106TH CONGRESS 1ST SESSION S. 758

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 SENATE OF THE UNITED STATES

March 25, 1999

Mr. ASHCROFT (for himself, Mr. HATCH, Mr. DODD, Mr. SESSIONS, Mr. LIEBERMAN, Mr. GRASSLEY, Mr. TORRICELLI, Mr. SMITH of New Hampshire, and Mr. SCHUMER) introduced the following bill; which was read twice and 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 1999".
- 6 (b) TABLE OF CONTENTS.—The table of contents for
- 7 this Act is as follows:

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

TITLE I—ASBESTOS RESOLUTION CORPORATION

- Sec. 101. Establishment.
- Sec. 102. Powers of the Corporation.
- Sec. 103. Board of Directors.
- Sec. 104. Officers.
- Sec. 105. Medical Advisory Board.
- Sec. 106. Avoidance of conflict of interest.
- Sec. 107. Annual reports.

TITLE II—MEDICAL ELIGIBILITY DETERMINATIONS

- Sec. 201. Medical criteria—nonmalignant conditions.
- Sec. 202. Medical criteria—mesothelioma.
- Sec. 203. Medical criteria—lung cancer.
- Sec. 204. Medical criteria—other cancer.
- Sec. 205. Procedure for certificate of eligibility.
- Sec. 206. Exceptional medical claims.
- Sec. 207. Confidentiality.
- Sec. 208. Judicial review.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

- Sec. 301. Rules of procedure.
- Sec. 302. Motions officers.
- Sec. 303. Notice to respondents.
- Sec. 304. Additional respondents.
- Sec. 305. Grace period.
- Sec. 306. Mediation.
- Sec. 307. Arbitration.
- Sec. 308. Subpoena powers of motions officers and arbitrators.

TITLE IV—CIVIL ACTIONS

- Sec. 401. Prerequisites for civil action.
- Sec. 402. Individual trials.
- Sec. 403. Certificate of medical eligibility presumed correct.
- Sec. 404. Penalty for inadequate offer in mediation.

TITLE V—RULES APPLICABLE TO ARBITRATIONS AND CIVIL ACTIONS

- Sec. 501. Elements of proof; relief.
- Sec. 502. Timeliness defenses abolished.
- Sec. 503. Attorneys' fees.
- Sec. 504. Certain prior litigation defenses abolished.

TITLE VI—FUNDING

- Sec. 601. Costs of medical review and overhead and administration.
- Sec. 602. Cost of mediation and arbitration.
- Sec. 603. Informal dispute resolution.
- Sec. 604. Judicial review; enforcement.
- Sec. 605. Penalties.

Sec. 606. Asbestos Resolution Corporation Trust Fund.

TITLE VII—APPLICABILITY; PENDING CIVIL ACTIONS

Sec. 701. Applicability.

Sec. 702. Pending civil actions.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Applicability of other Federal laws.

Sec. 802. Obligations of the Corporation not obligations of the United States.

Sec. 803. Application to existing asbestos trusts.

- Sec. 804. Settlements unaffected.
- Sec. 805. Severability.

1 SEC. 2. FINDINGS.

- 2 Congress finds the following:
- 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 Federal and State 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.
- (4) Asbestos litigation has resulted in arbitrary
 verdicts, with individuals receiving widely varying recoveries despite similar medical conditions.
- 17 (5) Asbestos litigation is a mature tort. The
 18 legal, medical, and scientific issues have been repeat19 edly tried and retried in the courts for many years.

(6) Currently, statutes of limitations can force
claimants to bring premature lawsuits in order to
avoid losing their claim for compensation. Moreover,
in order to obtain compensation for nonmalignant
disease, claimants often must give up their right to
obtain compensation later on, if they develop an asbestos-related cancer.

8 (7) Litigation has not been able to provide com-9 pensation to claimants swiftly. On the contrary, ac-10 cording to the Ad Hoc Committee on Asbestos Liti-11 gation of the United States Judicial Conference, the 12 volume and complexity of asbestos cases have resulted in the violation of a basic tenet of American 13 14 justice; which is the speedy and inexpensive resolu-15 tion of cases.

16 (8) Litigation has also proved to be an extraor17 dinarily costly means of resolving claims of asbestos18 related disease. Less than 50 percent of the total
19 cost of asbestos litigation actually goes to com20 pensate claimants, while the remainder is eaten up
21 in attorneys' fees and other litigation costs.

(9) In many courts, the vast majority of pending asbestos claims are filed by individuals who suffer no present asbestos-related impairment. These
claims divert the resources of defendants from com-

pensating individuals who are suffering from serious
 asbestos-related disease.

3 (10) Punitive damages also divert the resources
4 of defendants from compensating impaired claim5 ants. Moreover, punitive damages give a few claim6 ants huge windfalls in addition to compensatory
7 damages.

8 (11) In an effort to cope with the overwhelming 9 tide of asbestos cases, a few courts have resorted to 10 mass consolidated trials and other aggregative meth-11 ods of dealing with asbestos claims. Unfortunately, 12 mass consolidations only serve to magnify the irra-13 tionality of a litigation system that awards massive 14 amounts to the unimpaired, while threatening the 15 ability of seriously ill people to obtain compensation 16 in the future.

17 SEC. 3. DEFINITIONS.

18 In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION PROCESS.—The term "alternative dispute resolution process" means the mediation and voluntary arbitration
process established under title III of this Act.

(2) ASBESTOS.—The term "asbestos" means
any number of naturally occurring silicates with the
common properties of great resistance to destruction

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by physical or chemical means and a fibrous configu ration, including asbestiform varieties of chrysotile,
 crocidolite, amosite, anthophyllite, tremolite, or ac tinolite.

ASBESTOS CLAIM.—The term "asbestos 5 (3)6 claim" means any claim for damages or other relief, 7 arising out of, based on, or related to the health ef-8 fects of exposure to asbestos, including any claim for 9 personal injury, death, mental or emotional injury, 10 risk of disease or other injury, or the costs of med-11 ical monitoring or surveillance, and including any 12 claim made by or on behalf of any exposed person 13 or any representative, spouse, parent, child, or other 14 relative of any exposed person.

(4) ASBESTOS TRUST.—The term "asbestos
trust" means a court-supervised trust established to
resolve asbestos claims arising directly or indirectly
from exposure to asbestos or asbestos-containing
products, including a trust created under the bankruptcy laws of the United States or rule 23 of the
Federal Rules of Civil Procedure.

(5) BASILAR CRACKLES.—The term "basilar
crackles", sometimes referred to as "rales", means
those sounds described in American Thoracic Society, "The Diagnosis of Nonmalignant Diseases Re-

1	lated to Asbestos", 134 American Review of Res-
2	piratory Disease, 363, 366 (1986).
3	(6) BOARD.—The term "Board" means the
4	Board of Directors of the Asbestos Resolution Cor-
5	poration.
6	(7) BOARD-CERTIFIED INTERNIST.—The term
7	"board-certified internist" means a physician who is
8	currently certified by the American Board of Inter-
9	nal Medicine in internal medicine.
10	(8) BOARD-CERTIFIED ONCOLOGIST.—The term
11	"board-certified oncologist" means a physician who
12	is currently certified by the American Board of In-
13	ternal Medicine in the subspecialty of medical oncol-
14	ogy.
15	(9) BOARD-CERTIFIED PATHOLOGIST.—The
16	term "board-certified pathologist" means a physician
17	who currently holds primary certification in ana-
18	tomic pathology, or combined anatomic and clinical
19	pathology, from the American Board of Pathology.
20	(10) BOARD-CERTIFIED PULMONARY SPE-
21	CIALIST.—The term "board-certified pulmonary spe-
22	cialist" means a physician who is currently certified
23	by the American Board of Internal Medicine in the
24	subspecialty of pulmonary disease.

(11) BOARD-CERTIFIED RADIOLOGIST.—The
 term "board-certified radiologist" means a physician
 who is currently certified by the American Board of
 Radiology.

(12) BYLAWS.—The term "bylaws" means the 5 6 code or codes of rules adopted for the regulation or management of the affairs of the Corporation. By-7 8 laws shall be consistent with the requirements of this 9 Act and, to the extent consistent with this Act, with 10 the requirements of the District of Columbia Non-11 profit Corporation Act (D.C. Code section 29–501 et 12 seq.).

(13) CANCER.—The term "cancer" means any
of the various malignant neoplasms marked by the
proliferation of anaplastic cells that tend to invade
surrounding tissue and metastasize to new body
sites and the pathological condition characterized by
such growths.

(14) CERTIFICATE OF MEDICAL ELIGIBILITY.—
The term "certificate of medical eligibility" means a
certificate issued by the Corporation to a claimant
under this Act certifying that an exposed person
meets the requirements of 1 or more eligible medical
categories (or qualifies as an exceptional medical
claim with respect to an eligible medical category).

1	(15) Certified B-reader.—The term "cer-
2	tified B-reader" means an individual qualified as a
3	"final" or "B-reader" under section 37.51(b) of title
4	42, Code of Federal Regulations (and any subse-
5	quent revisions thereof) whose certification is cur-
6	rent.
7	(16) CHEST X-RAYS.—The term "chest x-rays"
8	means chest radiographs taken in 4 views (posterior-
9	anterior, lateral, and left and right obliques) and
10	graded quality 1 for reading according to the criteria
11	established by the ILO (except that, in situations
12	where the claimant is unable to provide quality 1
13	chest x-rays because of death or because of an in-
14	ability to have new chest x-rays taken, chest x-rays
15	graded quality 2 shall be acceptable).
16	(17) CIVIL ACTION.—The term "civil action"
17	means any action, lawsuit, or proceeding in any Fed-
18	eral, State, or tribal court, but does not include—
19	(A) a criminal action; or
20	(B) an action relating to Federal or State
21	worker's compensation laws.
22	(18) CLAIMANT.—The term "claimant" means
23	any exposed person or the legal representative of
24	that exposed person, and any parent, child, or other
25	relative of an exposed person, or the legal represent-

1 ative of that exposed person, who applies to the Cor-2 poration for a certificate of medical eligibility or who 3 invokes the alternative dispute resolution services of-4 fered by the Corporation. (19) CLINICAL EVIDENCE OF ASBESTOSIS.— 5 6 The term "clinical evidence of asbestosis" means a 7 diagnosis of pulmonary asbestosis by a board-cer-8 tified internist or board-certified pulmonary spe-9 cialist based on the following minimum objective cri-10 teria: 11 (A) Chest x-rays which, in the opinion of 12 a certified B-reader, show small irregular opac-13 ities of ILO grade 1/0 and pulmonary function 14 testing and physical examination that show 15 either-16 (i) FVC<80 percent of predicted value 17 with $FEV_1/FVC \ge 75$ percent (actual value); 18 or 19 TLC<80 percent of predicted (ii) 20 value, with either DLCO≤76 percent of 21 predicted value or bilateral basilar crack-22 les, and also the absence of any probable 23 explanation for this DLCO result or crack-24 les finding other than the presence of lung 25 disease.

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1	(B) Chest x-rays which, in the opinion of
2	a certified B-reader, show small irregular opac-
3	ities of ILO grade 1/1 or greater; and pul-
4	monary function testing that shows either—
5	(i) FVC<80 percent of predicted
6	value with $FEV_1/FVC \ge 72$ percent (actual
7	value) or, if the individual tested is at least
8	68 years old at the time of the testing,
9	with FEV ₁ /FVC \geq 65 percent (actual value);
10	or
11	(ii) TLC<80 percent of predicted
12	value.
13	(20) Compensatory damages.—The term
14	"compensatory damages" means damages awarded
15	for economic and noneconomic loss.
16	(21) CORPORATION.—The term "Corporation"
17	means the Asbestos Resolution Corporation estab-
18	lished in section 101.
19	(22) DEFENDANT.—The term "defendant"
20	means any party in a civil action that is alleged to
21	be legally responsible for the claimant's injury.
22	(23) DLCO.—The term "DLCO" means dif-
23	fusing capacity of the lung (carbon monoxide), which
24	is a measure of the volume of carbon monoxide
25	transferred from the alveoli to blood in the pul-

monary capillaries for each unit of driving pressure
 of the carbon monoxide.

(24) ECONOMIC LOSS.—The term "economic 3 loss" means any pecuniary loss resulting from harm 4 5 (including the loss of earnings or other benefits re-6 lated to employment, medical expense loss, replace-7 ment service loss, loss due to death, burial costs, and 8 loss of business or employment opportunities) to the 9 extent that recovery for such loss is allowed under 10 applicable law.

