

Calendar No. 449

106TH CONGRESS
2D SESSION

H. R. 1283

[Report No. 106-782]

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

MARCH 25, 1999

Mr. HYDE (for himself, Mr. MORAN of Virginia, Mr. ARMEY, Mr. DELAY, Mr. SENSENBRENNER, Mr. GEKAS, Mr. BURTON of Indiana, Mr. MANZULLO, Mr. STENHOLM, Mr. HOSTETTLER, Mr. BONILLA, Mr. NORWOOD, Mr. FOLEY, Mr. DEAL of Georgia, Mr. CALVERT, Mr. BRADY of Texas, Mr. WELLER, Mr. CANNON, and Mr. WATTS of Oklahoma) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 24, 2000

Additional sponsors: Mr. CUNNINGHAM, Mr. SAM JOHNSON of Texas, Mr. MCINTOSH, Ms. DUNN, Mr. COMBEST, Mr. PASCRELL, Mr. BARR of Georgia, Mrs. MYRICK, Mr. STUMP, Mr. BALLENGER, Mr. DOOLITTLE, Mr. BLUNT, Mr. DOOLEY of California, Mr. SMITH of Texas, Mr. SHUSTER, Mr. DAVIS of Virginia, Mr. BRYANT, Mr. GARY MILLER of California, Mr. SHAYS, Mr. GALLEGLY, Mr. GOODLING, Mr. PORTER, Mr. BACHUS, Mr. POMBO, Mr. THORNBERRY, Mrs. NORTHUP, Mrs. BONO, Mr. HERGER, Mr. ROGAN, Ms. GRANGER, Mr. SWEENEY, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mr. PETRI, Mr. LUCAS of Oklahoma, Mr. DICKEY, Mr. LINDER, Mr. SESSIONS, Mr. PETERSON of Pennsylvania, Mr. MCCOLLUM, Mr. WAMP, Mr. CAMP, Mr. MCKEON, Mr. SUNUNU, Mr. SMITH of Michigan, Mr. BURR of North Carolina, Mr. EHLERS, Mr. PICKERING, Mr. BAKER, Mr. BOYD, Mr. KASICH, Mr. HAYES, Mr. BARCIA, Mr. OXLEY, Mr. TANCREDO, Mr. BARTON of Texas, and Mr. VITTER

JULY 24, 2000

Deleted sponsors: Mr. HILL of Montana, (added September 22, 1999; deleted March 16, 2000), and Mr. TALENT (added September 30, 1999; deleted April 13, 2000)

JULY 24, 2000

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 25, 1999]

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 “As-*
5 *bestos Compensation Act of 2000”.*

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

Sec. 1. Short title; table of contents.

TITLE I—ESTABLISHMENT AND PROCEDURE

Sec. 101. Establishment of the Office of Asbestos Compensation.

Sec. 102. Medical eligibility review.

Sec. 103. Election of administrative process; settlement offers.

Sec. 104. Claimant’s choice of forum.

Sec. 105. Administrative adjudication.

Sec. 106. Appeals; judicial review.

Sec. 107. Gathering and maintenance of information.

Sec. 108. Legal assistance program.

Sec. 109. Time limits for dispositions.

TITLE II—LAW APPLICABLE TO ASBESTOS ADJUDICATIONS.

Sec. 201. Medical eligibility.

Sec. 202. Damages.

Sec. 203. Statute of limitations or repose.

Sec. 204. Come back rights.

- Sec. 205. Class actions, aggregations of claims and venue.*
Sec. 206. Joint and several liability.
Sec. 207. Core claims
Sec. 208. Special rules applicable to section 105 adjudications.
Sec. 209. Special rules applicable to the trustee.

TITLE III—ELIGIBLE MEDICAL CATEGORIES.

- Sec. 301. Eligible medical categories.*
Sec. 302. Asbestos-related non-malignant conditions with impairment.
Sec. 303. Asbestos-related mesothelioma.
Sec. 304. Asbestos-related lung cancer.
Sec. 305. Asbestos-related other cancer.
Sec. 306. Medical testing reimbursement.

TITLE IV—FUNDING.

- Sec. 401. Assessment and enforcement.*
Sec. 402. Fiscal and financial management of the asbestos compensation fund.
Sec. 403. Authorization for appropriations and offsetting collections.

TITLE V—TRANSITION

- Sec. 501. Applicability; transitional civil actions.*

TITLE VI—DEFINITIONS

- Sec. 601. Definitions.*

TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 701. Relationship to other laws.*
Sec. 702. Annual reports.
Sec. 703. Enforcement.
Sec. 704. Qualifying national settlement plan.
Sec. 705. Severability.

1 **TITLE I—ESTABLISHMENT AND**
2 **PROCEDURE**

3 **SEC. 101. ESTABLISHMENT OF THE OFFICE OF ASBESTOS**
4 **COMPENSATION.**

5 (a) *ESTABLISHMENT OF PROGRAM; ADMINIS-*
6 *TRATOR.—There is established in the Department of Justice*
7 *the Office of Asbestos Compensation (OAC) to be headed by*
8 *an Administrator. The Administrator shall be appointed by*
9 *the President by and with the advice and consent of the*
10 *Senate. The Administrator shall serve for a term of 10*

1 years, and may be removed by the Attorney General only
2 for good cause. The Administrator shall have authority to
3 promulgate all procedural and substantive rules necessary
4 to administer this Act. All claims and other filings under
5 this Act shall be lodged with the office designated by the
6 Administrator.

7 (b) *EXCLUSIVE JURISDICTION.*—Except as otherwise
8 provided in this Act, the OAC shall have exclusive jurisdic-
9 tion over proceedings to determine if a claimant is entitled
10 to compensation for an asbestos claim and the amount of
11 such compensation. The foregoing shall not apply to any
12 claim brought under any workers' compensation law or vet-
13 erans' benefits program.

14 (c) *MEDICAL DIRECTOR.*—The Administrator shall
15 appoint the Medical Director and may remove the Medical
16 Director for good cause. The Medical Director shall, under
17 the supervision of the Administrator, manage the medical
18 review process under section 102 and shall have the author-
19 ity to appoint or to contract for the services of claims exam-
20 iners, physicians, and such other personnel as may be nec-
21 essary or appropriate for the efficient conduct of the med-
22 ical review process and to create the exceptional medical
23 claims panel.

24 (d) *ASBESTOS COMPENSATION FUND.*—There is estab-
25 lished in the OAC an Asbestos Compensation Fund for the

1 *purpose of providing payments to claimants under this Act.*
2 *The Administrator shall appoint the Trustee of the Asbestos*
3 *Compensation Fund and may remove the Trustee for good*
4 *cause.*

5 *(e) OFFICE OF ADMINISTRATIVE LAW JUDGES.—There*
6 *is established in the OAC an Office of Administrative Law*
7 *Judges for the purpose of providing expedited administra-*
8 *tive adjudication of asbestos claims pursuant to section 105.*
9 *The Administrator shall have authority to appoint Admin-*
10 *istrative Law Judges on a temporary or emergency basis*
11 *and to remove such judges for good cause.*

12 *(f) MEDICAL ADVISORY COMMITTEE.—The Adminis-*
13 *trator shall appoint a Medical Advisory Committee which*
14 *shall periodically evaluate this Act's medical review process*
15 *and medical eligibility criteria. The Administrator shall set*
16 *a term of appointment for members of the Medical Advisory*
17 *Committee. The Committee shall make appropriate rec-*
18 *ommendations as and when it deems appropriate and shall*
19 *submit an annual report to the Administrator and the Con-*
20 *gress.*

21 **SEC. 102. MEDICAL ELIGIBILITY REVIEW.**

22 *(a) DETERMINATION OF ELIGIBILITY.—All claims*
23 *when filed shall be immediately referred to the Medical Di-*
24 *rector. The Medical Director shall determine whether the*
25 *claimant meets the requirements for medical eligibility in*

1 *section 301 or the requirements for medical testing reim-*
2 *bursement in section 306*

