harm
22 (including the loss of earnings or other benefits re-
23 lated to employment, medical expense loss, replace-
24 ment service loss, loss due to death, burial costs, and
25 loss of business or employment opportunities) to the

1 extent that recovery for such loss is allowed under
2 applicable law.

3 (25) ELIGIBLE MEDICAL CATEGORY.—The term
4 “eligible medical category” means mesothelioma,
5 lung cancer, other cancer, and non-malignant condi-
6 tions.

7 (26) EVIDENCE OF BILATERAL PLEURAL
8 THICKENING WITH IMPAIRMENT.—The term “evi-
9 dence of bilateral pleural thickening with impair-
10 ment” means a diagnosis of bilateral pleural thick-
11 ening with impairment by a Board-certified internist
12 or Board-certified pulmonary specialist based on the
13 following minimum objective criteria:

14 (A) Chest x-rays which, in the opinion of
15 a certified B-reader, show bilateral pleural
16 thickening of ILO Grade B2, and which in-
17 cludes blunting of at least one costophrenic
18 angle and is not explained by any other condi-
19 tion in the subject’s history; and pulmonary
20 function testing that shows—

21 (i) if TLC is available, $TLC < 75$ per-
22 cent of predicted value; or

23 (ii) if TLC is not available, VC or
24 $FVC < 75$ percent of predicted value with

1 FEV₁/FVC ≥ 75 percent (actual value); and
2 in either case

3 (iii) a statement by the Board-cer-
4 tified internist or Board-certified pul-
5 monary specialist that the asbestos-related
6 changes are a substantial contributing fac-
7 tor in causing the pulmonary function
8 changes.

9 (B) Chest x-rays which, in the opinion of
10 a certified B-reader, show bilateral pleural
11 thickening of ILO grade C2 or greater, and
12 which includes the blunting of at least one
13 costophrenic angle and is not explained by any
14 other condition in the subject's history; and pul-
15 monary function testing that shows—

16 (i) FVC < 80 percent of predicted
17 value with FEV₁/FVC ≥ 75 percent (actual
18 value), or, if the individual tested is at
19 least 68 years old at the time of the test-
20 ing, with FEV₁/FVC ≥ 65 percent (actual
21 value); or

22 (ii) TLC < 80 percent of predicted
23 value; and in either case

24 (iii) a statement by the Board-cer-
25 tified internist or Board-certified pul-

1 monary specialist that the asbestos-related
2 changes are a substantial contributing fac-
3 tor in causing the pulmonary function
4 changes.

5 (27) EXCEPTIONAL MEDICAL CLAIM.—The term
6 “exceptional medical claim” means a claim identified
7 as such pursuant to the procedures in section 206.

8 (28) EXPOSED PERSON.—The term “exposed
9 person” means any person who has been exposed in
10 any state (or while working aboard a United States
11 vessel outside the United States) to asbestos or to
12 asbestos-containing products.

13 (29) FEV₁.—The term “FEV₁” means forced
14 expiratory volume (1 second), which is the maximal
15 volume of air expelled in one second during perform-
16 ance of the spirometric test for forced vital capacity
17 (FVC). FEV₁ shall be measured using standard spi-
18 rometric methods.

19 (30) FINAL CERTIFICATE OF ELIGIBILITY.—
20 The term “final certificate of eligibility” means a
21 certificate of eligibility that is not subject to further
22 review or modification by the Corporation, whether
23 on reconsideration under section 205 or by action of
24 an exceptional medical claims panel under section
25 206.

1 (31) FVC.—The term “FVC” means forced
2 vital capacity, which is the maximal volume of air
3 expired with a maximally forced effort from a posi-
4 tion of maximal inspiration. FVC shall be measured
5 using standard spirometric methods.

6 (32) GOOD FAITH OFFER OR GOOD FAITH DE-
7 MAND.—The terms “good faith offer” or “good faith
8 demand” means a settlement offer or demand which
9 reflects an evaluation of relevant factors of tradi-
10 tional tort principles of damages.

11 (33) GRACE PERIOD.—The term “grace period”
12 means the period allowed for voluntary settlements
13 in section 305.

14 (34) ILO.—The term “ILO” means the Inter-
15 national Labour Office.

16 (35) ILO GRADE.—The term “ILO grade”
17 means the radiological ratings for the presence of
18 lung changes by chest x-rays as established from
19 time to time by the ILO.

20 (36) LATENCY PERIOD.—The term “latency pe-
21 riod” means the period from the date of the exposed
22 person’s first significant exposure to asbestos or an
23 asbestos-containing product to the date of mani-
24 festation of the condition claimed.