(25) ELIGIBLE MEDICAL CATEGORY.—The term
"eligible medical category" means mesothelioma,
lung cancer, other cancer, and nonmalignant conditions.

15 (26)EVIDENCE OF BILATERAL PLEURAL THICKENING WITH IMPAIRMENT.-The term "evi-16 17 dence of bilateral pleural thickening with impair-18 ment" means a diagnosis of bilateral pleural thick-19 ening with impairment by a board-certified internist 20 or board-certified pulmonary specialist based on the 21 following minimum objective criteria:

(A) Chest x-rays which, in the opinion of
a certified B-reader, show bilateral pleural
thickening of ILO Grade B2, and which includes blunting of at least 1 costophrenic angle

1	and is not explained by any other condition in
2	the subject's history; and pulmonary function
3	testing that shows—
4	(i) if TLC is available, TLC<75 per-
5	cent of predicted value; or
6	(ii) if TLC is not available, VC or
7	FVC < 75 percent of predicted value with
8	$FEV_1/FVC \ge 75$ percent (actual value); and
9	in either case
10	(iii) a statement by the board-certified
11	internist or board-certified pulmonary spe-
12	cialist that the asbestos-related changes
13	are a substantial contributing factor in
14	causing the pulmonary function changes.
15	(B) Chest x-rays which, in the opinion of
16	a certified B-reader, show bilateral pleural
17	thickening of ILO grade C2 or greater, and
18	which includes the blunting of at least 1
19	costophrenic angle and is not explained by any
20	other condition in the subject's history; and pul-
21	monary function testing that shows—
22	(i) FVC<80 percent of predicted
23	value with $\text{FEV}_1/\text{FVC} \ge 75$ percent (actual
24	value), or, if the individual tested is at
25	least 68 years old at the time of the test-

1	ing, with $FEV_1/FVC \ge 65$ percent (actual
2	value); or
3	(ii) TLC<80 percent of predicted
4	value; and in either case
5	(iii) a statement by the board-certified
6	internist or board-certified pulmonary spe-
7	cialist that the asbestos-related changes
8	are a substantial contributing factor in
9	causing the pulmonary function changes.
10	(27) Exceptional medical claim.—The term
11	"exceptional medical claim" means a claim identified
12	as such under the procedures in section 206.
13	(28) EXPOSED PERSON.—The term "exposed
14	person" means any person who has been exposed in
15	any State (or while working aboard a United States
16	vessel outside the United States) to asbestos or to
17	asbestos-containing products.
18	(29) FEV_1 .—The term "FEV ₁ " means forced
19	expiratory volume (1 second), which is the maximal
20	volume of air expelled in 1 second during perform-
21	ance of the spirometric test for forced vital capacity
22	(FVC). FEV_1 shall be measured using standard spi-
23	rometric methods.
24	(30) FINAL CERTIFICATE OF ELIGIBILITY.—
25	The term "final certificate of eligibility" means a

certificate of eligibility that is not subject to further
 review or modification by the Corporation, whether
 on reconsideration under section 205 by action of
 an exceptional medical claims panel under section
 206.

6 (31) FVC.—The term "FVC" means forced 7 vital capacity, which is the maximal volume of air 8 expired with a maximally forced effort from a posi-9 tion of maximal inspiration. FVC shall be measured 10 using standard spirometric methods.

(32) GOOD FAITH OFFER OR GOOD FAITH DEMAND.—The terms "good faith offer" or "good faith
demand" means a settlement offer or demand which
reflects an evaluation of relevant factors of traditional tort principles of damages.

16 (33) GRACE PERIOD.—The term "grace period"
17 means the period allowed for voluntary settlements
18 in section 305.

19 (34) ILO.—The term "ILO" means the Inter-20 national Labour Office.

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

1	(36) LATENCY PERIOD.—The term "latency pe-
2	riod" means the period from the date of the exposed
3	person's first significant exposure to asbestos or an
4	asbestos-containing product to the date of mani-
5	festation of the condition claimed.
6	(37) Manifestation.—The term "manifesta-
7	tion" means either the date of the actual diagnosis
8	of the condition claimed, or the date upon which the
9	clinical records and available tests indicate that the
10	condition could reasonably have been diagnosed by a
11	competent practicing physician.
12	(38) Medical advisory board.—The term
13	"Medical Advisory Board" means the board estab-
14	lished under section 105 to provide medical advice to
15	the board of directors of the Corporation.
16	(39) MESOTHELIOMA.—The term "mesothe-
17	lioma" means a malignant tumor of the mesothelial
18	tissue.
19	(40) MOTIONS OFFICER.—The term "motions
20	officer" means an official of the Corporation respon-
21	sible for resolving procedural and discovery disputes
22	during the alternative dispute resolution process in
23	the absence of an arbitrator. Motions officers shall
24	be members in good standing of the bar of a State.

1	(41) NONECONOMIC LOSS.—The term "non-
2	economic loss" means subjective, nonmonetary loss
3	resulting from harm, including pain, suffering, in-
4	convenience, mental suffering, emotional distress,
5	loss of society and companionship, loss of consor-
6	tium, injury to reputation, and humiliation.
7	(42) OSHA.—The term "OSHA" means the
8	Occupational Safety and Health Administration of
9	the Department of Labor.
10	(43) Occupational History.—The term "oc-
11	cupational history" means a listing of all employ-
12	ment positions, providing for the dates and place of
13	employment, the employer, and a description of job
14	responsibilities and activities.
15	(44) Operational date.—The term "oper-
16	ational date" means the date on which the Board
17	certifies that the Corporation is operational.
18	(45) PATHOLOGICAL EVIDENCE OF ASBES-
19	TOSIS.—The term "pathological evidence of asbes-
20	tosis" means diagnosis of pulmonary asbestosis by a
21	board-certified pathologist based on a finding that
22	more than 1 representative section of lung tissue
23	otherwise uninvolved with any other process (such as
24	cancer or emphysema) demonstrates a pattern of
25	peribronchiolar or parenchymal scarring in the pres-

ence of characteristic asbestos bodies, and also that
 there is no other more likely explanation for the
 presence of the fibrosis.

4 (46) PERSON.—The term "person" means an
5 individual, trust, firm, corporation, association, part6 nership, joint venture, the United States, and any
7 State or political subdivisions thereof. The term does
8 not include an asbestos trust in existence as of the
9 date of enactment unless the trust elects to be cov10 ered by this Act under section 803.

11 (47) PRACTICING PHYSICIAN.—The term "prac-12 ticing physician" means a medical doctor currently 13 licensed to practice medicine in any State who has 14 not, within the 5-year period before the date of en-15 actment of the Act, spent more than $\frac{1}{2}$ of that indi-16 vidual's professional time, or derived more than $\frac{1}{2}$ 17 of that individual's professional income, either annu-18 ally or in total, either reviewing or testifying in any 19 forum on medical-legal issues related to asbestos.

20 (48) Predicted Value.—

(A) IN GENERAL.—The term "predicted
value" for spirometry and lung volumes shall be
the relevant value published by Morris, Clinical
Pulmonary Function Testing, 2d Edition, Intermountain Thoracic Society (1984). "Predicted

1	Value" for diffusing capacity shall be the rel-
2	evant value published by Miller, et al., "Single
3	Breath Diffusing Capacity in a Representative
4	Sample of the Population of Michigan, a Large
5	Industrial State", 127 American Review of Res-
6	piratory Disease, 270–77 (1983).
7	(B) Corrections.—Predicted value in all
8	pulmonary function tests shall be corrected for
9	race, ethnic origin, and other relevant factors.
10	(49) Pulmonary function testing.—
11	(A) IN GENERAL.—The term "pulmonary
12	function testing" means spirometry, lung vol-
13	ume, and diffusing capacity ("DLCO") testing.
14	(B) Methods.—
15	(i) Spirometry.—All spirometry
16	shall use standard spirometric methods.
17	(ii) Pulmonary function testing
18	OTHER THAN SPIROMETRY.—Pulmonary
19	function testing other than spirometry
20	shall use methods, quality criteria, and
21	standards approved by the Board, upon
22	the recommendation of the Medical Advi-
23	sory Board. Such methods, quality criteria,
24	and standards shall be generally recognized
25	by authoritative professional bodies as ap-

1	propriate, giving due consideration to the
2	reliability where obstructive lung disease
3	may be present.
4	(C) BACKUP DATA.—For purposes of sub-
5	mitting results of pulmonary function testing to
6	the Corporation under this Act, all backup data
7	for those results (including flow volume loops,
8	spirographs, and other tracings), necessary to
9	ensure compliance with the methods, quality
10	criteria, and standards approved by the Board
11	shall be submitted to the Corporation.
12	(50) PUNITIVE DAMAGES.—The term "punitive
13	damages" means damages that are awarded against
14	any person and that are—
15	(A) designated as punitive or exemplary
16	damages under applicable law; or
17	(B) primarily designed to punish or deter
18	such person, or any other person, from engag-
19	ing in similar behavior in the future.
20	(51) Respondent.—
21	(A) IN GENERAL.—The term "respondent"
22	means any person who is or may be responsible
23	for a claimant's asbestos-related condition and
24	who is so notified by the Corporation under sec-
25	tion 303 or 304.

(B) EXCLUSION.—The term does not include an asbestos trust in existence as of the date of enactment of this Act unless the trust elects to be covered by this Act under section 803.

6 (52) Standard spirometric methods.—

7 (A) IN GENERAL.—The term "standard spirometric methods" means spirometric meth-8 9 ods and equipment that substantially conform 10 to American Thoracic Society standards for 11 technical quality and instrumentation, as set 12 forth in section 718.103 of title 20, Code of 13 Federal Regulations, and appendix B thereto or 14 in guidelines established by the American Tho-15 racic Society, as set forth in "Standardization 16 of Spirometry—1994 Update", 152 American 17 Review of Respiratory Disease 1107–36 (1995) 18 and any revisions thereof.

19 (B) TESTING.—For the purposes of testing
20 with standard spirometric methods under this
21 Act, each subject shall be required to be tested
22 with and without inhaled bronchodilators, with
23 best values taken.

24 (C) BACKUP DATA.—For purposes of sub25 mitting results of testing with standard spiro-

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1 metric methods to the Corporation under this 2 Act, all backup data for those results (including 3 flow volume loops, spirographs, and other trac-4 ings), necessary to ensure that the quality cri-5 teria and standards under subparagraphs (A) and (B) have been satisfied shall be submitted 6 7 to the Corporation. (53) STATE.—The term "State" means any 8 9 State of the United States, the District of Columbia, 10 Commonwealth of Puerto Rico, the Northern Mar-11 iana Islands, the Virgin Islands, Guam, American 12 Samoa, and any other territory or possession of the 13 United States or any political subdivision of any of 14 the foregoing. 15 (54) TLC.—The term "TLC" means total lung 16 capacity, which is the volume of air in the lung after 17 maximal inspiration. 18 (55) Workers' compensation law.— 19 (A) IN GENERAL.—The term "workers compensation law" means a law concerning a 20 21 program administered by a State or the United 22 States to provide benefits, funded by a respon-23 sible employer or its insurance carrier, for occu-24 pational diseases or injuries or for disability or

1	death caused by occupational diseases or inju-
2	ries.
3	(B) Scope.—The term includes the
4	Longshore and Harbor Workers' Compensation
5	Act (33 U.S.C. 901 through 944, and 948
6	through 950), but does not include the Federal
7	Employers' Liability Act (45 U.S.C. 51 et seq.).
8	TITLE I—ASBESTOS
9	RESOLUTION CORPORATION
10	SEC. 101. ESTABLISHMENT.
11	There is established a corporation, to be known as
12	the "Asbestos Resolution Corporation".
13	SEC. 102. POWERS OF THE CORPORATION.
14	The Corporation shall have the power to—
15	(1) hire or appoint employees and to retain the
16	services of other entities to provide such employees;
17	(2) contract for services, including the services
18	of practicing physicians and other medical profes-
19	sionals, hearing examiners, mediators, arbitrators,
20	financial experts or consultants, accountants, and
21	attorneys;
22	(3) receive voluntary contributions of funds,
23	goods, and services in order to carry out its pur-
24	poses;

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2	claims panels, as described in section 206(a);
3	(5) adopt rules, policies, and procedures gov-
4	erning recovery of costs from and allocation of costs
5	to defendants and respondents;
6	(6) adopt rules, policies, and procedures for the
7	fair and efficient conduct of medical review and al-
8	ternative dispute resolution;
9	(7) conduct audits of information submitted to
10	it, including inspection of laboratories performing
11	medical tests and verification of quality assurance
12	and quality control procedures; and
13	(8) sue and be sued in its corporate name.
14	SEC. 103. BOARD OF DIRECTORS.
15	(a) Membership.—
16	(1) IN GENERAL.—The Corporation shall be
17	managed by a Board of Directors consisting of 7
18	members appointed by the President, by and with
19	the advice and consent of the Senate.
20	(2) CHAIRPERSON.—The President shall des-
21	ignate the chairperson of the Board.
22	(3) LIMITATION.—Not more than 4 directors
23	may be members of the same political party.