3 (b) *INFORMATION FOR MEDICAL REVIEW.*—*The Ad-*
4 *ministrator shall issue rules for the expeditious conduct of*
5 *the medical review process. Such rules at a minimum shall*
6 *provide for the following:*

7 (1) *Submission of the following information*
8 *where relevant and feasible: smoking history; occupa-*
9 *tional history; description of the circumstances, inten-*
10 *sity, time, and duration of exposure; medical test re-*
11 *sults necessary for a decision as to whether an ex-*
12 *posed person meets the requirements for one or more*
13 *medically eligible categories under sections 301, 302,*
14 *303, 304, 305, or 306, including all of the supporting*
15 *data for any pulmonary function tests on which the*
16 *claimant relies (including all flow volume loops,*
17 *spirographs, and any other tracings for any test that*
18 *is performed). The claimant shall also provide such*
19 *medical releases as the Administrator may require al-*
20 *lowing the OAC to obtain any and all medical infor-*
21 *mation relevant to the determination of medical eligi-*
22 *bility.*

23 (2) *The Medical Director may require additional*
24 *non-invasive medical tests at the expense of the OAC*
25 *if necessary for a determination of medical eligibility.*

1 (c) *PROCEDURES.*—Upon receipt of a complete med-
2 ical application, the Medical Director shall send notice to
3 the claimant confirming the OAC’s receipt of the claim. The
4 Medical Director shall make an initial decision within 30
5 days of such receipt. If the application is initially denied,
6 the claimant shall be so notified and, at the claimant’s re-
7 quest, the application shall be immediately referred to—

8 (1) a review panel of 2 qualified physicians,
9 with a third qualified physician available to resolve
10 any disagreement between the initial 2 qualified phy-
11 sicians; or

12 (2) an exceptional medical claims panel.

13 The Medical Director shall be bound by a panel’s decision.
14 The rules shall also provide for the prioritization of claims,
15 including enhanced priority for claimants who have meso-
16 thelioma, and set a time limit for a determination by the
17 review panel.

18 (d) *EXCEPTIONAL MEDICAL CLAIMS.*—The rules of the
19 medical review process shall provide the claimant with an
20 opportunity to apply to an exceptional medical claims
21 panel for a determination of whether the exposed person
22 meets the requirements under section 301(b) for an excep-
23 tional medical claim for any category. This opportunity
24 shall be provided both at the initial filing of a claim and
25 after a claim has been denied under this subsection. The

1 *exceptional medical claims panel shall decide whether the*
2 *claimant qualifies as an exceptional medical claim within*
3 *30 days of receipt of the claim. This time limit may be*
4 *extended by the Administrator only for good cause. The*
5 *Medical Director shall be bound by the decision of the excep-*
6 *tional medical claims panel. The Medical Director shall*
7 *issue a final denial, along with a brief statement of reasons,*
8 *if the claimant is found ineligible following an opportunity*
9 *to submit the claim to a medical review panel and an excep-*
10 *tional medical claims panel.*

11 *(e) MONITORING ACCURACY OF DETERMINATIONS.—*
12 *The Medical Director shall establish audit and personnel*
13 *review procedures for evaluating the accuracy of medical*
14 *eligibility determinations, including both erroneous approv-*
15 *als and erroneous denials.*

16 *(f) OPT-OUT.—After receiving a certificate of eligi-*
17 *bility, a claimant may opt out of settlement proceedings*
18 *provided for under sections 103 and 104 and elect to file*
19 *suit in any State or Federal court of competent jurisdiction.*

20 **SEC. 103. ELECTION OF ADMINISTRATIVE PROCESS; SET-**
21 **TLEMENT OFFERS.**

22 *(a) NAMING AND NOTIFICATION OF DEFENDANTS.—*
23 *Medically eligible claimants, other than those who elect to*
24 *file suit in court under section 102(f), shall name defend-*

1 *ants. Defendants shall receive notice from the Adminis-*
2 *trator.*

3 (1) *IDENTIFICATION OF DEFENDANTS ASSOCI-*
4 *ATED WITH WORK SITES.—At the claimant’s request,*
5 *the Administrator will provide information con-*
6 *cerning person who may have provided asbestos or as-*
7 *bestos-containing products or materials to work sites*
8 *named by the claimant and when such asbestos or as-*
9 *bestos-containing products or materials may have*
10 *been provided as well as the time such products or*
11 *materials were located at the named work sites The*
12 *Administrator may implement this paragraph*
13 *through rulemaking.*

14 (2) *VERIFIED PARTICULARIZED STATEMENT.—*
15 *Within such time after receiving a certificate of med-*
16 *ical eligibility as may be provided by rule, a claim-*
17 *ant shall provide, with respect to each person that the*
18 *claimant alleges is responsible for the injury claimed,*
19 *a verified particularized statement of the basis for the*
20 *allegation that the person is or may be responsible for*
21 *the injury. The particularized statement shall include*
22 *such information as the Administrator may require*
23 *for the purpose of providing the defendant with a rea-*
24 *sonable basis for making an offer of settlement. The*
25 *claimant may incorporate by reference any informa-*

1 *tion required by this paragraph that may already*
2 *have been submitted to the OAC.*

3 (3) *NOTICE.*—*Upon finding that the claimant’s*
4 *particularized statement meets the requirements of*
5 *paragraph (2), the Administrator shall provide notice*
6 *to each named defendant. The defendant shall at the*
7 *same time be furnished with a copy of all particular-*
8 *ized statements submitted by the claimant under*
9 *paragraph (2) and, subject to reasonable rules pro-*
10 *tecting the confidentiality of information provided by*
11 *the claimant, a copy of all information submitted by*
12 *the claimant, records and other information obtained*
13 *by the Medical Director relating to the claim and the*
14 *results of any medical tests administered at the direc-*
15 *tion of the Medical Director. Any defendant may pro-*
16 *vide any information relevant to the amount of any*
17 *recommended settlement under subsection (b), includ-*
18 *ing information regarding product identification, ex-*
19 *posure, and damages.*

20 (4) *THIRD-PARTY PRACTICE.*—*Defendants may*
21 *assert third-party claims in accordance with rules*
22 *adopted by the Administrator. Third-party claimants*
23 *shall provide a verified particularized statement,*
24 *meeting the requirements of paragraph (2), substan-*
25 *tiating the allegation that the third-party defendant*

1 *may be liable to the third-party plaintiff, wholly or*
2 *in part, for the claimant's injury. For good cause*
3 *shown and subject to reasonable limitations, an Ad-*
4 *ministrative Law Judge may allow discovery for the*
5 *purpose of obtaining information necessary to allow*
6 *the claimant or any third-party plaintiff to provide*
7 *a particularized statement under paragraph (2) or*
8 *this paragraph.*

9 *(b) SETTLEMENT OFFERS; OFFER OF COMPENSATION*
10 *BY THE TRUSTEE.—*

11 *(1) MANDATORY OFFER FROM DEFENDANTS.—*
12 *Within 21 days following the naming of all defend-*
13 *ants, each defendant shall provide to the claimant in*
14 *writing a good faith settlement offer, and shall pro-*
15 *vide a copy to the Trustee.*

16 *(2) MANDATORY OFFER FROM ASBESTOS COM-*
17 *PENSATION FUND.—Within 10 days of receiving all of*
18 *the defendants' offers, the Trustee shall make an offer*
19 *of compensation to the claimant, based on a com-*
20 *ensation grid which shall be established and regu-*
21 *larly revised by rule.*

22 **SEC. 104. CLAIMANT'S CHOICE OF FORUM.**

23 *(a) IN GENERAL.—The claimant shall notify each de-*
24 *fendant and the Trustee whether the claimant accepts or*
25 *rejects the defendant's settlement offer under section*

1 103(b)(1). If the claimant accepts any such offer, or any
2 other settlement offer, the Trustee's offer of compensation
3 shall be automatically reduced by the amount of such settle-
4 ments.

5 (b) NOTICE.—The claimant shall notify the Trustee
6 and any defendant within 60 days whether the claimant
7 accepts or rejects an offer that has been provided pursuant
8 to section 103(b)(1) or 103(b)(2).