1 (37) MANIFESTATION.—The term “manifesta-
2 tion” means either the date of the actual diagnosis
3 of the condition claimed, or the date upon which the
4 clinical records and available tests indicate that the
5 condition could reasonably have been diagnosed by a
6 competent physician.

7 (38) MEDICAL ADVISORY BOARD.—The term
8 “medical advisory board” means the board estab-
9 lished under section 105 to provide medical advice to
10 the board of directors of the Corporation.

11 (39) MESOTHELIOMA.—The term “mesotheli-
12 oma” means a malignant tumor of the mesothelial
13 tissue.

14 (40) MOTIONS OFFICER.—The term “motions
15 officer” means an official of the Corporation respon-
16 sible for resolving procedural and discovery disputes
17 during the alternative dispute resolution process in
18 the absence of an arbitrator. Motions officers shall
19 be members in good standing of the bar of a State.

20 (41) NONECONOMIC LOSS.—The term “non-
21 economic loss” means subjective, nonmonetary loss
22 resulting from harm, including pain, suffering, in-
23 convenience, mental suffering, emotional distress,
24 loss of society and companionship, loss of consor-
25 tium, injury to reputation, and humiliation.

1 (42) OCCUPATIONAL HISTORY.—The term “oc-
2 cupational history” means a listing of all employ-
3 ment positions, providing for each the dates and
4 place of employment, the employer, and a descrip-
5 tion of job responsibilities and activities.

6 (43) OPERATIONAL DATE.—The term “oper-
7 ational date” means the date on which the Board
8 certifies that the Corporation is operational or the
9 first business day following the seventh month after
10 the date of enactment, whichever comes first.

11 (44) PATHOLOGICAL EVIDENCE OF ASBESTO-
12 SIS.—The term “pathological evidence of asbestosis”
13 means diagnosis of pulmonary asbestosis by a
14 Board-certified pathologist based on a finding that
15 more than one representative section of long tissue
16 otherwise uninvolved with any other process (e.g.,
17 cancer or emphysema) demonstrates a pattern of
18 peribronchiolar or parenchymal scarring in the pres-
19 ence of characteristic asbestos bodies, and also that
20 there is no other more likely explanation for the
21 presence of the fibrosis.

22 (45) PERSON.—The term “person” means an
23 individual, trust, firm, corporation, association, part-
24 nership, joint venture, the United States, and any
25 state or political subdivisions thereof. The term does

1 not include an asbestos trust in existence as of the
2 date of enactment unless the trust elects to be cov-
3 ered by this Act under section 804.

4 (46) PHYSICIAN.—The term “physician” means
5 a medical doctor currently licensed to practice medi-
6 cine in any state who has not, within the five-year
7 period prior to the date of enactment of the Act,
8 spent more than one half of his or her professional
9 time, or derived more than one-half of his or her
10 professional income, either annually or in total, ei-
11 ther reviewing or testifying in any forum on medical-
12 legal issues related to asbestos.

13 (47) PREDICTED VALUE.—The term “predicted
14 value” for spirometry and lung volumes shall be the
15 relevant value published by Morris, Clinical Pul-
16 monary Function Testing, 2d Edition, Inter-
17 mountain Thoracic Society (1984). “Predicted
18 Value” for diffusing capacity shall be the relevant
19 value published by Miller, et al., “Single Breath Dif-
20 fusing Capacity in a Representative Sample of the
21 Population of Michigan, a Large Industrial State,”
22 127 American Review of Respiratory Disease, 270–
23 77 (1983). Predicted value in all pulmonary function
24 tests shall be corrected for race, ethnic origin, and
25 other relevant factors.

1 (48) PULMONARY FUNCTION TESTING.—The
2 term “pulmonary function testing” means
3 spirometry, lung volume, and diffusing capacity
4 (“DLCO”) testing. All spirometry shall use standard
5 spirometric methods. Pulmonary function testing
6 other than spirometry shall use methods, quality cri-
7 teria, and standards approved by the Board, upon
8 the recommendation of the Medical Advisory Board.
9 Such methods, quality criteria, and standards shall
10 be generally recognized by authoritative professional
11 bodies as appropriate, giving due consideration to
12 the reliability where obstructive lung disease may be
13 present. All backup data (including flow volume
14 loops, spirographs, and other tracings), necessary to
15 ensure compliance with the methods, quality criteria,
16 and standards approved by the Board shall be sub-
17 mitted to the Corporation along with the results of
18 such tests.

19 (49) PUNITIVE DAMAGES.—The term “punitive
20 damages” means damages awarded against any per-
21 son to punish or deter such person, or others, from
22 engaging in similar behavior in the future.