1	(4) MEMBERSHIP REQUIREMENT.—The direc-
2	tors shall be distinguished private citizens of the
3	United States.
4	(5) Nominations.—The President shall submit
5	7 nominations under this section to the Senate not
6	later than 4 months after the date of the enactment
7	of this Act.
8	(b) TERMS.—
9	(1) IN GENERAL.—Each director shall be ap-
10	pointed for a term of 6 years beginning on the date
11	of expiration of the term of the predecessor of that
12	director, except that, of the directors first
13	appointed—
14	(A) 3 shall be appointed for a term of 3
15	years,
16	(B) 3 shall be appointed for a term of 6
17	years, and
18	(C) the chairperson shall be appointed for
19	a term of 6 years.
20	(2) Period of terms.—The terms of office of
21	the directors first appointed shall begin on the date
22	of enactment. A director may continue to serve until
23	his successor has been appointed and confirmed.
24	(c) VACANCY.—A vacancy on the Board shall be filled
25	in the same manner as the original appointment. A direc-

tor appointed to fill a vacancy occurring before the expira tion of the term for which the predecessor of that director
 was appointed shall be appointed for the remainder of that
 term. A vacancy shall not affect the power of the Board.
 (d) REMOVAL.—Directors may be removed for cause
 by the President.

7 (e) Compensation; Expenses.—

8 (1) The compensation of directors other than 9 the chairperson shall not exceed \$50,000 per year, 10 and the compensation of the chairperson shall not 11 exceed \$75,000 per year.

(2) Directors may be reimbursed for reasonable
travel and other expenses incurred in connection
with their services to the Corporation under policies
adopted by the Board.

16 (f) PERSONAL LIABILITY OF DIRECTORS.—A direc-17 tor shall not be personally liable for any act or omission 18 within the scope of the director's service as a member of 19 the Board. The liability of a director shall not be limited 20 as provided in this subsection if the director engaged in 21 willful misconduct or a knowing violation of the criminal 22 law.

(g) AUDIT COMMITTEE.—The Board shall establish
an Audit Committee, which shall conduct an annual audit
of the finances of the Corporation and provide an annual

report to the Board regarding the financial condition of
 the Corporation.

3 (h) EXCLUSIVE AUTHORITY.—The Board shall have4 the exclusive authority to—

5 (1) adopt rules, consistent with this Act, re-6 garding the assessment and recovery of costs, the 7 qualifications of practicing physicians, the organiza-8 tion and operation of the Medical Advisory Board, 9 and the conduct of the alternative dispute resolution 10 process;

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

(3) recommend the inclusion of new diseases in
the eligible medical category known as "other cancer" if the Board finds, upon the recommendation of
the Medical Advisory Board and at a meeting expressly called for that purpose, that there is a medical consensus that the disease is caused by exposure
to asbestos; and

(4) adopt and amend bylaws.

23 SEC. 104. OFFICERS.

22

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

4 SEC. 105. MEDICAL ADVISORY BOARD.

5 (a) IN GENERAL.—The Board shall appoint a Med6 ical Advisory Board to provide advice on medical matters,
7 including—

8 (1) retention, supervision, and removal of prac9 ticing physicians; establishment of guidelines regard10 ing exceptional medical claims;

(2) the appropriateness of adding new diseases
to the "other cancer" eligible medical category designated as "other cancer"; and

(3) such other medical matters as may be referred to the Medical Advisory Board by the Board.
(b) COMPOSITION; RULES AND POLICIES.—

17 (1) NUMBER OF MEMBERS.—The Medical Advi18 sory Board shall have no fewer than 5 or more than
19 9 members.

20 (2) QUALIFICATIONS.—Members of the Medical
21 Advisory Board shall be practicing physicians with a
22 demonstrated expertise in asbestos-related condi23 tions. The Medical Advisory Board shall include at
24 least 1 of each of the following:

25 (A) A board-certified pulmonary specialist.

1	(B) A board-certified radiologist.
2	(C) A board-certified oncologist.
3	(D) A board-certified pathologist.
4	(3) Rules and policies.—The Board shall
5	adopt such rules and policies regarding the composi-
6	tion and operation of the Medical Advisory Board as
7	may be necessary for its efficient operation, includ-
8	ing rules governing—
9	(A) the appointment and removal of mem-
10	bers;
11	(B) terms of office;
12	(C) the filling of vacancies;
13	(D) notice and conduct of meetings (in-
14	cluding quorum requirements); and
15	(E) compensation.
16	(c) Applicability of Federal Advisory Com-
17	MITTEE ACT.—The Medical Advisory Board shall be sub-
18	ject to the Federal Advisory Committee Act (5 U.S.C.
19	App.).
20	SEC. 106. AVOIDANCE OF CONFLICT OF INTEREST.
21	(a) IN GENERAL.—No director, officer, member of
22	the Medical Advisory Board, employee, contract employee,
23	contractor, or consultant to the Corporation may rep-
24	resent any person in any manner in any proceeding before
25	the Corporation.

(b) POLICIES AND PROCEDURES.—In addition, the
 Board shall adopt policies and procedures to guard against
 both actual and apparent conflicts of interest.

4 SEC. 107. ANNUAL REPORTS.

5 The Corporation shall submit an annual report to the
6 President and the Committee on the Judiciary of the Sen7 ate and the Committee on the Judiciary of the House of
8 Representatives with respect to the operations, activities,
9 and financial condition of the Corporation on or before
10 December 31 of each year.

11 TITLE II—MEDICAL ELIGIBILITY 12 DETERMINATIONS

13 SEC. 201. MEDICAL CRITERIA—NONMALIGNANT CONDI14 TIONS.

15 In order to meet the requirements for the nonmalig-16 nant conditions eligible medical category, a claimant shall 17 be required to submit medical information or testimonial 18 information sufficient to demonstrate—

- (1) a latency period of at least 12 years; and
 (2)(A) clinical evidence of asbestosis;
- 21 (B) pathological evidence of asbestosis; or

(C) evidence of bilateral pleural thickening withimpairment.

1	SEC. 202. MEDICAL CRITERIA—MESOTHELIOMA.
2	In order to meet the requirements for the mesothe-
3	lioma eligible medical category, a claimant shall be re-
4	quired to submit—
5	(1) a diagnosis of malignant mesothelioma with
6	a primary site in the pleura or peritoneum, that—
7	(A) is derived from appropriate tissue, and
8	verified using standardized and accepted cri-
9	teria of microscopic morphology or a variety of
10	appropriate staining techniques; and
11	(B) is made by either—
12	(i) 2 board-certified pathologists; and
13	(ii) 1 board-certified pathologist who
14	is, at the time that the diagnosis is
15	verified, a member of the United States-
16	Canadian Mesothelioma Reference Panel;
17	and
18	(2) medical information or testimonial informa-
19	tion sufficient to demonstrate a latency period of at
20	least 10 years.
21	SEC. 203. MEDICAL CRITERIA—LUNG CANCER.
22	(a) IN GENERAL.—In order to meet the requirements
23	for the lung cancer eligible medical category, a claimant
24	shall be required to submit—

1	(1) a diagnosis by a board-certified pathologist,
2	board-certified pulmonary specialist, or board-cer-
3	tified oncologist of primary lung carcinoma;
4	(2) medical information or testimonial informa-
5	tion sufficient to demonstrate a latency period of at
6	least 12 years; and
7	(3) either—
8	(A) evidence of a nonmalignant condition
9	sufficient to meet the requirements of section
10	201; or
11	(B) chest x-rays that, in the opinion of a
12	certified B-reader, demonstrate both asbestos-
13	related bilateral pleural plaques or asbestos-re-
14	lated bilateral pleural thickening and evidence
15	of 15 years of exposure to asbestos, to be cal-
16	culated as specified in subsection (b), in accord-
17	ance with paragraphs (1) through (4) of that
18	subsection.
19	(b) CALCULATIONS.—The calculations made under
20	subsection (a) shall be based on the following:
21	(1) Each year that an exposed person's primary
22	occupation, during a substantial portion of a normal
23	work year for that occupation, involved working in
24	areas immediately proximate to where asbestos-con-
25	taining products were being installed, repaired, or

removed under circumstances that involved regular
 airborne emissions of visible asbestos dust, shall
 count as 1 year.

4 (2) Each year that an exposed person's primary
5 occupation, during a substantial portion of a normal
6 work year for that occupation, involved the direct in7 stallation, repair, or removal of asbestos-containing
8 products, shall count as 2 years.

9 (3) Each year that an exposed person's primary 10 occupation, during a substantial portion of a normal 11 work year for that occupation, involved the direct 12 manufacture of asbestos-containing products using 13 raw asbestos fiber, or the direct installation, repair, 14 or removal of asbestos-containing products in a ship-15 yard during World War II, shall count as 4 years. 16 (4)(A) Except as provided in subparagraph (B), 17 for purposes of calculating years of exposure under 18 this subsection— 19 (i) each year of exposure before 1976 shall

20 be counted fully;

21 (ii) each year of exposure from 1976
22 through 1979 shall be counted ¹/₂; and
23 (iii) exposures after 1979 shall not be

24 counted.

1 (B)(i) For each year from 1972 through 1975, 2 for which it is demonstrated by a preponderance of 3 the evidence that the exposed person's exposure to 4 asbestos in the occupation of that person was, dur-5 ing a substantial portion of that work year, in com-6 pliance with the OSHA 8-hour time-weighted aver-7 age airborne concentration for asbestos exposure at 8 that time, that year shall count $\frac{1}{2}$ for purposes of 9 calculating the years of exposure for purposes of this 10 subsection.

11 (ii) For each year from 1976 through 1979 for 12 which a claimant demonstrates, by a preponderance 13 of the evidence, that the exposed person's exposure 14 to asbestos in the occupation of that person was, 15 during a substantial portion of that work year, in 16 excess of the OSHA 8-hour time-weighted average 17 airborne concentration for asbestos exposure at that 18 time, that year shall count fully for purposes of cal-19 culating the years of exposure for purposes of this 20 subsection.

(iii) For each year after 1979 for which a
claimant demonstrates, by a preponderance of the
evidence, that the exposed person's exposure to asbestos in the occupation of that person was, during
a substantial portion of that work year, in excess of

the OSHA 8-hour time-weighted average airborne
 concentration for asbestos exposure at that time,
 that year shall count ¹/₂ for purposes of calculating
 years of exposure for purposes of this subsection.

5 SEC. 204. MEDICAL CRITERIA—OTHER CANCER.

6 In order to meet the requirements in the other cancer
7 medical eligible category, a claimant shall be required to
8 submit—

9 (1) a diagnosis by a board-certified pathologist,
10 board-certified pulmonary specialist, or board-cer11 tified oncologist (as appropriate for the type of can12 cer claimed) of primary cancer of the colon or rec13 tum, larynx, esophagus, or stomach;

14 (2) medical or testimonial information sufficient
15 to demonstrate a latency period of at least 12 years;
16 and

17 (3) evidence of a nonmalignant condition suffi-18 cient to meet the requirements of section 201.

19 SEC. 205. PROCEDURE FOR CERTIFICATE OF ELIGIBILITY.

(a) APPLICATION.—A claimant may apply for a certificate of medical eligibility by submitting to the Corporation such information as the Corporation may require in
a form designated by the Corporation, that includes a
statement that the claimant is not required to retain an

attorney in order to file and proceed with a claim and that
 includes the following:

3 (1) PERSONAL INFORMATION.—The name, address, date of birth, and death (if applicable), smoking history, occupational history, and social security
number of the exposed person, and the relationship
between the exposed person and the claimant if the
claimant is not the exposed person.