9 (c) ORPHAN SHARES.—The Trustee shall not make an
10 offer to the claimant under section 103(b) if no solvent de-
11 fendant has been named.

12 (d) ACCEPTANCE.—If the claimant accepts the Trust-
13 ee's offer of compensation, the Trustee shall assume the
14 claim. The Trustee may accept any defendant's settlement
15 offer under section 103(b)(1) or may prosecute the claim
16 against any defendant as provided in section 105, or may
17 prosecute the claim in any State or Federal court.

18 (e) REJECTION.—If the claimant rejects any defend-
19 ant's settlement offer and also rejects the Trustee's offer of
20 compensation, the claimant may elect an administrative
21 adjudication under section 105 or opt out of further admin-
22 istrative proceedings and file suit in a State or Federal
23 court.

1 **SEC. 105. ADMINISTRATIVE ADJUDICATION.**

2 *If a claimant elects adjudication under this section,*
3 *the OAC shall assign an Administrative Law Judge to con-*
4 *duct a hearing on the record and to determine whether com-*
5 *pensation is to be provided and the amount of such com-*
6 *pensation. The Administrative Law Judge shall adhere to*
7 *the law applicable to asbestos adjudications as contained*
8 *in sections 201 through 210. The Administrative Law Judge*
9 *shall issue a decision, containing findings of fact and con-*
10 *clusions of law, as expeditiously as possible, but not later*
11 *than 90 days after the case is assigned.*

12 **SEC. 106. APPEALS; JUDICIAL REVIEW.**

13 *Any person aggrieved by a final decision of the Admin-*
14 *istrator under section 105 or a final denial by the Medical*
15 *Director under section 102, may seek review of that decision*
16 *or denial in the United States Court of Federal Claims,*
17 *which shall uphold the decision or denial if it is supported*
18 *by substantial evidence and is not contrary to law. A deci-*
19 *sion by the Medical Director that a claimant has an eligible*
20 *medical condition is not a final decision under this section.*
21 *Decisions of the United States Court of Federal Claims are*
22 *appealable, without regard to the amount in controversy or*
23 *the citizenship of the parties, to a United States Court of*
24 *Appeals for a judicial circuit.*

1 **SEC. 107. GATHERING AND MAINTENANCE OF INFORMA-**
2 **TION.**

3 (a) *PRODUCT IDENTIFICATION.*—The OAC shall collect
4 and regularly update information regarding product iden-
5 tification and shall make such information publicly avail-
6 able. The data base maintained by the OAC under this sec-
7 tion is for information purposes only, and the presence of
8 information in that database shall not lead to any pre-
9 sumption.

10 (b) *SETTLEMENTS, JUDGMENTS, AND AWARDS.*—The
11 OAC shall collect data on settlements, judgments, and
12 awards in connection with asbestos claims and shall make
13 such data publicly available. The OAC may require this
14 data to be reported in such form as it may prescribe.

15 (c) *SUBPOENA POWER.*—The OAC may compel, by
16 subpoena or other appropriate process, information from
17 any person regarding past settlements or product identi-
18 fication for purposes of developing and maintaining a com-
19 pensation grid under section 103(b)(2) and maintaining a
20 database for purposes of naming defendants under section
21 103(a)(1). In addition, the subpoena power under this sub-
22 section may be used by the OAC in order to secure financial
23 information from any defendant.

24 (d) *CONFIDENTIALITY.*—Any information or documen-
25 tary material concerning settlements which is specific to a
26 company, law firm, or plaintiff that is provided to the OAC

1 *pursuant to subsection (b) or (c), whether by subpoena or*
2 *otherwise, shall be exempt from disclosure under section 552*
3 *of title 5, United States Code, and the disclosure of such*
4 *information by the OAC or any person is prohibited.*

5 **SEC. 108. LEGAL ASSISTANCE PROGRAM.**

6 *(a) IN GENERAL.—The OAC shall implement a legal*
7 *assistance program for the purpose of providing legal rep-*
8 *resentation to claimants. The OAC shall maintain a roster*
9 *of qualified counsel who agree to provide services to claim-*
10 *ants under rules, practices, and procedures established by*
11 *the Administrator.*

12 *(b) FREE CHOICE OF COUNSEL.—Claimants shall not*
13 *be required to use counsel provided or recommended by the*
14 *OAC, but shall retain their right to be assisted by counsel*
15 *of their choice.*

16 *(c) LEGAL ASSISTANCE.—The OAC shall adopt rules*
17 *concerning the reasonableness of fees, and all legal represen-*
18 *tation of persons asserting asbestos claims shall comply*
19 *with such rules.*

20 **SEC. 109. TIME LIMITS FOR DISPOSITIONS.**

21 *(a) IN GENERAL.—If the Medical Director fails to meet*
22 *the time limits for an initial decision provided under this*
23 *Act with respect to more than 30 percent of claims, then*
24 *the Administrator shall take such action as may be nec-*
25 *essary, including increasing staff and administrative as-*

1 *assessments under section 401, to ensure compliance with such*
2 *time limit with regard to at least 70 percent of claims*

3 **(b) NO OFFER.**—*If the Trustee fails to make an offer*
4 *within 120 days after the Administrator’s receipt of a com-*
5 *plete application under section 102 with respect to more*
6 *than 30 percent of claims, then the Administrator shall take*
7 *such action as may be necessary, including increasing staff*
8 *and administrative assessments under section 401, to en-*
9 *sure compliance with such time limit with regard to at least*
10 *70 percent of claims.*

11 **(c) DUTIES.**—*The duties established by subsections (a)*
12 *and (b) shall be non-discretionary and enforceable by an*
13 *order of mandamus from any judge of the United States*
14 *Court of Federal Claims.*

15 **(d) EXCEPTIONS.**—*The Administrator may by rule es-*
16 *tablish exceptions to the time limits in this section. Such*
17 *rules shall take into consideration the complexity of the*
18 *case, the extent to which delays are attributable to the fault*
19 *or neglect of the claimant or the claimant’s attorney and*
20 *other factors that are beyond the control of the OAC.*

21 **TITLE II—LAW APPLICABLE TO**
22 **ASBESTOS ADJUDICATIONS.**

23 **SEC. 201. MEDICAL ELIGIBILITY.**

24 *A claimant may recover compensation for damages*
25 *caused by an eligible medical condition only if the claimant*

1 *presents a certificate of medical eligibility establishing its*
2 *existence. A certificate of medical eligibility shall be conclu-*
3 *sive unless rebutted by clear and convincing evidence. How-*
4 *ever, a certificate of medical eligibility shall not be conclu-*
5 *sive as to allegations regarding exposure to asbestos or when*
6 *medical eligibility is established pursuant to section 304(b).*

7 **SEC. 202. DAMAGES.**

8 *A claimant who establishes an eligible medical condi-*
9 *tion shall be entitled to compensatory damages to the extent*
10 *provided by applicable law, including damages for emo-*
11 *tional distress, pain and suffering, and medical monitoring*
12 *where authorized. Such damages shall not include punitive*
13 *damages or damages solely for enhanced risk of a future*
14 *condition, except as provided in section 208(d).*

15 **SEC. 203. STATUTE OF LIMITATIONS OR REPOSE.**

16 *No defense to an asbestos claim based on a statute of*
17 *limitations or statute of repose, laches, or any other defense*
18 *based on the timeliness of the claim shall be recognized or*
19 *allowed, unless such claim was untimely as of the date of*
20 *enactment of this Act. No claim shall be deemed to have*
21 *accrued until and unless the claimant's condition would*
22 *have qualified as an eligible medical condition under sec-*
23 *tion 302, 303, 304, or 305.*

1 **SEC. 204. COME BACK RIGHTS.**

2 *Notwithstanding any other provision of law, a judg-*
3 *ment or settlement of an asbestos claim for a non-malignant*
4 *disease shall not preclude a subsequent claim with respect*
5 *to the same exposed person for an eligible medical condition*
6 *pursuant to section 301(b), 303, 304, or 305*