23 (50) RESPONDENT.—The term “respondent”
24 means any person who is or may be responsible for
25 a claimant’s asbestos-related condition and who is so

1 notified by the Corporation under section 303 or
2 304. The term does not include an asbestos trust in
3 existence as of the date of enactment of this Act un-
4 less the trust elects to be covered by this Act under
5 section 804.

6 (51) STANDARD SPIROMETRIC METHODS.—The
7 term “standard spirometric methods” means spiro-
8 metric methods and equipment that substantially
9 conform to American Thoracic Society standards for
10 technical quality and instrumentation, as set forth in
11 20 C.F.R. § 718.103 (1997) and appendix B thereto
12 or in guidelines established by the American Tho-
13 racic Society, as set forth in “Standardization of
14 Spirometry—1994 Update,” 152 American Review
15 of Respiratory Disease 1107–36 (1995) and any re-
16 visions thereof. Each subject must be tested with
17 and without inhaled bronchodilators, with best val-
18 ues taken. All back-up data pertaining to spirometric
19 testing of an exposed person (including all flow vol-
20 ume loops, spirographs, and any other tracings)
21 shall be submitted to the Corporation to ensure that
22 these quality criteria and standards have been satis-
23 fied.

24 (52) STATE.—The term “State” means any
25 State of the United States, the District of Columbia,

1 Commonwealth of Puerto Rico, the Northern Mari-
2 ana Islands, the Virgin Islands, Guam, American
3 Samoa, and any other territory or possession of the
4 United States or any political subdivision of any of
5 the foregoing.

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

9 (54) WORKERS’ COMPENSATION LAW.—The
10 term “workers compensation law” means a law re-
11 specting a program administered by a state or the
12 United States to provide benefits, funded by a re-
13 sponsible employer or its insurance carrier, for occu-
14 pational diseases or injuries or for disability or death
15 caused by occupational diseases or injuries. The
16 term includes the Longshore and Harbor Workers’
17 Compensation Act (33 U.S.C. §§ 901–944, 948–
18 950), but does not include the Federal Employers’
19 Liability Act (45 U.S.C. § 51–60).

20 **SEC. 802. APPLICABILITY OF OTHER FEDERAL LAWS.**

21 (a) Nothing in this Act shall be construed to make
22 any director, officer or employee of the Corporation, an
23 officer or employee of the U.S. Government for purposes
24 of title 5, United States Code. Neither the Corporation

1 nor any director, officer, or employee of the Corporation
2 shall be subject to the provisions of 31 U.S.C. § 1341(a).

3 (b) To the extent consistent with the provisions of
4 this Act, the Corporation shall be subject to 5 U.S.C.
5 §§ 553, 555, and 706 and 5 U.S.C. § 552a.

6 (c) In order to preserve the integrity of the settlement
7 process in the resolution of asbestos claims, the Corpora-
8 tion shall exempt from disclosure under 5 U.S.C.
9 § 552(b)(3) information or documents that contain the re-
10 sults of settlements or settlement averages, individual
11 party or attorney names, medical records, and related data
12 collected for the purpose of resolving individual claims.

13 (d) The Corporation shall be exempt from: 5 U.S.C.
14 § 552b, 5 U.S.C. §§ 5101–5115, 5331–5338, 5 U.S.C.
15 § 504, 5 U.S.C. App. (Ethics in Government Act), 28
16 U.S.C. § 2412, 28 U.S.C. § 2672, 41 U.S.C. §§ 251–260
17 and 44 U.S.C. § 3501 et seq.

18 **SEC. 803. OBLIGATIONS OF THE CORPORATION NOT OBLI-**
19 **GATIONS OF THE UNITED STATES.**

20 Obligations or liabilities of the Corporation shall not
21 be obligations or liabilities of the United States. No action
22 may be maintained against the United States to enforce
23 any obligation or liability of the Corporation.

1 **SEC. 804. APPLICATION TO EXISTING ASBESTOS TRUSTS.**

2 (a) This Act shall not apply to any asbestos trust in
3 existence as of the date of enactment of this Act, except
4 as provided in subsection (b).

5 (b) An asbestos trust may elect to be subject to the
6 Act by providing written notice of such election to the Cor-
7 poration, in which case the trust will have the same rights
8 and responsibilities under the Act as any person who is
9 not a trust. A valid election under this subsection shall
10 be irrevocable.

11 **SEC. 805. SEVERABILITY.**

12 If any provision of this Act or the application of such
13 provision to any person or circumstance is held invalid,
14 it is the intent of Congress that the remainder of this Act
15 and application of such provision to other persons or cir-
16 cumstances shall not be affected thereby.

○