9 (2) EXPOSURE INFORMATION.—The years of 10 the exposed person's exposure to asbestos or asbes-11 tos-containing products; identification of the types of 12 asbestos or asbestos-containing products to which 13 the exposed person was exposed; description of the 14 circumstances, intensity, and duration of the expo-15 sure; and identification of the worksites or other 16 such locations where such exposures occurred.

(3) Medical information.—

18 (A) IN GENERAL.—The Corporation may19 require following medical information:

20 (i) The eligible medical category or
21 categories for which the claimant is apply22 ing.

23 (ii) All medical diagnoses, reports and
24 records that relate to any claimed asbes25 tos-related condition.

1	(iii) Materials supporting those diag-
2	noses, reports and records that may be re-
3	quired by the Corporation, but in any
4	event including all of the backup data for
5	any pulmonary function tests on which the
6	claimant relies (including all flow volume
7	loops, spirographs, and any other tracings
8	for any test that is performed).
9	(iv) An identification of all medical
10	professionals and medical care facilities in-
11	volved in diagnosing, treating, testing,
12	counseling, or consulting with the exposed
13	person concerning any medical condition
14	within the 5-year period preceding the date
15	on which that information is submitted to
16	the Corporation.
17	(B) ADDITIONAL INFORMATION.—In addi-
18	tion to the medical information under subpara-
19	graph (A), the claimant shall also provide such
20	medical releases as the Corporation may require
21	allowing the Corporation to obtain any and all
22	medical information relevant to the determina-
23	tion of medical eligibility.
24	(4) EXCEPTIONAL MEDICAL CLAIMS.—The
25	claimant may concede that the claim cannot meet

1	the requirements of any eligible medical category
2	and state that the claimant intends to apply to an
3	exceptional medical claims panel for designation as
4	an exceptional medical claim. If the claimant makes
5	such a statement—
6	(A) the Corporation shall refer the claim to
7	an exceptional medical claim panel; and
8	(B) the application of the claimant shall be
9	reviewed under section 206.
10	(b) NOTIFICATION OF ACCEPTANCE FOR PROC-
11	ESSING.—
12	(1) IN GENERAL.—The Corporation shall notify
13	the claimant not later than 30 days after receipt of
14	the application that the application either—
15	(A) is accepted for processing; or
16	(B) is materially incomplete and cannot be
17	processed until additional information is pro-
18	vided.
19	(2) Notice for materially incomplete Ap-
20	PLICATIONS.—Any notice that an application is ma-
21	terially incomplete shall describe the missing infor-
22	mation.
23	(3) Requests for additional informa-
24	TION.—The issuance of a notice of acceptance shall
<u> 4</u> 7	field. The issuance of a notice of acceptance shall

1	tional information regarding a claim if the Corpora-
2	tion subsequently concludes that such information is
3	necessary to make a decision on medical eligibility.
4	(c) Records From Third Persons.—The Corpora-
5	tion may at any time seek to obtain medical, employment,
6	or other relevant records concerning an exposed person
7	from persons other than the claimant. If the corporation
8	seeks such additional records, the Corporation shall—
9	(1) give notice to the claimant; and
10	(2) if the Corporation obtains those records,
11	furnish copies of all such records to the claimant,
12	upon request and at the expense of the claimant.
13	(d) Additional Medical Testing.—If the Cor-
14	poration reasonably believes that the Corporation cannot
15	determine, on the basis of the available medical informa-
16	tion, whether an exposed person meets the medical criteria
17	for 1 of the eligible medical categories, the Corporation,
18	at its option and expense, may require the exposed person
19	to undergo appropriate, reasonable, and noninvasive med-
20	ical examination or testing (excluding any sort of com-
21	puted tomography (CT) scan).
22	(e) Testimonial Information Under Oath.—All
23	testimonial information provided to the Corporation in

(e) TESTIMONIAL INFORMATION UNDER OATH.—All
testimonial information provided to the Corporation in
connection with a claim, other than information in any
medical report or records, shall be made—

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1	(1) under oath;
2	(2) by sworn affidavit; or
3	(3) by written declaration subscribed to as true
4	under penalty of perjury.
5	(f) DETERMINATION OF MEDICAL ELIGIBILITY.—
6	(1) IN GENERAL.—Subject to paragraph (2), as
7	soon as practicable and, but not later than 60 days
8	after the issuance of a notice of acceptance for proc-
9	essing, the Corporation shall issue either—
10	(A) a certificate of medical eligibility stat-
11	ing each eligible medical category for which the
12	claimant qualifies; or
13	(B) a finding of ineligibility.
14	(2) EXTENSION.—The Corporation may extend
15	the period of time beyond the period specified in
16	paragraph (1) if the Corporation determines that ex-
17	tension to be necessary to secure additional informa-
18	tion that is essential to the determination of medical
19	eligibility.
20	(3) STATEMENT IN REASON.—If the Corpora-
21	tion declines to certify a claimant for any eligible
22	medical category identified by the claimant or makes
23	a finding of ineligibility, the certificate of eligibility
24	or finding of ineligibility shall be accompanied by a
25	brief written statement of reasons.

1	(g) Reconsideration.—
2	(1) IN GENERAL.—
3	(A) RECONSIDERATION.—The claimant
4	may seek reconsideration of the Corporation's
5	determination under subsection (f) by submit-
6	ting to the Corporation a written request for re-
7	consideration within 60 days after the date of
8	the Corporation's determination under sub-
9	section (f).
10	(B) EXTENSION.—The Corporation may
11	extend the time period for submitting a request
12	for reconsideration upon the claimant's request.
13	(C) CONTENTS OF REQUEST.—The request
14	for reconsideration shall—
15	(i) include a statement of the grounds
16	for reconsideration; and
17	(ii) be accompanied by any additional
18	evidence on which the claimant relies.
19	(2) Referral.—
20	(A) IN GENERAL.—The Corporation shall
21	refer a request for reconsideration to a panel of
22	2 practicing physicians with expertise in the
23	medical issue or issues raised by the claimant.
24	(B) Additional information.—The
25	panel of practicing physicians may request fur-

1	ther information from the applicant or from
2	third parties, or may require additional medical
3	examination or testing, in accordance with the
4	provisions of subsections (c) and (d).
5	(3) Operation of panel.—
6	(A) IN GENERAL.—The panel of practicing
7	physicians shall consider the issues raised by
8	the request for reconsideration de novo on the
9	basis of all of the evidence before the Corpora-
10	tion.
11	(B) DECISIONS.—If the panel of practicing
12	physicians agrees on the disposition of the re-
13	quest for reconsideration, the panel shall render
14	a decision.
15	(C) Augmentation.—If the panel is not
16	in agreement, the Corporation shall appoint to
17	the panel a third practicing physician with ex-
18	pertise in the issues raised by the claimant, and
19	the panel of 3 practicing physicians shall render
20	a decision.
21	(4) Acceptance or denial of requests.—
22	(A) ACCEPTANCE.—If the panel approves
23	the request for reconsideration, wholly or in
24	part, the Corporation shall issue a certificate of
25	medical eligibility for the eligible medical cat-

1 egories for which the panel finds that the claim-2 ant qualifies. (B) DENIAL.—If the panel denies the re-3 4 quest for reconsideration, or if the certificate of 5 eligibility on reconsideration rejects eligibility 6 for any eligible medical category identified by 7 the claimant claim made by the claimant, the 8 panel shall provide a brief written statement of 9 reasons. 10 (5) ACTION ON REQUEST FOR RECONSIDER-11 ATION.— 12 (A) IN GENERAL.—Subject to subpara-13 graph (B), the Corporation shall act upon a re-14 quest for reconsideration as soon as practicable 15 but not later than 30 days after receiving the 16 request. 17 (B) EXTENSIONS.—The Corporation may 18 extend the period specified in subparagraph (A) 19 if the Corporation determines the extension to 20 be necessary to secure additional information 21 that is essential to the disposition of the request 22 for reconsideration. 23 (h) REAPPLICATION.—After making an application 24 under this title, a claimant may file a new application

25 under this title at any time. Any such new application filed

within 1 year after the date on which the Corporation
 issued a final finding of ineligibility shall identify the pre vious application and any relevant changes in cir cumstances.

5 SEC. 206. EXCEPTIONAL MEDICAL CLAIMS.

6 (a) EXCEPTIONAL MEDICAL C	LAIMS PANEL.—
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7 (1) IN GENERAL.—The Corporation shall estab8 lish 1 or more exceptional medical claims panels.
9 Each exceptional medical claims panel shall be com10 prised of 5 practicing physicians, including—
11 (A) 2 board-certified pulmonary specialists;
12 (B) 1 board-certified radiologist (who is ei-

12 (B) 1 board-certified radiologist (who is ei13 ther a certified B-reader or a specialist in com14 puted tomography); and

15 (C) 2 board-certified pathologists.

16 (2) DETERMINATIONS.—Each exceptional med17 ical claims panel shall determine whether claims re18 ferred to the panel meet the requirements of this
19 section for designation as exceptional medical claims.
20 (b) TIME TO APPLY.—

(1) IN GENERAL.—Subject to paragraph (2), a
claimant may apply to the Corporation for designation of his claim as an exceptional medical claim if
the claimant—

	10
1	(A) concedes (either before or after a de-
2	termination is made under section $205(f)$) that
3	the claim does not meet the medical criteria in
4	sections 201 through 204; or
5	(B) seeks designation of the claim as an
6	exceptional medical claim within 60 days after
7	a determination on reconsideration under sec-
8	tion 205(g) that the claim does not meet the
9	medical criteria in sections 201 through 204,
10	wholly or in part.
11	(2) PROHIBITION.—The Corporation shall not
12	accept any application for designation as an excep-
13	tional medical claim, if a claimant has—
14	(A) filed an action under section 208 for
15	review of the Corporation's determination on re-
16	consideration; or
17	(B) commenced alternative dispute resolu-
18	tion procedures under title III.
19	(c) CONTENTS OF APPLICATION.—
20	(1) IN GENERAL.—The application for designa-
21	tion as an exceptional medical claim shall include the
22	information required by the Corporation under sec-
23	tion 205(a) and shall, in addition, be supported, as
24	appropriate for the eligible medical category claimed,
25	by the report of—

1	(A) a board-certified internist;
2	(B) a board-certified pulmonary specialist;
3	(C) a board-certified pathologist; or
4	(D) a board-certified oncologist.
5	(2) REPORT.—The report under paragraph (1)
6	shall contain—
7	(A) a complete review of the exposed per-
8	son's medical history and current condition;
9	(B) such additional material by way of
10	analysis and documentation as shall be pre-
11	scribed by the Corporation; and
12	(C) a detailed explanation why the claim
13	meets the standard for acceptance as an excep-
14	tional medical claim set forth in subsection (d).
15	(d) Standard for Acceptance.—The exceptional
16	medical claims panel shall designate a claim as an excep-
17	tional medical claim only if the claimant cannot satisfy
18	the requirements for a given eligible medical category for
19	reasons beyond the control of the claimant, but dem-
20	onstrates, through clear and convincing evidence, that the
21	exposed person has an asbestos-related condition that is
22	substantially comparable to the condition of an exposed
23	person who would satisfy the requirements of a given eligi-
24	ble medical category.

(e) FURTHER TESTING.—The exceptional medical
 claims panel may order additional appropriate, reasonable,
 and noninvasive testing or examination of the exposed per son (including computed tomography (CT) scanning).
 Tests ordered by an exceptional medical claims panel shall
 be made at the expense of the Corporation.

7 (f) DECISION.—The decision of the exceptional med-8 ical claims panel shall not be subject to further review 9 within the Corporation. If the exceptional medical claims 10 panel decides that a claim should be designated, wholly or in part, as an exceptional medical claim, the Corpora-11 tion shall issue a certificate of medical eligibility which 12 13 shall designate the claim as an exceptional medical claim and state the eligible medical category or categories for 14 15 which the claim qualifies by virtue of that designation.

16 SEC. 207. CONFIDENTIALITY.

17 The Corporation shall observe the requirements of 18 section 552a of title 5, United States Code, with respect 19 to information that it receives regarding a claimant or ex-20 posed person. The production of that information to re-21 spondents in accordance with section 303(c) shall be 22 deemed a routine use of the information within the mean-23 ing of section 552a(a)(7) of title 5, United States Code.