7 **SEC. 205. CLASS ACTIONS, AGGREGATIONS OF CLAIMS AND**
8 **VENUE.**

9 *(a) CONSOLIDATIONS.—No joinder of parties, aggrega-*
10 *tion of claims, consolidation of actions, extrapolation, or*
11 *other device to determine multiple asbestos claims on a col-*
12 *lective basis shall be permitted without the consent of all*
13 *parties, except as provided in subsection (b) or unless the*
14 *court, pursuant to an exercise of judicial authority to pro-*
15 *mote the just and efficient conduct of asbestos civil actions,*
16 *orders such procedures, including the transfer for consolida-*
17 *tion, to determine multiple asbestos claims on a collective*
18 *basis.*

19 *(b) CLASS ACTION SUITS.—In any civil action assert-*
20 *ing an asbestos claim, a class action may be allowed with-*
21 *out the consent of all parties if the requirements of Rule*
22 *23, Federal Rules of Civil Procedure are satisfied.*

23 *(c) VENUE.—At the election of the claimant, an asbes-*
24 *tos claim may be filed in any jurisdiction where the claim-*
25 *ant is alleging that the claimant was exposed to asbestos*
26 *or where the claimant is currently domiciled.*

1 (d) *REMOVAL*.—Any party in a civil action that in-
2 volves a violation of subsection (a), (b) or (c) of this section
3 may remove such action to an appropriate district court
4 of the United States. The district courts of the United States
5 shall have jurisdiction of all civil actions removed pursuant
6 to this section without regard to diversity of citizenship or
7 amount in controversy.

8 (e) *ADMINISTRATIVE PROCEEDINGS*.—In any pro-
9 ceeding under section 105, the Administrative Law Judge
10 may order adjudication of claims on a collective basis.

11 **SEC. 206. JOINT AND SEVERAL LIABILITY.**

12 This Act shall not be construed to limit joint and sev-
13 eral liability under applicable Federal or State law. In any
14 core claim that is successfully asserted against a defendant,
15 such defendant shall be held jointly and severally liable for
16 full compensatory damages to the claimant notwithstanding
17 any contrary provision of law.

18 **SEC. 207. CORE CLAIMS.**

19 In any core claim, the issues to be decided shall be
20 limited to—

21 (1) whether the exposed person with respect to
22 whom a claim is made has or had an eligible medical
23 condition;

24 (2) whether the exposure of the exposed person to
25 the product of the defendant was a substantial con-

1 *tributing factor in causing that eligible medical con-*
2 *dition; and*

3 *(3) the amount of compensation to be provided.*

4 **SEC. 208. SPECIAL RULES APPLICABLE TO SECTION 105 AD-**
5 **JUDICATIONS.**

6 *(a) APPLICABLE LAW.—Unless otherwise provided in*
7 *this Act, in claims based on State law, the Administrative*
8 *Law Judge shall, with respect to each defendant, apply the*
9 *substantive law of the State which has the most significant*
10 *relationship to the exposure and the parties.*

11 *(b) FULL COMPENSATORY DAMAGES IN WRONGFUL*
12 *DEATH CASES.—Notwithstanding any contrary provision*
13 *of State law, full compensatory damages, including dam-*
14 *ages for non-economic loss, shall be awarded in wrongful*
15 *death claims involving mesothelima. In all other cases,*
16 *damages for non-economic loss may be awarded to the ex-*
17 *tent that they are available pursuant to applicable law.*

18 *(c) PENALTY FOR INADEQUATE OFFER.—In any pro-*
19 *ceeding against a defendant by a claimant under section*
20 *105, and in any proceeding by the Trustee, if the final offer*
21 *made by any defendant is less than the share of the total*
22 *liability awarded against that defendant, a penalty shall*
23 *be added to the award equal to 100 percent of the difference*
24 *between the defendant's settlement offer under section 103(b)*
25 *and the lesser of—*

1 (1) *the defendant's share of the offer made by the*
2 *Trustee under section 103(b); or*

3 (2) *the defendant's share of the award made*
4 *under section 105.*

5 (d) *PUNITIVE DAMAGES.*—*Punitive damages may be*
6 *awarded against a defendant if the claimant establishes by*
7 *clear and convincing evidence that the conduct carried out*
8 *by the defendant with a conscious, flagrant indifference to*
9 *the rights or safety of others was the proximate cause of*
10 *the harm that is the subject of the asbestos claim. Punitive*
11 *damages may not exceed 3 times the amount of the award*
12 *pursuant to a section 105 adjudication plus any penalties*
13 *added to that award pursuant to subsection (c).*

14 **SEC. 209. SPECIAL RULES APPLICABLE TO THE TRUSTEE.**

15 *In an action by the Trustee as assignee of the claim-*
16 *ant, the award under section 104(d) shall include compen-*
17 *satory damages for the claimant's injury and all punitive*
18 *damages under section 208(d), any penalties for inadequate*
19 *offers by defendants, and the Trustee's costs in establishing*
20 *the claim, including reasonable attorneys' fees and expenses*
21 *and an allowance for interest on the amount paid by the*
22 *Fund to the claimant under section 104. Interest shall be*
23 *calculated from the time of such payments, and in accord-*
24 *ance with Title IV. All economic and non-economic dam-*
25 *ages recovered by the Fund in excess of 200 percent of the*

1 amount paid to the claimant pursuant to section 104 and
2 all punitive damages under section 208(d) shall be paid to
3 the settling claimant. The fact that the claimant has accept-
4 ed an offer of compensation by the Trustee, and the amount
5 and terms of such offer, shall not be admissible in any adju-
6 dication of a claim brought by the Trustee against any de-
7 fendant.

8 **TITLE III—ELIGIBLE MEDICAL** 9 **CATEGORIES.**

10 **SEC. 301. ELIGIBLE MEDICAL CATEGORIES.**

11 (a) *IN GENERAL.*—The eligible medical categories
12 under this Act are asbestos-related non-malignant condi-
13 tions with impairment, asbestos-related mesothelioma, as-
14 bestos-related lung cancer, and asbestos-related other cancer.

15 (b) *ESTABLISHING EXISTENCE.*—A claimant may es-
16 tablish the existence of an eligible medical condition either
17 by demonstrating that the exposed person meets the stand-
18 ard criteria provided in sections 302, 303, 304, and 305
19 or by demonstrating to an exceptional medical claims
20 panel, through reliable evidence, that the exposed person has
21 an asbestos-related impairment that is substantially com-
22 parable to the condition of an exposed person who would
23 satisfy the requirements of a given medical category. The
24 Administrator, after consultation with the Medical Advi-
25 sory Committee, may adopt rules consistent with this sec-

1 *tion to assure consistency and efficiency in the designation*
2 *of claims as exceptional medical claims.*

3 **SEC. 302. ASBESTOS-RELATED NON-MALIGNANT CONDI-**
4 **TIONS WITH IMPAIRMENT.**

5 *(a) IN GENERAL.—The standard criteria for asbestos-*
6 *related non-malignant conditions with impairment shall*
7 *include—*

8 *(1) clinical evidence of asbestosis,*

9 *(2) pathological evidence of asbestosis, or*

10 *(3) evidence of bilateral pleural thickening with*
11 *impairment.*

12 *(b) OBSTRUCTIVE LUNG DISEASE.—A claimant shall*
13 *not be disqualified from compensation under this category*
14 *solely because an exposed person who otherwise meets the*
15 *requirements for impairment has a reduced FEV1/FVC*
16 *ratio indicating obstructive lung disease. In that event, the*
17 *exceptional medical claims panel shall determine, giving*
18 *due regard to the evidence that any impairment is related*
19 *to obstructive disease and taking into consideration all*
20 *available evidence, whether an asbestos-related restrictive*
21 *disease substantially contributes to the impairment of the*
22 *exposed person. Such a contribution shall be presumed if*
23 *the panel concludes, based upon the findings of a certified*
24 *B-reader, that the exposed person's chest x-ray is ILO*
25 *Grade 2/1 or more.*

1 **SEC. 303. ASBESTOS-RELATED MESOTHELIOMA.**

2 *The standard criteria for asbestos-related mesothe-*
3 *lioma shall include a diagnosis by a qualified physician*
4 *of a malignant mesothelioma caused or contributed to by*
5 *exposure to asbestos with a primary site in the pleura, peri-*
6 *toneum, or like tissue, or reasonably equivalent clinical di-*
7 *agnosis in the absence of adequate tissue for pathological*
8 *diagnosis.*

9 **SEC. 304. ASBESTOS-RELATED LUNG CANCER.**

10 *(a) IN GENERAL.—The standard criteria for asbestos-*
11 *related lung cancer shall include—*

12 *(1) a diagnosis by a qualified physician of lung*
13 *cancer that the physician concludes was caused or*
14 *contributed to by exposure to asbestos;*

15 *(2) a latency period of at least 10 years; and*

16 *(3) either—*

17 *(A) evidence of asbestosis or bilateral pleu-*
18 *ral thickening with impairment sufficient to*
19 *meet the requirements of section 302 or to qual-*
20 *ify as an exceptional medical claim under sec-*
21 *tion 301(b); or*

22 *(B) chest x-rays which, in the opinion of a*
23 *certified B-reader, demonstrate asbestos-related*
24 *bilateral pleural plaques or thickening, and 7.5*
25 *equivalent-years of exposure to asbestos-con-*
26 *taining materials in employment regularly re-*

1 *quiring work in the immediate area of visible as-*
2 *bestos dust.*

3 *(b) HISTORY OF SMOKING.—If a finding of asbestos-*
4 *related lung cancer is made pursuant to paragraph (3)(B)*
5 *and the exposed person has a substantial history of smok-*
6 *ing, which shall be defined by rule, the claimant shall be*
7 *medically eligible for compensation, but the finding of as-*
8 *bestos-related lung cancer shall not be conclusive as to cau-*
9 *sation for purposes of section 201.*

10 **SEC. 305. ASBESTOS-RELATED OTHER CANCER.**

11 *The standard criteria for asbestos-related other cancer*
12 *shall include a diagnosis by a qualified physician of a ma-*
13 *lignant primary tumor of the larynx, oral-pharynx, gastro-*
14 *intestinal tract, or stomach, caused or contributed to by ex-*
15 *posure to asbestos, together with evidence of a condition suf-*
16 *ficient to meet the requirements of section 302 or to qualify*
17 *as an exceptional medical claim under section 301(b).*

18 **SEC. 306. MEDICAL TESTING REIMBURSEMENT.**

19 *(a) LEVEL A.—A claimant with at least 4 equivalent-*
20 *years of heavy exposure to asbestos, whose chest x-ray shows*
21 *either small irregular opacities of ILO Grade 1/0 or bilat-*
22 *eral pleural thickening of ILO Grade B/2, shall be eligible*
23 *for reimbursement of 100 percent of out-of-pocket expenses*
24 *for any medical testing required under section 102, up to*
25 *a ceiling of \$1500. Level A claimants shall be eligible at*

1 3 year intervals for similar reimbursement of future med-
2 ical testing expenses for up to 2 additional occasions. Level
3 A reimbursements shall be treated as administrative ex-
4 penses of the OAC and paid for by defendants under section
5 401.

6 (b) *LEVEL B.*—The Administrator shall, subject to the
7 availability of appropriated funds, reimburse up to 100
8 percent of the out-of-pocket expenses for any medical testing
9 required under section 102, up to a ceiling established by
10 rule, with the approval of the Trustee, for any claimant
11 with at least one equivalent-year of heavy exposure to asbes-
12 tos who meets the medical but not the exposure requirements
13 of Level A. Level B claimants may be eligible for similar
14 reimbursement of future medical testing expenses for up to
15 2 additional occasions at least 3 years apart. The Adminis-
16 trator shall adjust periodically the amount of the cash pay-
17 ment to reflect changes in medical costs. Level B reimburse-
18 ments shall be treated as administrative expenses of the
19 OAC and paid for by defendants under section 401.

20 (c) *CERTIFIED LABS.*—The Administrator is author-
21 ized to establish a program for the certification of labora-
22 tories to provide medical testing under this section.

23 (d) *EXPOSURE VERIFICATION.*—The Administrator
24 shall establish audit and other procedures to provide reason-
25 able assurance that statements concerning exposure made

1 *by claimants seeking medical testing reimbursement under*
2 *this section are accurate.*

3

4 ***TITLE IV—FUNDING***

5 ***SEC. 401. ASSESSMENT AND ENFORCEMENT.***

6 *(a) RULES.—The Administrator shall adopt rules for*
7 *calculating and collecting from defendants all costs associ-*
8 *ated with the determination of claims and payments to*
9 *claimants.*

10 *(b) TRUSTEE.—The Trustee shall have authority to*
11 *bring an action in the district courts of the United States*
12 *to enforce any obligation imposed on any person by this*
13 *section and such courts shall have exclusive jurisdiction of*
14 *such actions without regard to the amount in controversy*
15 *or citizenship of the parties. The district court shall not*
16 *entertain any defense other than lack of jurisdiction in any*
17 *action by the Trustee under this subsection.*

18 *(c) TRUSTEE PREVAILS.—In any action under sub-*
19 *section (b) in which the Trustee prevails, the Trustee shall*
20 *be entitled to costs, including reasonable attorneys' fees, and*
21 *interest on any unpaid amount.*

22 *(d) JUDICIAL REVIEW.—A defendant may challenge*
23 *the legality or amount of any assessment only by seeking*
24 *judicial review in the United States Court of Federal*

1 *Claims after paying the disputed amount. If successful, the*
 2 *defendant shall be awarded interest.*

3 **SEC. 402. FISCAL AND FINANCIAL MANAGEMENT OF THE AS-**
 4 **BESTOS COMPENSATION FUND**

5 *(a) APPLICABILITY OF CREDIT REFORM ACT PRIN-*
 6 *CIPLES; FISCAL MANAGEMENT RULES.—Except as provided*
 7 *in this section, the operations of the Fund related to settle-*
 8 *ment payments under section 104, and associated recoveries*
 9 *from defendants, shall be governed by the Federal Credit*
 10 *Reform Act of 1990 (2 U.S.C. 661 et seq.), notwithstanding*
 11 *the status of the Fund as a governmental entity. The Ad-*
 12 *ministrator shall promulgate rules, approved by the Office*
 13 *of Management and Budget, for the fiscal management of*
 14 *the Fund. Such rules and their application shall not be sub-*
 15 *ject to judicial review and shall, as regards payments under*
 16 *section 104—*

17 *(1) provide all reasonable assurance that, over*
 18 *an appropriate time period, the subsidy rate associ-*
 19 *ated with the net litigation risk of the Fund is zero;*

20 *(2) provide all reasonable assurance that, in any*
 21 *given year, the subsidy rate associated with the net*
 22 *litigation risk of the Fund is no more than 2 percent;*

23 *(3) provide for the allocation of receipts from de-*
 24 *fendants to various Fund accounts, including the*
 25 *Fund's financing account, program account, and an*

1 *account for salaries and expenses (which shall include*
2 *litigation costs); and*

3 *(4) provide specific instructions for the Trustee*
4 *to reduce payments by the Fund when necessary to*
5 *meet the solvency requirements of this subsection.*

6 ***(b) FINANCING OF THE FUND, SETTLEMENT PAY-***
7 ***MENTS TO CLAIMANTS.—***

8 ***(1) CREDIT REFORM PRINCIPLES.—****The Fund is*
9 *authorized to receive from defendants, as offsetting re-*
10 *ceipts, any amounts related to settlements or judg-*
11 *ments, including damages, interest, litigation costs,*
12 *specific administrative costs that may be required by*
13 *the Administrator through rulemaking, and interest*
14 *costs incurred by the Fund in connection with pay-*
15 *ment of settlement offers made under section 103.*
16 *Amounts received from defendants as interest shall be*
17 *sufficient to pay interest costs due to the United*
18 *States Treasury from the financing account, plus the*
19 *subsidy costs of the program account, provided that*
20 *the latter amounts may not exceed 3 percent of the*
21 *amount of any settlement or award. Recoveries on a*
22 *claim by the Fund in excess of the settlement amount*
23 *paid to the claimant and other costs of the Fund*
24 *which are not paid to the claimant under section 209*
25 *shall be available to the program account as a reduc-*