24 SEC. 208. JUDICIAL REVIEW.

25 (a) IN GENERAL.—

1	(1) JUDICIAL REVIEW.—The district courts of
2	the United States shall have exclusive jurisdiction,
3	without regard to the amount in controversy or the
4	citizenship of the parties, of any action to review a
5	determination of the Corporation—
6	(A) after a reconsideration by the Corpora-
7	tion under section $205(g)$; or
8	(B) with respect to designation as an ex-
9	ceptional medical claim under section 206.
10	(2) EXHAUSTION OF REMEDIES.—A determina-
11	tion under section 205(f) shall not be directly re-
12	viewable. Before any review by a court of such a de-
13	termination, a claimant shall be required to exhaust
14	each administrative remedy made available to that
15	claimant under section 205(g) or 206.
16	(b) Period for Commencing Action.—
17	(1) IN GENERAL.—An action for review under
18	this section shall be commenced not later than 60
19	days after the later of, as applicable—
20	(A) the determination on reconsideration
21	made under section $205(g)$ with respect to
22	which review is sought; or
23	(B) the determination that the claimant
24	does not qualify as an exceptional medical
25	claim.

(2) EFFECT OF CERTAIN PENDING APPLICA TIONS.—No action for review under this section may
 be commenced while an application for designation
 as an exceptional medical claim is pending.

5 (3) APPEAL OF DUAL DETERMINATIONS.—If a 6 claimant has pursued a determination on reconsider-7 ation under section 205(g) and a determination of 8 an exceptional medical claim under section 206, and 9 has failed to receive a favorable determination under 10 either section, the claimant may appeal both deter-11 minations.

12 (c) Grounds for Upholding Determination.— 13 The court shall uphold the determination of the Corporation if the determination is supported by substantial evi-14 15 dence on the record as a whole and is not contrary to law. Due account shall be taken of the rule of prejudicial error. 16 17 (d) RECORDS.—In applying the standard set forth in 18 subsection (c), the record referred to in that subsection 19 shall consist of—

20 (1) the information submitted to the Corpora21 tion or the exceptional medical claims panel by the
22 claimant;

(2) records and other information obtained by
the Corporation or exceptional medical claims panel
relating to the claim; and

(3) the results of any medical tests adminis tered at the direction of the Corporation or excep tional medical claims panel.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

6 SEC. 301. RULES OF PROCEDURE.

4

5

7 (a) IN GENERAL.—The Board shall establish rules of
8 procedure for the alternative dispute resolution process.
9 Such rules of procedure shall—

10 (1) be designed to ensure that claims will be re11 solved in a prompt, efficient, fair, and inexpensive
12 manner; and

13 (2) include—

14 (A) reasonable time limits and rules re15 garding the time at which actions of the Cor16 poration become final;

17 (B) procedures relating to the notification
18 of respondents, including reasonable and limited
19 discovery;

20 (C) procedures for the disclosure of infor21 mation necessary for settlement, including the
22 timing of disclosure and determination of the
23 information that must be disclosed;

24 (D) rules regarding protection of confiden-25 tial information;

1 (E) procedures for the selection of arbitra-2 tors;

(F) arbitration procedures designed to fur-3 4 ther the objective of prompt, efficient, fair and 5 inexpensive dispute resolution including sim-6 plified pleadings, reasonable limitations on dis-7 covery, resolution of prehearing motions includ-8 ing motions for summary disposition, appro-9 priate, evidentiary rules, and efficient conduct 10 of hearings; and

(G) procedures for just and reasonable
sanctions to ensure compliance with the rules
and orders of the Corporation.

(b) REPRESENTATION BY COUNSEL.—Each party
shall have the right to be represented by counsel at all
phases of the alternative dispute resolution process under
this section.

(c) EFFECT OF PRESENTING STATEMENTS.—By presenting to the Corporation any statement, motion, or other
paper, counsel and the party represented by that counsel
shall be considered to warrant that to the best of their
knowledge, information, and belief, formed after reasonable inquiry—

24 (1) the statement, motion, or other paper is not25 being presented for any improper purpose;

1	(2) the claims, defenses, or other legal conten-
2	tions in that statement, motion, or other paper are
3	warranted by applicable law or by a nonfrivolous ar-
4	gument for the extension, modification, or reversal
5	of applicable law for the establishment of new law;
6	(3) the allegations and other factual contentions
7	have evidentiary support; and
8	(4) the denials of factual contentions are war-
9	ranted on the evidence.
10	(d) Contract Service Providers.—The Corpora-
11	tion may contract with providers of alternative dispute res-
12	olution services to provide mediation or arbitration under
13	this part. To the extent appropriate and consistent with
14	this Act, the Board may adopt the rules of procedure of
15	such contract service providers.
16	SEC. 302. MOTIONS OFFICERS.
17	(a) IN GENERAL.—Upon the issuance of a certificate
18	of eligibility, the Corporation shall assign a motions officer
19	to the claim of a claimant.
20	(b) Authority of Motions Officer.—
21	(1) IN GENERAL.—The motions officer shall
22	have the authority to determine all procedural issues
23	in the alternative dispute resolution process except
24	such matters as may be within the authority of a
25	mediator or arbitrator assigned to the claim.

1	(2) AUTHORITY.—Without limitation, the mo-
2	tions officer may—
3	(A) determine whether notice shall be pro-
4	vided to any respondent under section 303 or
5	304;
6	(B) issue subpoenas to parties and non-
7	parties for testimony and documents, in accord-
8	ance with the terms of section 308;
9	(C) enter scheduling orders and other or-
10	ders to control the progress of the proceedings;
11	(D) resolve discovery disputes; and
12	(E) exercise any other authority conferred
13	by procedural rules, policies, or procedures es-
14	tablished by the Corporation.
15	SEC. 303. NOTICE TO RESPONDENTS.
15 16	(a) IN GENERAL.—
16	(a) IN GENERAL.—
16 17	(a) IN GENERAL.—(1) IN GENERAL.—Within such period of time
16 17 18	 (a) IN GENERAL.— (1) IN GENERAL.—Within such period of time after receiving a final certificate of eligibility as the
16 17 18 19	 (a) IN GENERAL.— (1) IN GENERAL.—Within such period of time after receiving a final certificate of eligibility as the Corporation may provide, a claimant shall provide to
16 17 18 19 20	 (a) IN GENERAL.— (1) IN GENERAL.—Within such period of time after receiving a final certificate of eligibility as the Corporation may provide, a claimant shall provide to the Corporation—
16 17 18 19 20 21	 (a) IN GENERAL.— (1) IN GENERAL.—Within such period of time after receiving a final certificate of eligibility as the Corporation may provide, a claimant shall provide to the Corporation— (A) the name and address of each person
 16 17 18 19 20 21 22 	 (a) IN GENERAL.— (1) IN GENERAL.—Within such period of time after receiving a final certificate of eligibility as the Corporation may provide, a claimant shall provide to the Corporation— (A) the name and address of each person that claimant alleges is responsible for the as-

1	the Corporation of the basis for the allegation
2	that that person is or may be responsible for
3	his injury.
4	(2) Contents of particularized state-
5	MENT.—A particularized statement under paragraph
6	(1)(B) shall include, as applicable—
7	(A) the dates of exposure for each relevant
8	time period;
9	(B) the worksite or other place of expo-
10	sure;
11	(C) the nature and frequency of the expo-
12	sure;
13	(D) if the exposure was occupational, the
14	name of the exposed person's employer and a
15	description of the exposed person's job and
16	working conditions;
17	(E) each asbestos-containing product or
18	material to which the claimant was exposed at
19	each place of exposure; and
20	(F) any other information that the Cor-
21	poration may require by rule or otherwise in all
22	or in particular classes of cases.
23	(b) NOTIFICATION.—

1	(1) IN GENERAL.—After receiving particular-
2	ized statements submitted by a claimant under sub-
3	section (a), the Corporation shall promptly notify—
4	(A) each person identified by the claimant
5	under that subsection; and
6	(B) each person for whom a complete par-
7	ticularized statement has been submitted.
8	(2) CONTENT.—The notification under para-
9	graph (1) shall inform the person that such person
10	has been named as a respondent.
11	(3) Copies of particularized state-
12	MENTS.—At the same time as the Corporation pro-
13	vides the notification under paragraph (1) , the Cor-
14	poration shall provide to each respondent a copy of
15	all particularized statements submitted to the Cor-
16	poration under subsection (a).
17	(c) INFORMATION.—
18	(1) IN GENERAL.—Except as provided in para-
19	graph (2), the Corporation shall provide to each re-
20	spondent, on request and at the respondent's ex-
21	pense, a copy of all information submitted to the
22	Corporation by the claimant, records and other in-
23	formation obtained by the Corporation relating to
24	the claim and the results of any medical tests ad-
25	ministered at the Corporation's direction.

1 (2) EXCEPTION.—The Corporation shall not 2 provide the information described in this subsection 3 to the Corporation until the respondent has received 4 a protective order, signed by or on behalf of the respondent, in a form prescribed by the Corporation, 5 6 that preserves the confidentiality of medical, employ-7 ment, and other information that the Corporation 8 reasonably designates as confidential. 9 (d) DISCOVERY.— 10 (1) IN GENERAL.—For good cause shown and 11 subject to reasonable limitations, a motions officer 12 may allow discovery for the purpose of obtaining in-13 formation necessary to allow the claimant to provide 14 a particularized statement under subsection (a). 15 (2) EXTENSIONS.—The motions officer may 16 grant reasonable extensions of time for naming re-17 spondents in order to allow for the completion of dis-18 covery under this subsection. 19 SEC. 304. ADDITIONAL RESPONDENTS. 20 (a) IN GENERAL.— 21 (1) IN GENERAL.—Any respondent notified 22 under section 303 may, within such period of time 23 as the Corporation may provide, identify additional 24 respondents and request the Corporation to notify

those additional respondents by providing to the

25

Corporation the particularized statement required
 under section 303(a) with respect to each such newly
 identified respondent.

4 (2) Acceptance of information.—For pur-5 poses of this subsection, a respondent may accept as 6 true any assertion made by the claimant in a par-7 ticularized statement submitted under section 8 303(a), unless the respondent knows, or with reason-9 able investigation should know, that that assertion is 10 untrue.

(b) PROVISION OF INFORMATION.—As soon as practicable after the identification of additional persons under
subsection (a), the Corporation shall provide to each additional person identified under that subsection—

15 (1) the particularized statement required under16 that subsection; and

17 (2) the information provided to original re18 spondents under section 303 (b) and (c), subject to
19 receiving the signed protective order described in
20 section 303(c).

(c) RIGHTS OF ADDITIONAL RESPONDENTS.—Additional respondents notified under this section shall have
the same right to add further additional respondents as
is conferred upon originally named respondents under subsection (a).

1 (d) DISCOVERY.—

2	(1) IN GENERAL.—For good cause shown and
3	subject to reasonable limitations, a motions officer
4	may allow discovery for the purpose of obtaining in-
5	formation necessary to allow a respondent to provide
6	the information required under subsection (a).
7	(2) EXTENSIONS.—The motions officer may
8	grant reasonable extensions of time for naming addi-
9	tional respondents in order to allow for the comple-
10	tion of discovery under this subsection.
11	(e) Notice of Expiration of Period for Adding
12	Additional Respondents.—The Corporation shall pro-
13	vide notice to all parties at the time that period for adding
14	additional respondents has expired. No new party shall be
15	added to the proceeding after the expiration of that period,
16	except on motion for good cause.

17 SEC. 305. GRACE PERIOD.

18 The Corporation shall establish a grace period of not 19 to exceed 60 days after expiration of the period of time 20 for adding additional respondents referred to in section 21 304, during which the parties shall be encouraged to reach 22 voluntary settlements without the need for mediation.

23 SEC. 306. MEDIATION.

24 (a) APPOINTMENT OF MEDIATOR.—Upon the expira-25 tion of a grace period referred to in section 305, the Cor-

poration shall appoint a mediator to assist the parties who
 have not settled in the grace period in settling the claim.
 (b) DISCLOSURE OF INFORMATION NECESSARY FOR
 SETTLEMENT.—

5 (1) IN GENERAL.—Within such period of time
6 after appointment of a mediator as the Corporation
7 shall prescribe, each party shall serve upon all other
8 nonsettling parties a statement of information re9 quired for settlement.

10 (2) INFORMATION INCLUDED.—The information 11 to be included in a statement referred to in para-12 graph (1) shall be determined by the Corporation to 13 be reasonably necessary for the parties to evaluate 14 the claim.

(3) INCORPORATION BY REFERENCE.—With respect to a statement referred to in paragraph (1),
information previously provided to the Corporation
by any party may be incorporated by reference and
need not be resubmitted.