1 *tion to subsidy costs in the current or any subsequent*
2 *year.*

3 (2) *AUTHORITY.—The program account shall*
4 *have permanent indefinite authority, not subject to*
5 *further appropriation, to transfer funds to the finance*
6 *account in accordance with principles of the Credit*
7 *Reform Act.*

8 **SEC. 403. AUTHORIZATION FOR APPROPRIATIONS AND OFF-**
9 **SETTING COLLECTIONS.**

10 (a) *IN GENERAL.—There are authorized to be*
11 *appropriated—*

12 (1) *to the OAC such sums as may be required to*
13 *perform responsibilities under this Act;*

14 (2) *to the United States Court of Federal Claims,*
15 *such sums as may be required to carry out its respon-*
16 *sibilities under this Act; and*

17 (3) *to the OAC an amount not to exceed \$100*
18 *million, for a one-time loan to the Fund in connec-*
19 *tion with startup expenses, such loan to be repaid by*
20 *the Fund with interest;*

21 *The total of appropriations provided under this subsection*
22 *in the first year after the date of enactment not exceed \$250*
23 *million and in any subsequent year not exceed \$150 mil-*
24 *lion.*

1 (b) *OFFSETTING COLLECTIONS OF ADMINISTRATIVE*
 2 *ASSESSMENTS.*—*The OAC is authorized to receive and to*
 3 *expend in any year, as offsetting collections, all administra-*
 4 *tive assessments or prepaid administrative assessments and*
 5 *all costs and penalties paid to it.*

6 **TITLE V—TRANSITION**

7 **SEC. 501. APPLICABILITY; TRANSITIONAL CIVIL ACTIONS.**

8 (a) *IN GENERAL.*—*This Act shall be effective upon its*
 9 *date of enactment with respect to any civil action asserting*
 10 *an asbestos claim in which trial has not commenced as of*
 11 *that date.*

12 (b) *PENDING CLAIM.*—*A claimant with a pending civil*
 13 *claim on the date of enactment shall not be required to ob-*
 14 *tain a certificate of medical eligibility or otherwise exhaust*
 15 *the procedures set forth in title I if trial commences within*
 16 *6 months of the date of enactment of this Act. This 6-month*
 17 *period may be extended by the Attorney General for up to*
 18 *an additional 6 months if required for the orderly imple-*
 19 *mentation of this Act, and after reporting to the Congress*
 20 *the reasons for any such extension.*

21 (c) *RIGHT TO SUE LETTER.*—*If a claimant with—*
 22 (1) *a pending civil action on the date of enact-*
 23 *ment of this Act, and*
 24 (2) *a scheduled trial date within one year after*
 25 *the date of enactment of this Act*

1 *does not receive an initial decision on medical eligibility*
 2 *within the time period prescribed in section 102(c), the*
 3 *claimant may request a right-to sue letter from the Admin-*
 4 *istrator at any time prior to the issuance of that initial*
 5 *decision. If the Attorney General determines that the 6-*
 6 *month period in subsection (b) should be extended, the one-*
 7 *year period in the preceding sentence shall be similarly ex-*
 8 *tended. The Administrator shall issue a right-to-sue letter*
 9 *or an initial decision under section 102 within 10 days*
 10 *following the receipt of the claimant's request. A claimant*
 11 *who receives a right-to-sue letter may assert the claimant's*
 12 *asbestos claim in any competent forum notwithstanding*
 13 *section 101(b).*

14 *(d) CLAIM IN ANOTHER FORUM.—Any claimant who*
 15 *asserts his claim in a forum other than the OAC under sub-*
 16 *sections (b) or (c) must demonstrate that the exposed person*
 17 *has qualified for medical eligibility under section 301, 302,*
 18 *303, 304, 305, or 306.*

19 **TITLE VI—DEFINITIONS**

20 **SEC. 601: DEFINITIONS.**

21 *In this Act:*

22 *(1) ASBESTOS CLAIM.—The term “asbestos*
 23 *claim” means any claim for damages or other relief,*
 24 *arising out of, based on, or related to the health effects*
 25 *of exposure to asbestos, including any claim for per-*

1 sonal injury, death, mental or emotional injury, risk
2 of disease or other injury, or the costs of medical mon-
3 itoring or surveillance, and including any claim
4 made by or on behalf of any exposed person or any
5 representative, spouse, parent, child, or other relative
6 of any exposed person. The term does not include any
7 claim for workers' compensation benefits, or any
8 claim by an employer or insurer for reimbursement
9 from a third-party for benefits paid under a workers'
10 compensation plan, or any claim for benefits under a
11 veterans' benefits program.

12 (2) *ASBESTOS TRUST.*—The term “asbestos
13 trust” means a court-supervised trust established to
14 resolve asbestos claims arising directly or indirectly
15 from exposure to asbestos or asbestos-containing prod-
16 ucts, including a trust created pursuant to the bank-
17 ruptcy laws of the United States or Rule 23 of the
18 Federal Rules of Civil Procedure.

19 (3) *CERTIFICATE OF MEDICAL ELIGIBILITY.*—The
20 term “certificate of medical eligibility” means a cer-
21 tificate issued to a claimant pursuant to this Act cer-
22 tifying that an exposed person meets the requirements
23 of one or more eligible medical categories or qualifies
24 as an exceptional medical claim.

1 (4) *CERTIFIED B-READER.*—The term “certified
2 *B-reader*” means an individual qualified as a “final”
3 or “B-reader” under 42 C.F.R. 37.51(b) (1997) (and
4 any subsequent revisions thereof) whose certification
5 is current.

6 (5) *CHEST X-RAYS.*—The term “chest x-rays”
7 means chest radiographs taken in at least 2 views
8 (Posterior-Anterior and Lateral) and graded quality
9 1 for reading according to the criteria established by
10 the ILO. If the claimant is unable to provide quality
11 1 chest x-rays because of death or because of an in-
12 ability to have new chest x-rays taken, chest x-rays
13 graded quality 2 will be acceptable.

14 (6) *CIVIL ACTION.*—The term “civil action”
15 means any action, lawsuit, or proceeding in any
16 State, Federal, or tribal court, but does not include—

17 (A) a criminal action; or

18 (B) an action relating to State or Federal
19 workers’ compensation laws, or a proceeding for
20 benefits under any veterans’ benefits program.

21 (7) *CLAIMANT.*—The term “claimant” means
22 any exposed person or the person’s legal representa-
23 tive, and any relative of an exposed person or their
24 legal representative, who asserts an asbestos claim.

1 (8) *CLINICAL EVIDENCE OF ASBESTOSIS.*—The
2 term “clinical evidence of asbestosis” means a diag-
3 nosis of pulmonary asbestosis by a qualified physi-
4 cian based on the minimum objective criteria of—

5 (A) *Chest x-rays for which a B-reader re-*
6 *port is furnished showing small irregular opac-*
7 *ities of ILO Grade 1/0 and pulmonary function*
8 *testing and physical examination that show*
9 *either—*

10 (i) *FVC <80% of predicted value with*
11 *FEV1/FVC ≥ 75% (actual value); or*

12 (ii) *TLC <80% of predicted value,*
13 *with either DLCO ≤ 76% of predicted value*
14 *or bilateral basilar crackles, and also the*
15 *absence of any probable explanation for this*
16 *DLCO result or crackles finding other than*
17 *the presence of asbestos lung disease; or*

18 (B) *Chest x-rays for which a B-reader re-*
19 *port is furnished showing small irregular opac-*
20 *ities of ILO Grade 1/1 or greater and pulmonary*
21 *function testing that shows either—*

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

1 the time of the testing, with $FEV_1/FVC \geq$
2 65% (actual value); or

3 (ii) $TLC < 80\%$ of predicted value.

4 (9) *COMPENSATORY DAMAGES*.—The term “com-
5 pensatory damages” means damages awarded for eco-
6 nomic loss, such as medical expenses, as well as non-
7 economic loss. Non-economic loss includes subjective,
8 non-pecuniary loss, such as pain, suffering, inconven-
9 ience, emotional distress, loss of society and compan-
10 ionship, and loss of consortium.