20 (4) RULE OF CONSTRUCTION.—Nothing in this
21 subsection shall be construed to require the disclo22 sure of any information privileged under applicable
23 law.

24 (c) TIME LIMITS.—

1	(1) IN GENERAL.—Except as provided in para-
2	graph (2), mediation conducted under this section
3	shall be completed not later than 60 days after the
4	appointment of the mediator.
5	(2) EXTENSION.—The time period specified in
6	paragraph (1) may be extended by the mediator if—
7	(A)(i) the claimant has failed to provide
8	the information required under subsection (b);
9	and
10	(ii) that extension is necessary to allow for
11	simultaneous mediation of a group of claims, or
12	for other good cause; or
13	(B) for a period not to exceed 60 days, if
14	in the judgment of the mediator, the claimant's
15	final demand under subsection (e) is not made
16	in good faith, on consideration of the legal and
17	factual basis of the claim.
18	(d) CONFIDENTIALITY.—All statements made by any
19	party in mediation shall be confidential and shall not be
20	admissible in any trial or arbitration except as allowed
21	under rule 408 of the Federal Rules of Evidence.
22	(e) Good Faith Offers and Demands.—
23	(1) GOOD FAITH OFFERS.—On the date that is
24	15 days before the close of the mediation period, the
25	claimant shall provide to each nonsettling respond-

1	ent or jointly represented group of respondents a
2	final good faith demand of settlement.
3	(2) GOOD FAITH OFFERS IN REPLY.—On the
4	date that is 10 days before the close of the medi-
5	ation period, each respondent or jointly represented
6	group of respondents shall make a final good faith
7	offer in reply.
8	(3) FAILURE TO MAKE A SETTLEMENT
9	OFFER.—If a respondent or jointly represented
10	group of respondents fails to make a settlement
11	offer under this section, that respondent or group of
12	respondents shall be deemed to have made a settle-
13	ment offer of \$0.
14	(4) Efforts of mediator.—During the 10-
15	day period preceding the close of the mediation pe-
16	riod, or any extension of that 10-day period, the me-
17	diator shall work with the parties in a further effort
18	to settle the claim.
19	(f) Release From Mediation.—
20	(1) IN GENERAL.—At the close of the mediation
21	period under this section, the mediator shall issue to
22	the claimant a release from mediation.
23	(2) EFFECT OF RELEASE.—After the issuance
24	of a release from mediation under paragraph (1),

the claimant may commence a civil action or may
 elect arbitration under section 307.

3 SEC. 307. ARBITRATION.

4 (a) ELECTION TO ARBITRATE.—A claimant may 5 elect arbitration under this section by serving notice of such election within 30 days following release from medi-6 7 ation on all respondents that have not previously settled. 8 All such respondents shall be parties to the arbitration. 9 (b) FEDERAL ARBITRATION ACT.—All arbitrations 10 under this section shall be subject to the provisions of title 9, United States Code, that are commonly referred to as 11 12 the Federal Arbitration Act including sections 1 through 13 6 and 8 through 16 of that title, except that, the provisions of this Act and rules adopted by the Corporation 14 15 under this Act shall be effective notwithstanding any inconsistent provision of title 9, United States Code. 16

17 (c) Arbitration by Special Agreement.—

18 (1) IN GENERAL.—Nothing in this section shall
19 be construed as prohibiting consensual arbitration
20 under a special agreement entered into by the claim21 ant and 1 or more of the respondents.

(2) EFFECT OF SPECIAL AGREEMENT.—With
respect to the parties to a special agreement under
paragraph (1), the terms of that agreement shall supersede any provision of this section (other than

subsection (h)) and any rule adopted under section
 301.

3 (d) STATUTORY ARBITRATION.—In the absence of a
4 special agreement to arbitrate, arbitrations under this sec5 tion shall be conducted under rules adopted by the Cor6 poration under section 301.

7 (e) SUBPOENA POWERS OF ARBITRATORS.—Arbitra8 tors may issue subpoenas to parties and nonparties for
9 testimony and documents in accordance with the terms of
10 section 308.

11 (f) LAW TO BE APPLIED.—

(1) IN GENERAL.—Subject to paragraph (2)
and unless otherwise provided in this Act, the arbitrator shall, with respect to each respondent, apply
the law, including the law relating to choice of law,
that would be applied by a court designated by the
claimant which would have jurisdiction over that respondent.

19 (2) EXCEPTION.—If a respondent demonstrates
20 to the satisfaction of an arbitrator that the court
21 designated by the claimant would dismiss or transfer
22 under forum non conveniens or a similar doctrine,
23 then the arbitrator shall apply the law of the State
24 that has the most significant relationship to the oc25 currence and the parties.

(g) PRESUMPTION APPLICABLE TO MEDICAL DETER MINATION.—

3 (1) BURDEN OF PROOF—Except as provided in
4 paragraph (2), a finding of medical eligibility by the
5 Corporation shall be presumed to be correct unless
6 rebutted by clear and convincing evidence.

7 (2) EXTENT OF EXPOSURE TO ASBESTOS.—
8 With respect to the issue of the extent of exposure
9 to asbestos, the burden of proof with respect to a
10 finding of medical eligibility by the Corporation shall
11 be determined in accordance with applicable State
12 law.

(h) AWARDS.—The arbitrator shall issue awards with
respect to each respondent within time periods set by the
Corporation. The awards shall be accompanied by findings
of fact and conclusions of law. Each respondent shall be
jointly and severally liable to the claimant to the extent
provided by applicable State law, as follows:

(1)(A) In any case in which joint and several liability exists under applicable State law, the arbitrator shall determine the total joint and several liability of all respondents that have not been released
by the claimant or dismissed from the proceeding.

(B) In addition to making a determinationunder subparagraph (A), the arbitrator shall deter-

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bility.

mine the amount allocable to each such respondent

based on principles of comparative fault or responsi-

(C)(i) Subject to clause (ii), any respondent

5	who has obtained a release from the claimant before
6	the issuance of the arbitrator's award shall be fully
7	protected from claims for contribution or indemnity.
8	(ii) In any case in which a respondent obtains
9	a release, the award against the remaining respond-
10	ents shall be reduced by the greater of—
11	(I) consideration paid; or
12	(II) the amount stated in the release.
13	(iii) The total award, reduced by the aggregate
14	amount of reductions determined under clause (ii)
15	for all respondents receiving a release, shall be allo-
16	cated among the remaining respondents according to
17	the arbitrator's allocation of comparative shares of
18	fault or responsibility.
19	(2) In any case in which joint and several liabil-
20	ity has been abolished under applicable State law,
21	the arbitrator shall determine in accordance with the
22	law of that State the share of several liability (re-
23	ferred to in this subsection as the "several share")
24	of each respondent that has not been released or dis-
25	missed from the proceeding.
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1	(3) In any case in which joint and several liabil-
2	ity has been abolished under applicable State law
3	with respect to only a portion of damages, the arbi-
4	trator shall determine in accordance with applicable
5	State law—
6	(A) the several share of each respondent
7	that has not been released or dismissed from
8	the proceeding; and
9	(B) the total amount of joint and several
10	liability of all such respondents.
11	(4) The allocation of the joint and several por-
12	tion of the award among the respondents, and the
13	reduction of the total award on account of settle-
14	ments, shall be made in accordance with subsection
15	(h)(1), except that—
16	(A) only the joint and several portion of an
17	award may be reduced by amounts paid in set-
18	tlement by released persons; and
19	(B) only that portion of the amount paid
20	by any released person in settlement with re-
21	spect to the joint and several portion of dam-
22	ages shall be so applied to reduce the award.
23	(i) Contribution Rights Retained by Respond-
24	ENTS IN ADR.—

1 (1) IN GENERAL.—The entry of an arbitration 2 award against any respondent under this section 3 shall give rise to a right of contribution on the part 4 of that respondent against any joint tortfeasor 5 whose liability is extinguished by the award without 6 the necessity that the award be enforced as a court 7 judgment.

8 (2) EFFECT OF SETTLEMENT.—A settlement 9 between a respondent and a claimant under this sec-10 tion that extinguishes in whole or in part the liabil-11 ity of a joint tortfeasor shall not extinguish the set-12 tling respondent's right of contribution against that 13 joint tortfeasor.

14 (j) PENALTY FOR INADEQUATE OFFER IN MEDI-15 ATION.—

16 (1) IN GENERAL.—If the final offer made by a 17 respondent or jointly represented group of respond-18 ents under section 306(e) is less than the amount 19 specified in paragraph (2), the arbitrator shall add 20 a 10-percent penalty to the award against that re-21 spondent or each member of the group of respond-22 ents.

(2) AMOUNT.—The amount specified in this
paragraph is, with respect to a respondent or a
jointly represented group of respondents, an amount

equal to 75 percent of the share of the total liability
(exclusive of prejudgment interest, if any) awarded
in arbitration against that respondent or that group
of respondents as a whole, the arbitrator shall add
a 10-percent penalty to the award against such respondent or each member of such group of respondents.

8 (3) EXCLUSION.—A penalty added under para9 graph (1) shall not be counted in any determination
10 of maximum allowable attorneys' fees under section
11 503.

12 (k) CONSOLIDATIONS.—Claims with respect to mul13 tiple exposed persons shall not be consolidated for hearing
14 on the merits without the consent of all parties.

15 SEC. 308. SUBPOENA POWERS OF MOTIONS OFFICERS AND
16 ARBITRATORS.

(a) IN GENERAL.—A motions officer or an arbitrator
under this title may summon in writing any person to attend before that officer or arbitrator as a witness, or to
appear for a deposition, and in a proper case to bring with
him or her any book, record, document, or paper which
may be deemed material as evidence in the case.

(b) FEES.—The fees for attendance under subsection
(a) shall be the same as the fees of witnesses before masters of the United States courts.

1	(c) SUMMONS.—
2	(1) IN GENERAL.—A summons under this sec-
3	tion shall—
4	(A) be issued in the name of the motions
5	officer or arbitrator;
6	(B) be signed by the motions officer or ar-
7	bitrator;
8	(C) be directed to the person summoned;
9	and
10	(D) be served in accordance with rule
11	45(b)(1) of the Federal Rules of Civil Proce-
12	dure.
13	(2) Effect of refusal or neglect.—If any
14	person summoned to testify or produce documents
15	under paragraph (1) refuses or neglects to obey that
16	summons, upon petition, the United States District
17	Court for the District of Columbia or the district
18	court for the district in which the testimony is to be
19	taken or the document production is to take place
20	may, in the same manner provided by law for secur-
21	ing the attendance of witnesses or for the punish-
22	ment of witnesses for neglect or refusal to attend in
23	the courts of the United States—
24	(Λ) commol

24 (A) compel—

(i) the attendance of that person be fore the motions officer or arbitrator;
 (ii) the appearance of that person for
 a deposition; or
 (iii) the production of documents; or
 (B) punish that person for contempt.

TITLE IV—CIVIL ACTIONS

8 SEC. 401. PREREQUISITES FOR CIVIL ACTION.

9 Subject to section 702, no civil action asserting any
10 asbestos claim may be filed or maintained unless the plain11 tiff has obtained a certificate of medical eligibility and re12 lease from mediation.

13 SEC. 402. INDIVIDUAL TRIALS.

7

(a) IN GENERAL.—No class action suit, joinder of
parties, aggregation of claims, consolidation of actions, extrapolation, or other device to determine multiple asbestos
claims on a collective basis shall be permitted without the
consent of each defendant.

(b) REMOVAL.—Any defendant in a civil action that
involves a violation of this section may remove such action
to an appropriate Federal district court.

(c) JURISDICTION.—The district courts of the United
States shall have jurisdiction of all civil actions removed
under this section without regard to diversity of citizenship or amount in controversy.

3 (a) BURDEN OF PROOF—Except as provided in sub4 section (b), a finding of medical eligibility by the Corpora5 tion shall be presumed to be correct unless rebutted by
6 clear and convincing evidence.

7 (b) EXTENT OF EXPOSURE TO ASBESTOS.—With re8 spect to the issue of the extent of exposure to asbestos,
9 the burden of proof with respect to a finding of medical
10 eligibility by the Corporation shall be determined in ac11 cordance with applicable State law.

12 SEC. 404. PENALTY FOR INADEQUATE OFFER IN MEDI-13 ATION.

(a) IN GENERAL.—If the final offer made by a respondent or jointly represented group of respondents
under section 306(e) is less than the amount specified in
paragraph (2), the court shall add a 10-percent penalty
to the award against that respondent or each member of
the group of respondents.

(b) AMOUNT.—The amount specified in this paragraph is, with respect to a respondent or a jointly represented group of respondents, an amount equal to 75 percent of the share of the total liability (exclusive of prejudgment interest, if any) assigned by the jury or other fact
finder to that respondent or that group of respondents as
a whole, the arbitrator shall add a 10-percent penalty to

the award against such respondent or each member of
 such group of respondents.

3 (c) EXCLUSION.—A penalty added under paragraph
4 (1) shall not be counted in any determination of maximum
5 allowable attorneys' fees under section 503.

6 TITLE V—RULES APPLICABLE 7 TO ARBITRATIONS AND CIVIL 8 ACTIONS

9 SEC. 501. ELEMENTS OF PROOF; RELIEF.

Subject to section 702 and notwithstanding any other
provision of law, the following shall apply in all civil actions and arbitrations involving an asbestos claim:

13	(1) ELEMENTS OF PROOF.—A plaintiff or
14	claimant shall be entitled to recovery if and only if—
15	(A)(i) the plaintiff or claimant presents a
16	certificate of medical eligibility; and
17	(ii) the defendant or respondent fails to
18	satisfy the applicable burden of proof under sec-
19	tion 403 to rebut the finding of medical eligi-
20	bility contained in the certificate; and
21	(B) the plaintiff or claimant establishes

that the exposure of the exposed person to asbestos or an asbestos-containing product of a
defendant or respondent was a substantial contributing factor in the exposed person's condi-

1	tion, as set forth in the certificate of medical
2	eligibility.
3	(2) Issues to be decided.—
4	(A) IN GENERAL.—Subject to subpara-
5	graph (B), the only issues that may be decided
6	in any civil action or arbitration involving an
7	asbestos claim are—
8	(i) whether the exposed person with
9	respect to whom a claim is made has or
10	had an asbestos-related disease or condi-
11	tion;
12	(ii) whether the exposure of the ex-
13	pose person to asbestos or an asbestos-con-
14	taining product of a defendant or respond-
15	ent was a substantial contributing factor in
16	causing that asbestos-related disease or
17	condition; and
18	(iii) the amount of compensatory dam-
19	ages, if any to be awarded.
20	(B) DETERMINATION OF COMPENSATORY
21	DAMAGES.—In addition to the issues referred to
22	in subparagraph (A), in any proceeding in
23	which, under applicable law, the share of com-
24	pensatory damages allocable to a defendant or
25	respondent is relevant to an issue described in

that subparagraph, the share of compensatory damages of that defendant or respondent shall be determined.

4 (C) PROHIBITION.—No evidence that is
5 not relevant to an issue referred to in subpara6 graph (A) or (B) may be offered by a plaintiff
7 or claimant against a defendant or respondent
8 in any civil action or arbitration involving an
9 asbestos claim.

10 (3)EMOTIONAL DISTRESS; MEDICAL MONI-11 TORING.—No damages or other relief shall be 12 awarded in any civil action or arbitration involving 13 an asbestos claim for emotional distress or any other 14 form of mental or emotional harm, or for medical 15 monitoring or surveillance, based wholly or in part 16 on exposure to asbestos unless the requirements of 17 paragraph (1) are met in addition to any other re-18 quirement under applicable law for recovery of dam-19 ages or other relief for emotional distress or medical 20 monitoring or surveillance.

(4) ENHANCED RISK.—No damages or other relief shall be awarded in any civil action or arbitration involving an asbestos claim solely for increased
risk of cancer or other disease.

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(5) PUNITIVE DAMAGES.—No punitive damages
 shall be awarded in any civil action or arbitration in volving an asbestos claim.

4 SEC. 502. TIMELINESS DEFENSES ABOLISHED.

5 No defense to an asbestos claim based on a statute 6 of limitations or statute of repose, laches, or any other 7 defense based on the timeliness of the claim shall be recog-8 nized or allowed in any civil action or arbitration unless 9 that claim was untimely as of the date of enactment of 10 this Act.

11 SEC. 503. ATTORNEYS' FEES.

(a) IN GENERAL.—Notwithstanding any other provision of law or any contract, the aggregate amount of fees,
including expenses and other charges, of a claimant's attorneys in any proceeding covered under this Act shall not
exceed an amount equal to 25 percent of the amount of
compensation received by the claimant as a result of that
proceeding.

(b) RULES OF PROCEDURE.—The Corporation shall
establish rules of procedure that require any attorney who
represents a claimant in any proceeding covered under this
Act to submit an itemized statement of expenses and fees
to the Corporation before receiving any fee.

24 (c) PENALTIES.—Any attorney who charges, de-25 mands, receives, or collects, for services rendered in con-

nection with any proceeding under this Act, an amount
 that exceeds the amount that is allowable under this Act
 shall—

4 (1) be guilty of a misdemeanor; and

5 (2) upon conviction, be subject to a fine of not
6 more than \$10,000, imprisonment for not more than
7 1 year, or both.

8 SEC. 504. CERTAIN PRIOR LITIGATION DEFENSES ABOL9 ISHED.

(a) IN GENERAL.—Notwithstanding any other provision of law, a judgment or settlement of an asbestos claim
for a nonmalignant condition satisfying the requirements
of section 201 shall not preclude a subsequent claim with
respect to the same exposed person for a malignant condition satisfying the requirements of section 202, 203, 204,
or 206, as applicable.

17 (b) RULE OF CONSTRUCTION.—Subsection (a) shall
18 not be construed to invalidate any provision of a settle19 ment agreement entered into before the date of enactment.

20 TITLE VI—FUNDING

21 SEC. 601. COSTS OF MEDICAL REVIEW AND OVERHEAD AND

22 **ADMINISTRATION.**

- 23 (a) PROVISIONAL ALLOCATION.—
- 24 (1) Estimate of costs.—

1	(A) IN GENERAL.—On or before August 1
2	of each year, the Corporation shall estimate the
3	costs of the Corporation (exclusive of the cost
4	of mediation and arbitration that may be recov-
5	ered under section 602) for the following fiscal
6	year (beginning on October 1 of that year).
7	(B) Allowances for contingencies;
8	COSTS OF MEDICAL REVIEW, OVERHEAD, AND
9	ADMINISTRATION.—In estimating its costs
10	under this section, the Corporation shall—
11	(i) make reasonable allowances for
12	contingencies; and
13	(ii) state separately those costs di-
14	rectly related to—
15	(I) medical review; or
16	(II) general overhead and admin-
17	istration of the Corporation.
18	(2) Allocation to respondents.—
19	(A) IN GENERAL.—The Corporation shall
20	proportionally allocate the costs estimated
21	under paragraph (1) among all persons named
22	as a respondent during the 12-month period
23	ending the preceding June 30 and shall notify
24	each such person of the amount due under that
25	allocation.

1	(B) Determination of respondents.—
2	In this section, a person shall be considered
3	named as a respondent if notice was provided
4	to that person under section 303 or 304.
5	(C) Determination of number of pro-
6	CEEDINGS.—In making an allocation under
7	subparagraph (B), the Corporation shall deter-
8	mine the following:
9	(i) For each individual respondent,
10	the total number of proceedings in which
11	the respondent has been named.
12	(ii) The total combined number of
13	proceedings for all respondents.
14	(D) COUNTING CLAIMS.—For purposes of
15	a determination under subparagraph (C) all
16	claims, including derivative claims, relating to 1
17	exposed person shall be counted as 1 proceeding
18	for each respondent named in the proceeding.
19	(E) Determination of Allocation.—In
20	calculating an allocation made in accordance
21	with subparagraph (A), the total number of
22	proceedings for each respondent shall be divided
23	by the total combined number of proceedings
24	for all respondents to determine the percentage
25	of costs allocable to each individual respondent.

(F) PROHIBITION.—The Corporation shall 1 2 not allocate any of the costs estimated under 3 paragraph (1) to any respondent whose allo-4 cable share of the costs, in the absence of such 5 exclusion, is less than a de minimis percentage 6 established by the Corporation. Any such 7 unallocated percentage shall be reallocated to 8 the remaining respondents based upon their 9 original allocation percentages.

10 (3)Payment \mathbf{OF} ESTIMATED SHARE OF 11 COSTS.—Each respondent shall pay to the Corpora-12 tion the allocated share of the respondent of the esti-13 mated costs of the Corporation not later than 30 14 days after the date of notification of the allocated 15 share of the respondent.

16 (b) FINAL ALLOCATION.—

17 (1) IN GENERAL.—On or before November 30 18 of each year, the Corporation shall determine the 19 total costs of the Corporation (exclusive of the cost 20 of mediation and arbitration that may be recovered 21 from respondents under section 602) for the pre-22 ceding fiscal year ending September 30 and shall al-23 locate those costs proportionally, in the manner de-24 scribed in subsection (a)(2), among persons who 25 were named as respondents in that fiscal year.

1 (2) ATTRIBUTION OF COSTS.—In making an al-2 location under this subsection, the Corporation shall 3 state separately those costs directly attributable to— 4 (A) the medical review process; or 5 (B) general overhead and administration of 6 the Corporation. 7 (3)PAYMENT DEFICIENCIES.—If the \mathbf{OF} 8 amount allocated to any person under this sub-9 section is greater than the amount deposited by such 10 person under subsection (a)(2) with respect to the preceding fiscal year, that person shall pay the defi-11 12 ciency to the Corporation not later than 30 days 13 after receiving a notice of deficiency from the Cor-14 poration. 15 (4) REFUNDS.—If the amount allocated to any 16 person under this subsection is less than the amount 17 deposited by such person under subsection (a)(2) for 18 the preceding fiscal year, the Corporation shall 19 promptly refund the difference to that respondent. 20 (c) TRANSITIONAL PROVISIONS.— 21 (1) STARTUP FUNDING.— 22 (A) IN GENERAL.—Startup funding shall 23 be provided by voluntary contributions within 24 30 days after appointment and confirmation of 25 the first director of the Board. Those contribu-

1	tions shall be provided by the signatories to a
2	startup funding agreement that all of the de-
3	fendants shall enter into before that date, in ac-
4	cordance with, and contingent only on the
5	terms and conditions contained in that agree-
6	ment.
7	(B) Refund of contributions.—Unless
8	the Corporation and the donor otherwise agree,
9	the Corporation shall refund contributions made
10	under subparagraph (A) following receipt of the
11	funds allocated under the initial determination
12	of costs and assessments to defendants provided
13	in subsection $(c)(2)$.
14	(C) STARTUP COSTS DEFINED.—For pur-
15	poses of this subsection, startup costs include
16	all reasonable and necessary expenses of the
17	Corporation incurred before the availability of
18	transitional funding under paragraph (2).
19	(2) Transitional funding.—
20	(A) NOTICE.—As soon as feasible after a
21	majority of the Board is appointed and con-
22	firmed, the Board shall provide notice request-
23	ing the information listed in subparagraph (B)
24	to each defendant served in any civil action in-
25	volving an asbestos claim pending on the date

1	of enactment of this Act. The notice shall be
2	the best practicable notice under the cir-
3	cumstances, including publication in the Fed-
4	eral Register and individual notice to any de-
5	fendant that can be identified through reason-
6	able effort.
7	(B) INFORMATION TO BE PROVIDED.—
8	Within such time as the Corporation may pre-
9	scribe, but not less than 60 days after the date
10	of publication in the Federal Register, each per-
11	son who, as of the date of enactment of this
12	Act, has been served as a defendant in at least
13	5,000 pending civil actions involving asbestos
14	claims shall provide to the Corporation a state-
15	ment containing the following information:
16	(i) The total number of civil actions in
17	which that person was named as a defend-
18	ant.
19	(ii) With respect to each civil action
20	referred to in clause (i)—
21	(I) the name of the lead plaintiff;
22	(II) the name of the lead defend-
23	ant;
24	(III) the court in which the civil
25	action was pending; and

1	(IV) the docket number.
2	(C) Counting Rules.—For purposes of
3	subparagraph (B):
4	(i) All asbestos claims relating to a
5	single exposed person, including derivative
6	claims, shall be treated as 1 civil action re-
7	gardless of the number of plaintiffs or de-
8	fendants named in the complaint.
9	(ii) In civil actions involving multiple
10	plaintiffs and defendants, each asbestos
11	claim shall be deemed to have been as-
12	serted against each defendant unless the
13	complaint states otherwise.
14	(iii) Third-party defendants shall cal-
15	culate the number of civil actions involving
16	asbestos claims pending against them as if
17	they had been joined as a defendant by the
18	original plaintiff or plaintiffs.
19	(iv) Cross claims, deemed or other-
20	wise, shall not count as a separate civil ac-
21	tion.
22	(D) SIGNATURE.—The statement of infor-
23	mation required under this paragraph shall be
24	signed on behalf of the defendant by a cor-
25	porate officer or (in the case of a defendant

	01
1	that is not a corporation) a senior official com-
2	parable to a corporate officer, authorized to
3	bind such defendant, attesting under penalty of
4	perjury that the information contained therein
5	is true and complete to the best of his knowl-
6	edge and belief after reasonable investigation.
7	(E) Allocation and payment.—
8	(i) IN GENERAL.—The Corporation
9	shall—
10	(I) proportionally allocate the es-
11	timated costs of the Corporation for a
12	transitional period to include the first
13	2 fiscal years after the date of enact-
14	ment of this Act, in substantially the
15	same manner as the allocation de-
16	scribed in subsection $(a)(2)$, to the de-
17	fendants identified in this paragraph;
18	and
19	(II) notify each such defendant
20	of its proportionate share of such esti-
21	mated transitional costs.
22	(ii) PAYMENT.—Not later than 45
23	days after the date on which a defendant
24	receives a notice made under clause (i)(II),
25	that defendant shall pay its share of the

estimated transitional costs to the Cor-
poration.
(3) Reconciliation.—
(A) IN GENERAL.—On or before November
30 following the end of the transitional period,
the Corporation shall—
(i) determine the total costs of the
Corporation (exclusive of the cost of medi-
ation and arbitration that may be recov-
ered from respondents under section 602)
for the transitional period, including start-
up costs; and
(ii) proportionally allocate those costs,
in substantially the same manner as the al-
location described in subsection $(a)(2)$,
among defendants who were named as re-
spondents during that transitional period.
(B) STATEMENT OF COSTS.—In making an
allocation under this subsection, the Corpora-
tion shall state separately those costs directly
attributable to—
(i) the medical review process; or
(ii) general overhead and administra-
tion of the Corporation.

1 (C) PAYMENT OF DEFICIENCIES.—If the 2 amount allocated to any respondent under this 3 subsection is greater than the amount deposited 4 by such respondent under paragraph (2), that 5 respondent shall pay the deficiency to the Cor-6 poration within 30 days after receiving a notice 7 of deficiency from the Corporation.

8 (D) REFUNDS.—If the amount allocated to 9 any respondent under this subsection is less 10 than the amount deposited by such respondent 11 under paragraph (2), the difference shall be re-12 funded promptly.

13 SEC. 602. COST OF MEDIATION AND ARBITRATION.

(a) MEDIATION.—The cost of mediation shall be
charged, on a per capita basis, to each respondent who
participated in the mediation, wholly or in part.

17 (b) ARBITRATION.—In the absence of an agreement 18 among the parties to the contrary, the cost of arbitration 19 shall be charged, on a per capita basis, to each respondent 20 who participated in the arbitration, wholly or in part, ex-21 cept that, the Corporation may by rule provide for a reduc-22 tion in the costs charged to respondents who settle or are dismissed from arbitration before the commencement of 23 24 the hearing.

SEC. 603. INFORMAL DISPUTE RESOLUTION.

1

(a) PROCEDURES.—The Corporation shall establish
expeditious procedures for the informal resolution of disputes regarding the assessment of costs under this title.
The Corporation may, in its sole discretion, postpone the
obligation to pay the disputed assessment, wholly or in
part, during the pendency of informal dispute resolution
procedures.

9 (b) VOLUNTARY PROCEDURES.—The Corporation
10 may agree to participate in voluntary alternative dispute
11 resolution procedures, including mediation and arbitra12 tion, to resolve disputes regarding assessments.

13 SEC. 604. JUDICIAL REVIEW; ENFORCEMENT.

14 (a) JURISDICTION.—

(1) IN GENERAL.—The district courts of the
United States shall have exclusive jurisdiction, without regard to the amount in controversy or citizenship of the parties, to review any assessment of costs
made by the Corporation under this title.

20 (2) TREATMENT OF CHALLENGED ASSESS21 MENT.—The reviewing court shall uphold a chal22 lenged assessment unless that court determines that
23 that assessment is arbitrary and capricious or other24 wise not in accordance with law.

1 (3) PROCEDURES.—No action under this sub-2 section may be commenced or maintained by any 3 person unless that person first has— 4 (A) exhausted the informal dispute resolu-5 tion procedures provided under section 603; and 6 (B) paid to the Corporation the entire 7 amount assessed to that person by the Corpora-8 tion, including the amount in dispute. 9 (b) AUTHORITY OF CORPORATION.— 10 (1) IN GENERAL.—The Corporation shall have 11 the authority to bring an action in a district court 12 of the United States to enforce any obligation im-13 posed on any person by this title. 14 (2) JURISDICTION.—In an action brought under 15 paragraph (1), the district court of the United 16 States shall have exclusive jurisdiction of such action 17 without regard to the amount in controversy or citi-18 zenship of the parties. 19 (3) DEFENSES.—The court shall not entertain 20 any defense other than lack of jurisdiction in any ac-21 tion by the Corporation to recover assessments due 22 under this title unless the assessment is fully paid, 23 with interest. If the assessment is fully paid, with in-24 terest, the court shall uphold the Corporation's determination that a determination is not arbitrary
 and capricious or otherwise contrary to law.

(4) PAYMENT OF COSTS.—In any action under
this subsection in which the Corporation prevails,
the Corporation shall be entitled to costs, including
reasonable attorneys' fees, and interest on any unpaid funds. Interest under this subsection shall be
equal to the rate applicable to underpaid taxes under
section 6621 of the Internal Revenue Code of 1986.

10 SEC. 605. PENALTIES.

11 If any person who is required by section 601 to pro-12 vide information to the Corporation willfully fails to provide that information within the period of time specified 13 14 by the Corporation, that person shall forfeit to the Cor-15 poration an amount equal to \$50,000. That forfeiture 16 shall be payable to the Corporation, and shall be recover-17 able in a civil suit in the name of the Corporation brought under section 604(b). 18

19SEC. 606. ASBESTOS RESOLUTION CORPORATION TRUST20FUND.

(a) ESTABLISHMENT.—There is established in the
Treasury of the United States a trust fund, to be known
as the Asbestos Resolution Corporation Trust Fund (in
this section referred to as the "Trust Fund"), consisting
of such amounts as are transferred to the Trust Fund

under subsection (b) and any interest earned on invest ment of amounts in the Trust Fund under subsection
 (c)(2).

4 (b) TRANSFER OF AMOUNTS EQUIVALENT TO CER5 TAIN TARIFFS.—The Corporation shall transfer to the
6 Secretary of the Treasury for deposit in the Trust Fund
7 any—

8 (1) amounts paid to the Corporation under sec-9 tions 601 and 602;

10 (2) amounts received by the Corporation as vol-11 untary donations;

12 (3) interest earned on deposits made by the13 Corporation;

(4) amounts received by the Corporation as
judgments, costs (including reasonable attorneys'
fees) and interest under section 604 or any other applicable provision of law; and

18 (5) penalties paid to the Corporation under sec-19 tion 605.

20 (c) Investment of Trust Fund.—

(1) IN GENERAL.—It shall be the duty of the
Secretary of the Treasury to invest such portion of
the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such
investments may be made only in interest-bearing

obligations of the United States or in obligations
 guaranteed as to both principal and interest by the
 United States.

4 (2) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund (except special obligations
6 issued exclusively to the Trust Fund) may be sold by
7 the Secretary of the Treasury at the market price,
8 and such special obligations may be redeemed at par
9 plus accrued interest.

10 (3) CREDITS TO TRUST FUND.—The interest
11 on, and the proceeds from the sale or redemption of,
12 any obligations held in the Trust Fund shall be
13 credited to and form a part of the Trust Fund.

(d) OBLIGATIONS FROM TRUST FUND.—The Corporation may obligate such sums as are available in the
Trust Fund (including any amounts not obligated in previous fiscal years) in a manner consistent with this Act.
Amounts in the Trust Fund shall be available for obligation without fiscal year limitation.

20 **TITLE VII—APPLICABILITY;**

21 **PENDING CIVIL ACTIONS**

22 SEC. 701. APPLICABILITY.

Subject to section 702, beginning on the date of en-actment of this Act, this Act shall apply to any civil action

1	asserting an asbestos claim that has not resulted in a
2	final, nonappealable judgment.
3	SEC. 702. PENDING CIVIL ACTIONS.
4	(a) IN GENERAL.—
5	(1) CERTIFICATES OF MEDICAL ELIGIBILITY.—
6	A certificate of medical eligibility shall not be re-
7	quired in any civil action asserting an asbestos claim
8	if—
9	(A) that action was pending on the date of
10	enactment of this Act; and
11	(B) a trial commences before the oper-
12	ational date.
13	No release from mediation shall be required in any
14	civil action asserting an asbestos claim if the action
15	was pending on the date of enactment, whether or
16	not trial commences before the operational date.
17	(b) Elections.—Before the operational date, a
18	plaintiff in a civil action asserting an asbestos claim that
19	is pending on the date of enactment may elect to submit
20	that claim to the Corporation for a determination of med-
21	ical eligibility. Any such election shall be irrevocable.
22	(c) BURDEN OF PROOF.—Notwithstanding any other
23	provision of law, the plaintiff in any civil action asserting
24	an asbestos claim who has not obtained a certificate of
25	medical eligibility shall have the burden of establishing the

existence of an asbestos-related condition that meets the
 criteria for an eligible medical category under sections 201
 through 204.

4 TITLE VIII—MISCELLANEOUS 5 PROVISIONS

6 SEC. 801. APPLICABILITY OF OTHER FEDERAL LAWS.

7 (a) IN GENERAL—Nothing in this Act shall be con8 strued to make any director, officer, or employee of the
9 Corporation, an officer or employee of the Federal Govern10 ment for purposes of title 5, United States Code. Neither
11 the Corporation nor any director, officer, or employee of
12 the Corporation shall be subject to section 1341(a) of title
13 31, United States Code.

(b) APPLICABILITY OF CERTAIN ADMINISTRATIVE
PROVISIONS.—To the extent consistent with the provisions
of this Act, the Corporation shall be subject to the requirements of sections 552a, 553, 555, and 706 of title 5,
United States Code, as though the Corporation were an
agency, as such term is defined under section 551(1) of
such title.

(c) DISCLOSURE OF INFORMATION.—In order to preserve the integrity of the settlement process in the resolution of asbestos claims, the Corporation shall exempt from
disclosure under section 552(b)(3) of title 5, United States
Code, with respect to information or documents that con-

1	tain the results of settlements or settlement averages, indi-
2	vidual party or attorney names, medical records, and re-
3	lated data collected for the purpose of resolving individual
4	claims.
5	(d) EXEMPTIONS.—The Corporation shall be exempt
6	from the requirements of the following provisions of law:
7	(1) Sections 504 and 552b of title 5, United
8	States Code.
9	(2) Chapter 51 of title 5, United States Code.
10	(3) Chapter 53 of title 5, United States Code.
11	(4) The Ethics in Government Act (5 U.S.C.
12	App.).
13	(5) Sections 2412 and 2672 of title 28, United
14	States Code.
15	(6) Title III of the Federal Property and Ad-
16	ministrative Services Act of 1949 (41 U.S.C. 251 et
17	seq.).
18	(7) Chapter 35 of title 44, United States Code.
19	SEC. 802. OBLIGATIONS OF THE CORPORATION NOT OBLI-
20	GATIONS OF THE UNITED STATES.
21	Obligations or liabilities of the Corporation shall not
22	be obligations or liabilities of the United States. No action
23	may be maintained against the United States to enforce
24	any obligation or liability of the Corporation.

1 SEC. 803. APPLICATION TO EXISTING ASBESTOS TRUSTS.

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

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

11 SEC. 804. SETTLEMENTS UNAFFECTED.

Nothing in this Act shall prohibit any claimant, plaintiff, respondent, or defendant from entering into a settlement agreement or any other agreement concerning a
claim covered, in whole or in part, under this Act.

16 SEC. 805. SEVERABILITY.

17 If any provision of this Act or the application of such 18 provision to any person or circumstance is held invalid, 19 it is the intent of Congress that the remainder of this Act 20 and application of such provision to other persons or cir-21 cumstances shall not be affected thereby.

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