11 (10) *CORE CLAIM*.—The term “core claim”
12 means an asbestos claim against a defendant who
13 either—

14 (A) manufactured any asbestos-containing
15 product which released asbestos fibers to which
16 the exposed person was exposed, and paid out \$
17 50 million in respect of such claims cumulatively
18 over the 10 year period preceding the filing of
19 the claim; or

20 (B) was not a manufacturer but paid out \$
21 100 million in respect of such claims cumula-
22 tively over the 10 year period preceding the fil-
23 ing of the claim; provided that the alleged liabil-
24 ity is not based upon the control or ownership
25 of property.

1 (11) *DEFENDANT.*—*The term “defendant” means*
2 *any person who is or may be responsible for the asbes-*
3 *tos-related condition of the exposed person and who is*
4 *so notified by the Administrator pursuant to title I.*
5 *The term does not include—*

6 (A) *an asbestos trust in existence as of the*
7 *date of enactment of this Act unless the trust*
8 *elects to be covered by this Act under section*
9 *701(b); or*

10 (B) *the United States Government or a*
11 *State government.*

12 (12) *DLCO.*—*The term “DLCO” means single-*
13 *breath diffusing capacity of the lung (carbon mon-*
14 *oxide), which is a measure of the volume of carbon*
15 *monoxide transferred from the alveoli to blood in the*
16 *pulmonary capillaries for each unit of driving pres-*
17 *sure of the carbon monoxide.*

18 (13) *EQUIVALENT-YEAR.*—*The term “equivalent-*
19 *year” means a measure of exposure to asbestos ad-*
20 *justed to reflect varying exposure levels typical of dif-*
21 *ferent occupations. Each year of exposure in which an*
22 *exposed person’s primary occupation involved the di-*
23 *rect installation, repair, or removal of asbestos-con-*
24 *taining products, shall count as one year. Each year*
25 *of such occupational exposure in which the exposed*

1 *person's primary occupation involved either the direct*
 2 *manufacture of asbestos-containing products using*
 3 *raw asbestos fiber or the direct installation, repair, or*
 4 *removal of asbestos-containing products in a shipyard*
 5 *during World War II, shall count as 2 years. Each*
 6 *year of exposure in occupations not described above*
 7 *shall count as one-half year.*

8 (14) *EVIDENCE OF BILATERAL PLEURAL THICK-*
 9 *ENING WITH IMPAIRMENT.—The term “evidence of bi-*
 10 *lateral pleural thickening with impairment” means a*
 11 *diagnosis of bilateral pleural thickening by a quali-*
 12 *fied physician based on the minimum objective cri-*
 13 *teria of either—*

14 (A) *Chest x-rays for which a B-reader re-*
 15 *port is furnished showing bilateral pleural thick-*
 16 *ening of ILO Grade B/2 with pulmonary func-*
 17 *tion testing and physical examination that show*
 18 *either—*

19 (i) *FVC <80% of predicted value with*
 20 *FEV1/FVC ≥ 75% (actual value) or*

21 (ii) *TLC <80% of predicted value,*
 22 *with either DLCO ≤ 76% of predicted value*
 23 *or bilateral basilar crackles, and also the*
 24 *absence of any probable explanation for this*

1 *DLCO result or crackles finding other than*
 2 *the presence of asbestos lung disease; or*

3 *(B) Chest x-rays for which a B-reader re-*
 4 *port is furnished showing bilateral pleural thick-*
 5 *ening of ILO Grade C/2 or greater; and pul-*
 6 *monary function testing that shows either—*

7 *(i) FVC <80% of predicted value with*
 8 *FEV1/FVC ≥ 72% (actual value) or, if the*
 9 *individual tested is at least 68 years old at*
 10 *the time of the testing, with FEV1/FVC ≥*
 11 *65% (actual value); or*

12 *(ii) TLC <80% of predicted value.*

13 *(15) EXPOSED PERSON.—The term “exposed per-*
 14 *son” means any person who has been exposed in any*
 15 *State (or while working aboard a United States vessel*
 16 *outside the United States) to asbestos or to asbestos-*
 17 *containing products.*

18 *(16) FEV1.—The term “FEV1” means forced ex-*
 19 *piratory volume (1 second), which is the maximal vol-*
 20 *ume of air expelled in one second during performance*
 21 *of the spirometric test for forced vital capacity (FVC).*

22 *(17) FUND.—The term “Fund” means the Asbes-*
 23 *tos Compensation Fund.*

24 *(18) FVC.—The term “FVC” means forced vital*
 25 *capacity, which is the maximal volume of air expired*

1 *with a maximally forced effort from a position of*
2 *maximal inspiration.*

3 (19) *ILO.*—*The term “ILO” means the Inter-*
4 *national Labour Organization.*

5 (20) *ILO GRADE.*—*The term “ILO grade” means*
6 *the radiological ratings for the presence of lung or*
7 *pleural changes by chest x-ray as established from*
8 *time to time by the ILO.*

9 (21) *LATENCY PERIOD.*—*The term “latency pe-*
10 *riod” means the period from the date of the exposed*
11 *person’s first exposure to asbestos or an asbestos-con-*
12 *taining product to the date of manifestation of the*
13 *condition claimed.*

14 (22) *LUNG CANCER.*—*The term “lung cancer”*
15 *means a primary malignant bronchogenic tumor, of*
16 *any cell type, caused or contributed to by exposure to*
17 *asbestos.*

18 (23) *MANIFESTATION.*—*The term “manifesta-*
19 *tion” means either the date of the actual diagnosis of*
20 *the condition claimed, or the date upon which the*
21 *clinical records and available tests indicate that the*
22 *condition could reasonably have been diagnosed by a*
23 *qualified physician.*

24 (24) *NET LITIGATION RISK.*—*The term “net liti-*
25 *gation risk” means the risk to the Asbestos Compensa-*

1 *tion Fund that amounts paid out to claimants, plus*
2 *associated interest and litigation expenses, will exceed*
3 *amounts recovered from defendants, expressed as a*
4 *percentage of sums expended, and estimated for a spe-*
5 *cific cohort of transactions. Losses on particular*
6 *claims are netted against excess recoveries on other*
7 *claims.*

8 (25) *OAC.*—*The term “OAC” means the Office of*
9 *Asbestos Compensation.*

10 (25) *OCCUPATIONAL HISTORY.*—*The term “occu-*
11 *pational history” means a listing of all employment*
12 *positions, providing for the dates and location of em-*
13 *ployment, the employer, and a description of job re-*
14 *sponsibilities and activities.*

15 (26) *PARTY.*—*The term “party” does not include*
16 *the United States Government or a State government.*

17 (27) *PATHOLOGICAL EVIDENCE OF ASBES-*
18 *TOSIS.*—*The term “pathological evidence of asbes-*
19 *tosis” means diagnosis of pulmonary asbestosis by a*
20 *qualified physician based on a finding that more*
21 *than one representative section of lung tissue other-*
22 *wise uninvolved with any other process (e.g., cancer*
23 *or emphysema) demonstrates a pattern of*
24 *peribronchiolar or parenchymal scarring in the pres-*
25 *ence of characteristic asbestos bodies, and also that*

1 *there is no other more likely explanation for the pres-*
2 *ence of the fibrosis.*

3 (28) *PERSON.*—*The term “person” means an in-*
4 *dividual, trust, firm, corporation, association, part-*
5 *nership, or joint venture. The term does not include—*

6 (A) *an asbestos trust in existence as of the*
7 *date of enactment of this Act unless the trust*
8 *elects to be covered by this Act under section*
9 *701(b); or*

10 (B) *the United States Government or any*
11 *State government.*

12 (29) *PHYSICIAN.*—*The term “physician” means*
13 *a medical doctor or doctor of osteopathy currently li-*
14 *censed to practice medicine in any State who has not,*
15 *within the 5-year period prior to the date of enact-*
16 *ment of this Act, spent more than one half of the doc-*
17 *tor’s professional time, or derived more than one-half*
18 *of the doctor’s professional income, either annually or*
19 *in total, either reviewing or testifying in any forum*
20 *on medical-legal issues related to asbestos.*

21 (30) *PREDICTED VALUE.*—*The term “predicted*
22 *value” means a published reference to the normal*
23 *breathing capacity of healthy populations based on*
24 *age, height, and gender, as approved by the Medical*
25 *Director, pursuant to a rule, issued within 120 days*

1 *of the date of enactment. For the purposes of this Act,*
2 *the use of any published, predicted values that are*
3 *generally accepted in the medical community shall be*
4 *acceptable and such values may not be adjusted for*
5 *race.*

6 (31) *PULMONARY FUNCTION TESTING.*—*The term*
7 *“pulmonary function testing” means tests for forced*
8 *vital capacity, lung volume, and diffusing studies*
9 *using equipment, tests and standards generally ac-*
10 *cepted in the medical community, as approved by the*
11 *Medical Director, pursuant to a rule, issued within*
12 *120 days of enactment of this Act. Such pulmonary*
13 *function test shall not be adjusted for race.*

14 (32) *PUNITIVE DAMAGES.*—*The term “punitive*
15 *damages” means damages, in addition to compen-*
16 *satory damages, awarded against any person to pun-*
17 *ish past conduct or deter that person, or others, from*
18 *engaging in similar conduct in the future.*

19 (33) *QUALIFIED PHYSICIAN.*—*The term “quali-*
20 *fied physician” means, with respect to a diagnosis or*
21 *other medical judgment or procedure under this Act,*
22 *an internist, pulmonary specialist, pathologist, radi-*
23 *ologist, oncologist, or specialist in occupational medi-*
24 *cine with an appropriate subspecialty, as appro-*

1 *appropriate, who is certified by the relevant medical spe-*
2 *cialty board.*

3 (34) *QUALIFYING NATIONAL SETTLEMENT*
4 *PLAN.—The term “Qualifying National Settlement*
5 *Plan” means a written agreement or related series of*
6 *written agreements with claimants or with attorneys*
7 *or law firms representing claimants, pursuant to*
8 *which a person who is or may be responsible for such*
9 *claims has resolved or agreed to resolve at least 50*
10 *percent of the asbestos claims that were pending*
11 *against such person.*

12 (35) *STATE.—The term “State” means any*
13 *State of the United States, the District of Columbia,*
14 *Commonwealth of Puerto Rico, the Northern Mariana*
15 *Islands, the Virgin Islands, Guam, American Samoa,*
16 *and any other territory or possession of the United*
17 *States or any political subdivision of any of the fore-*
18 *going.*

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

22 (37) *TRUSTEE.—The term “Trustee” means the*
23 *Trustee of the Asbestos Compensation Fund.*

24 (38) *VETERANS’ BENEFITS PROGRAM.—The term*
25 *“veterans’ benefits program” means any program for*

1 *benefits in connection with military service adminis-*
2 *tered by the Veterans' Administration under Title 38,*
3 *United States Code.*

4 (39) *WORKERS' COMPENSATION LAW.—The term*
5 *“workers’ compensation law” means a law respecting*
6 *a program administered by a State or the United*
7 *States to provide benefits, funded by a responsible em-*
8 *ployer or its insurance carrier, for occupational dis-*
9 *eases or injuries or for disability or death caused by*
10 *occupational diseases or injuries. The term includes*
11 *the Longshore and Harbor Workers’ Compensation*
12 *Act, (33 U.S.C. 901-944, 948-950), but does not in-*
13 *clude the Employer’s Liability Act, (45 U.S.C. chap-*
14 *ter 2).*

15 **TITLE VII—MISCELLANEOUS**

16 **PROVISIONS**

17 **SEC. 701. RELATIONSHIP TO OTHER LAWS.**

18 (a) *APPLICABILITY OF OTHER FEDERAL LAWS.—The*
19 *OAC may, with the approval of the Director of the Office*
20 *of Management and Budget, waive the applicability in*
21 *whole or in part of personnel and procurement laws and*
22 *regulations, provided that any such waiver must be specific,*
23 *must be subject to periodic review and evaluation, and must*
24 *be reasonably related to the goals of expeditious, profes-*

1 sional, efficient, cost-effective and fair resolution of asbestos
2 claims.

3 (b) *APPLICATION TO EXISTING ASBESTOS TRUSTS.*—

4 (1) *IN GENERAL.*—*This Act shall not apply to*
5 *any asbestos trust in existence as of the date of enact-*
6 *ment of this Act, except as provided in paragraph (2).*

7 (2) *ELECTION.*—*An asbestos trust may elect to*
8 *be subject to this Act by providing written notice of*
9 *such election to the OAC, in which case the trust will*
10 *have the same rights and responsibilities under this*
11 *Act as any person who is not a trust. A valid election*
12 *under this paragraph shall be irrevocable.*

13 (c) *SETTLEMENTS PRESERVED.*—*Nothing in this*
14 *Act—*

15 (1) *invalidates any settlement of asbestos claims*
16 *entered into prior to the date of enactment of this Act;*
17 *or*

18 (2) *revokes or negates any asbestos defendant's*
19 *standing offer to settle existing asbestos claims.*

20 (d) *OTHER COMPENSATION.*—*This Act shall not be*
21 *construed to affect the scope or operation of any workers'*
22 *compensation law or veterans' disability benefit program,*
23 *to affect the exclusive remedy provisions of any such law,*
24 *or to authorize any lawsuit which is barred by any such*
25 *provision of law.*

1 (e) *SUCCESSOR LIABILITY.*—*Nothing in this Act is in-*
2 *tended to displace otherwise applicable law governing any*
3 *liability arising from the defendants’ status as transferee*
4 *or successor with respect to a change in ownership of cor-*
5 *porate assets.*

6 **SEC. 702. ANNUAL REPORTS.**

7 *The Administrator shall submit an annual report to*
8 *the President and Congress.*

9 **SEC. 703. ENFORCEMENT.**

10 *The Administrator may enforce any obligation im-*
11 *posed on any person by this Act in a district court of the*
12 *United States, and such courts shall have exclusive jurisdic-*
13 *tion over such actions without regard to the amount in con-*
14 *troversy or citizenship of the parties. The Administrator,*
15 *if successful, shall be entitled to costs, including attorney’s*
16 *fees.*

17 **SEC. 704. QUALIFYING NATIONAL SETTLEMENT PLAN.**

18 *Any defendant which is party to a Qualifying Na-*
19 *tional Settlement Plan may elect to defer the application*
20 *of this Act (other than sections 201 through 207 and section*
21 *501) to asbestos claims against that defendant for a period*
22 *not exceeding 7 years from a date relative to the commence-*
23 *ment of the Qualified National Settlement Plan. The Ad-*
24 *ministrator shall, by rule, adopt procedures for processing*
25 *requests for deferral under this section. If the request for*

1 *deferral is accepted, the deferred defendant and any asbestos*
2 *claims or third party asbestos claims against the deferred*
3 *defendant shall not be subject to the provisions of this Act*
4 *(other than sections 201 through 207 and section 501).*

5 **SEC. 705. SEVERABILITY.**

6 *If any provision of this Act or the application of such*
7 *provision to any person or circumstance is held invalid,*
8 *it is the intent of Congress that the remainder of this Act*
9 *and application of such provision to other persons or cir-*
10 *cumstances shall not be affected thereby.*

11 **SEC. 706. SETTLEMENTS.**

12 *For a period of 7 years after the date of enactment*
13 *of this Act, a claimant or a defendant may specifically en-*
14 *force, in any applicable Federal or State court where the*
15 *claimant is alleging that the claimant was exposed to asbes-*
16 *tos or where the claimant is currently domiciled, any writ-*
17 *ten settlement agreement which was agreed to by the claim-*
18 *ant or the claimant's attorney and the defendant before such*
19 *date of enactment.*

Calendar No. 449

106TH CONGRESS
2D SESSION

H. R. 1283

[Report No. 106-782]

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.

JULY 24, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed