

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 litigation
10 tion is straining Federal and State courts at enormous
11 taxpayer expense, with more than 150,000
12 such lawsuits currently pending in the tort system
13 and tens of thousands of new cases filed every year.

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

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

1 (6) Currently, statutes of limitations can force
2 claimants to bring premature lawsuits in order to
3 avoid losing their claim for compensation. Moreover,
4 in order to obtain compensation for nonmalignant
5 disease, claimants often must give up their right to
6 obtain compensation later on, if they develop an as-
7 bestos-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 re-
13 sulted in the violation of a basic tenet of American
14 justice; which is the speedy and inexpensive resolu-
15 tion of cases.

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

22 (9) In many courts, the vast majority of pend-
23 ing asbestos claims are filed by individuals who suf-
24 fer no present asbestos-related impairment. These
25 claims divert the resources of defendants from com-

1 compensating individuals who are suffering from serious
2 asbestos-related disease.

3 (10) Punitive damages also divert the resources
4 of defendants from compensating impaired claim-
5 ants. Moreover, punitive damages give a few claim-
6 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:

19 (1) ALTERNATIVE DISPUTE RESOLUTION PROC-
20 ESS.—The term “alternative dispute resolution proc-
21 ess” means the mediation and voluntary arbitration
22 process established under title III of this Act.

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

by physical or chemical means and a fibrous configuration, including asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, or actinolite.

(3) ASBESTOS CLAIM.—The term “asbestos claim” means any claim for damages or other relief, arising out of, based on, or related to the health effects of exposure to asbestos, including any claim for personal injury, death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance, and including any claim made by or on behalf of any exposed person or any representative, spouse, parent, child, or other 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.

1 (11) BOARD-CERTIFIED RADIOLOGIST.—The
 2 term “board-certified radiologist” means a physician
 3 who is currently certified by the American Board of
 4 Radiology.

5 (12) BYLAWS.—The term “bylaws” means the
 6 code or codes of rules adopted for the regulation or
 7 management of the affairs of the Corporation. By-
 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 (13) CANCER.—The term “cancer” means any
 14 of the various malignant neoplasms marked by the
 15 proliferation of anaplastic cells that tend to invade
 16 surrounding tissue and metastasize to new body
 17 sites and the pathological condition characterized by
 18 such growths.

19 (14) CERTIFICATE OF MEDICAL ELIGIBILITY.—
 20 The term “certificate of medical eligibility” means a
 21 certificate issued by the Corporation to a claimant
 22 under this Act certifying that an exposed person
 23 meets the requirements of 1 or more eligible medical
 24 categories (or qualifies as an exceptional medical
 25 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.

5 (19) CLINICAL EVIDENCE OF ASBESTOSIS.—

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 $FEV_1/FVC \geq 75$ percent (actual value);
 18 or

19 (ii) $TLC < 80$ percent of predicted
 20 value, with either $DLCO \leq 76$ 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.

(B) Chest x-rays which, in the opinion of a certified B-reader, show small irregular opacities of ILO grade 1/1 or greater; and pulmonary function testing that shows either—

(i) $FVC < 80$ percent of predicted value with $FEV_1/FVC \geq 72$ percent (actual value) or, if the individual tested is at least 68 years old at the time of the testing, with $FEV_1/FVC \geq 65$ percent (actual value);

or

(ii) $TLC < 80$ percent of predicted value.

(20) COMPENSATORY DAMAGES.—The term “compensatory damages” means damages awarded for economic and noneconomic loss.

(21) CORPORATION.—The term “Corporation” means the Asbestos Resolution Corporation established in section 101.

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

(23) DLCO.—The term “DLCO” means diffusing capacity of the lung (carbon monoxide), which is a measure of the volume of carbon monoxide transferred from the alveoli to blood in the pul-

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

3 (24) ECONOMIC LOSS.—The term “economic
4 loss” means any pecuniary loss resulting from harm
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.

11 (25) ELIGIBLE MEDICAL CATEGORY.—The term
12 “eligible medical category” means mesothelioma,
13 lung cancer, other cancer, and nonmalignant condi-
14 tions.

15 (26) EVIDENCE OF BILATERAL PLEURAL
16 THICKENING WITH IMPAIRMENT.—The term “evi-
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:

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

and is not explained by any other condition in the subject's history; and pulmonary function testing that shows—

(i) if TLC is available, $\text{TLC} < 75$ percent of predicted value; or

(ii) if TLC is not available, VC or $\text{FVC} < 75$ percent of predicted value with $\text{FEV}_1/\text{FVC} \geq 75$ percent (actual value); and in either case

(iii) a statement by the board-certified internist or board-certified pulmonary specialist that the asbestos-related changes are a substantial contributing factor in causing the pulmonary function changes.

(B) Chest x-rays which, in the opinion of a certified B-reader, show bilateral pleural thickening of ILO grade C2 or greater, and which includes the blunting of at least 1 costophrenic angle and is not explained by any other condition in the subject's history; and pulmonary function testing that shows—

(i) $\text{FVC} < 80$ percent of predicted value with $\text{FEV}_1/\text{FVC} \geq 75$ percent (actual value), or, if the individual tested is at least 68 years old at the time of the test-

ing, with $FEV_1/FVC \geq 65$ percent (actual value); or

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

(iii) a statement by the board-certified internist or board-certified pulmonary specialist that the asbestos-related changes are a substantial contributing factor in causing the pulmonary function changes.

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

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

(29) FEV_1 .—The term “ FEV_1 ” means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity (FVC). FEV_1 shall be measured using standard spirometric methods.

(30) FINAL CERTIFICATE OF ELIGIBILITY.—The term “final certificate of eligibility” means a

1 certificate of eligibility that is not subject to further
2 review or modification by the Corporation, whether
3 on reconsideration under section 205 by action of
4 an exceptional medical claims panel under section
5 206.

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.

11 (32) GOOD FAITH OFFER OR GOOD FAITH DE-
12 MAND.—The terms “good faith offer” or “good faith
13 demand” means a settlement offer or demand which
14 reflects an evaluation of relevant factors of tradi-
15 tional 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.

21 (35) ILO GRADE.—The term “ILO grade”
22 means the radiological ratings for the presence of
23 lung changes by chest x-rays as established from
24 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-

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

4 (46) PERSON.—The term “person” means an
 5 individual, trust, firm, corporation, association, part-
 6 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 cov-
 10 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.—

21 (A) IN GENERAL.—The term “predicted
 22 value” for spirometry and lung volumes shall be
 23 the relevant value published by Morris, Clinical
 24 Pulmonary Function Testing, 2d Edition, Inter-
 25 mountain Thoracic Society (1984). “Predicted

Value” for diffusing capacity shall be the relevant value published by Miller, et al., “Single Breath Diffusing Capacity in a Representative Sample of the Population of Michigan, a Large Industrial State”, 127 American Review of Respiratory Disease, 270–77 (1983).

(B) CORRECTIONS.—Predicted value in all pulmonary function tests shall be corrected for race, ethnic origin, and other relevant factors.

(49) PULMONARY FUNCTION TESTING.—

(A) IN GENERAL.—The term “pulmonary function testing” means spirometry, lung volume, and diffusing capacity (“DLCO”) testing.

(B) METHODS.—

(i) SPIROMETRY.—All spirometry shall use standard spirometric methods.

(ii) PULMONARY FUNCTION TESTING OTHER THAN SPIROMETRY.—Pulmonary function testing other than spirometry shall use methods, quality criteria, and standards approved by the Board, upon the recommendation of the Medical Advisory Board. Such methods, quality criteria, and standards shall be generally recognized by authoritative professional bodies as ap-

1 appropriate, 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.

1 (B) EXCLUSION.—The term does not in-
2 clude an asbestos trust in existence as of the
3 date of enactment of this Act unless the trust
4 elects to be covered by this Act under section
5 803.

6 (52) STANDARD SPIROMETRIC METHODS.—

7 (A) IN GENERAL.—The term “standard
8 spirometric methods” means spirometric meth-
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 sub-
25 mitting results of testing with standard spirometric

metric methods to the Corporation under this Act, all backup data for those results (including flow volume loops, spirographs, and other tracings), necessary to ensure that the quality criteria and standards under subparagraphs (A) and (B) have been satisfied shall be submitted to the Corporation.

(53) STATE.—The term “State” means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

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

(55) WORKERS’ COMPENSATION LAW.—

(A) IN GENERAL.—The term “workers compensation law” means a law concerning a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational 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;

1 (4) appoint 1 or more exceptional medical
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-

1 tor appointed to fill a vacancy occurring before the expira-
2 tion of the term for which the predecessor of that director
3 was appointed shall be appointed for the remainder of that
4 term. A vacancy shall not affect the power of the Board.

5 (d) REMOVAL.—Directors may be removed for cause
6 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.

12 (2) Directors may be reimbursed for reasonable
13 travel and other expenses incurred in connection
14 with their services to the Corporation under policies
15 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.

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

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

3 (h) EXCLUSIVE AUTHORITY.—The Board shall have
4 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;

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

15 (3) recommend the inclusion of new diseases in
16 the eligible medical category known as “other can-
17 cer” if the Board finds, upon the recommendation of
18 the Medical Advisory Board and at a meeting ex-
19 pressly called for that purpose, that there is a med-
20 ical consensus that the disease is caused by exposure
21 to asbestos; and

22 (4) adopt and amend bylaws.

23 **SEC. 104. OFFICERS.**

24 The Corporation shall have a chief executive officer
25 and such other officers as may be named and appointed

1 by the Board at rates of compensation and terms of serv-
 2 ice fixed by the Board. Officers of the Corporation may
 3 not simultaneously serve on the Board.

4 **SEC. 105. MEDICAL ADVISORY BOARD.**

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

8 (1) retention, supervision, and removal of prac-
 9 ticing physicians; establishment of guidelines regard-
 10 ing exceptional medical claims;

11 (2) the appropriateness of adding new diseases
 12 to the “other cancer” eligible medical category des-
 13 ignated as “other cancer”; and

14 (3) such other medical matters as may be re-
 15 ferred to the Medical Advisory Board by the Board.

16 (b) COMPOSITION; RULES AND POLICIES.—

17 (1) NUMBER OF MEMBERS.—The Medical Advi-
 18 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 condi-
 23 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.

1 (b) POLICIES AND PROCEDURES.—In addition, the
 2 Board shall adopt policies and procedures to guard against
 3 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 Sen-
 7 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 CONDI-**
 14 **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—

- 19 (1) a latency period of at least 12 years; and
- 20 (2)(A) clinical evidence of asbestosis;
- 21 (B) pathological evidence of asbestosis; or
- 22 (C) evidence of bilateral pleural thickening with
- 23 impairment.

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

1 removed under circumstances that involved regular
2 airborne emissions of visible asbestos dust, shall
3 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 in-
7 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 $\frac{1}{2}$; 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.

21 (iii) For each year after 1979 for which a
22 claimant demonstrates, by a preponderance of the
23 evidence, that the exposed person's exposure to as-
24 bestos in the occupation of that person was, during
25 a substantial portion of that work year, in excess of

1 the OSHA 8-hour time-weighted average airborne
 2 concentration for asbestos exposure at that time,
 3 that year shall count $\frac{1}{2}$ for purposes of calculating
 4 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-cer-
 11 tified oncologist (as appropriate for the type of can-
 12 cer claimed) of primary cancer of the colon or rec-
 13 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.**

20 (a) APPLICATION.—A claimant may apply for a cer-
 21 tificate of medical eligibility by submitting to the Corpora-
 22 tion such information as the Corporation may require in
 23 a form designated by the Corporation, that includes a
 24 statement that the claimant is not required to retain an

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

3 (1) PERSONAL INFORMATION.—The name, ad-
4 dress, date of birth, and death (if applicable), smok-
5 ing history, occupational history, and social security
6 number of the exposed person, and the relationship
7 between the exposed person and the claimant if the
8 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.

17 (3) MEDICAL INFORMATION.—

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

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

23 (ii) All medical diagnoses, reports and
24 records that relate to any claimed asbes-
25 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 PPLICATIONS.—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
 25 not preclude the Corporation from requesting addi-

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
 24 connection with a claim, other than information in any
 25 medical report or records, shall be made—

- 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-

ther information from the applicant or from third parties, or may require additional medical examination or testing, in accordance with the provisions of subsections (c) and (d).

(3) OPERATION OF PANEL.—

(A) IN GENERAL.—The panel of practicing physicians shall consider the issues raised by the request for reconsideration de novo on the basis of all of the evidence before the Corporation.

(B) DECISIONS.—If the panel of practicing physicians agrees on the disposition of the request for reconsideration, the panel shall render a decision.

(C) AUGMENTATION.—If the panel is not in agreement, the Corporation shall appoint to the panel a third practicing physician with expertise in the issues raised by the claimant, and the panel of 3 practicing physicians shall render a decision.

(4) ACCEPTANCE OR DENIAL OF REQUESTS.—

(A) ACCEPTANCE.—If the panel approves the request for reconsideration, wholly or in part, the Corporation shall issue a certificate of medical eligibility for the eligible medical cat-

1 egories for which the panel finds that the claim-
 2 ant qualifies.

3 (B) DENIAL.—If the panel denies the re-
 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

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

5 **SEC. 206. EXCEPTIONAL MEDICAL CLAIMS.**

6 (a) EXCEPTIONAL MEDICAL CLAIMS PANEL.—

7 (1) IN GENERAL.—The Corporation shall estab-
8 lish 1 or more exceptional medical claims panels.
9 Each exceptional medical claims panel shall be com-
10 prised of 5 practicing physicians, including—

11 (A) 2 board-certified pulmonary specialists;

12 (B) 1 board-certified radiologist (who is ei-
13 ther a certified B-reader or a specialist in com-
14 puted tomography); and

15 (C) 2 board-certified pathologists.

16 (2) DETERMINATIONS.—Each exceptional med-
17 ical claims panel shall determine whether claims re-
18 ferred to the panel meet the requirements of this
19 section for designation as exceptional medical claims.

20 (b) TIME TO APPLY.—

21 (1) IN GENERAL.—Subject to paragraph (2), a
22 claimant may apply to the Corporation for designa-
23 tion of his claim as an exceptional medical claim if
24 the claimant—

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.

1 (e) FURTHER TESTING.—The exceptional medical
 2 claims panel may order additional appropriate, reasonable,
 3 and noninvasive testing or examination of the exposed per-
 4 son (including computed tomography (CT) scanning).
 5 Tests ordered by an exceptional medical claims panel shall
 6 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
 11 or in part, as an exceptional medical claim, the Corpora-
 12 tion shall issue a certificate of medical eligibility which
 13 shall designate the claim as an exceptional medical claim
 14 and state the eligible medical category or categories for
 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.

1 (2) EFFECT OF CERTAIN PENDING APPLICA-
 2 TIONS.—No action for review under this section may
 3 be commenced while an application for designation
 4 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 Corpora-
 14 tion if the determination is supported by substantial evi-
 15 dence on the record as a whole and is not contrary to law.
 16 Due account shall be taken of the rule of prejudicial error.

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 Corpora-
 21 tion or the exceptional medical claims panel by the
 22 claimant;

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

(3) the results of any medical tests administered at the direction of the Corporation or exceptional medical claims panel.

TITLE III—ALTERNATIVE DISPUTE RESOLUTION

SEC. 301. RULES OF PROCEDURE.

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

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

(2) include—

(A) reasonable time limits and rules regarding the time at which actions of the Corporation become final;

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

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

(D) rules regarding protection of confidential information;

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

3 (F) arbitration procedures designed to fur-
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

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

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

18 (c) EFFECT OF PRESENTING STATEMENTS.—By pre-
19 senting to the Corporation any statement, motion, or other
20 paper, counsel and the party represented by that counsel
21 shall be considered to warrant that to the best of their
22 knowledge, information, and belief, formed after reason-
23 able inquiry—

24 (1) the statement, motion, or other paper is not
25 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.**

16 (a) **IN GENERAL.**—

17 (1) **IN GENERAL.**—Within such period of time
 18 after receiving a final certificate of eligibility as the
 19 Corporation may provide, a claimant shall provide to
 20 the Corporation—

21 (A) the name and address of each person
 22 that claimant alleges is responsible for the as-
 23 bestos-related injury of the claimant; and

24 (B) for each such person, a verified par-
 25 ticularized statement in a form prescribed by

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 re-
 5 spondent, in a form prescribed by the Corporation,
 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
 25 those additional respondents by providing to the

1 Corporation the particularized statement required
2 under section 303(a) with respect to each such newly
3 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.

11 (b) PROVISION OF INFORMATION.—As soon as prac-
12 ticable after the identification of additional persons under
13 subsection (a), the Corporation shall provide to each addi-
14 tional person identified under that subsection—

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

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

21 (c) RIGHTS OF ADDITIONAL RESPONDENTS.—Addi-
22 tional respondents notified under this section shall have
23 the same right to add further additional respondents as
24 is conferred upon originally named respondents under sub-
25 section (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-

1 poration shall appoint a mediator to assist the parties who
2 have not settled in the grace period in settling the claim.

3 (b) DISCLOSURE OF INFORMATION NECESSARY FOR
4 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 re-
9 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.

15 (3) INCORPORATION BY REFERENCE.—With re-
16 spect to a statement referred to in paragraph (1),
17 information previously provided to the Corporation
18 by any party may be incorporated by reference and
19 need not be resubmitted.

20 (4) RULE OF CONSTRUCTION.—Nothing in this
21 subsection shall be construed to require the disclo-
22 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),

1 the claimant may commence a civil action or may
2 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
6 such election within 30 days following release from medi-
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
11 9, United States Code, that are commonly referred to as
12 the Federal Arbitration Act including sections 1 through
13 6 and 8 through 16 of that title, except that, the provi-
14 sions of this Act and rules adopted by the Corporation
15 under this Act shall be effective notwithstanding any in-
16 consistent provision of title 9, United States Code.

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 claim-
21 ant and 1 or more of the respondents.

22 (2) EFFECT OF SPECIAL AGREEMENT.—With
23 respect to the parties to a special agreement under
24 paragraph (1), the terms of that agreement shall su-
25 percede any provision of this section (other than

1 subsection (h)) and any rule adopted under section
2 301.

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

7 (e) SUBPOENA POWERS OF ARBITRATORS.—Arbitra-
8 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.—

12 (1) IN GENERAL.—Subject to paragraph (2)
13 and unless otherwise provided in this Act, the arbi-
14 trator shall, with respect to each respondent, apply
15 the law, including the law relating to choice of law,
16 that would be applied by a court designated by the
17 claimant which would have jurisdiction over that re-
18 spondent.

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 oc-
25 currence and the parties.

1 (g) PRESUMPTION APPLICABLE TO MEDICAL DETER-
2 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.

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

19 (1)(A) In any case in which joint and several li-
20 ability exists under applicable State law, the arbi-
21 trator shall determine the total joint and several li-
22 ability of all respondents that have not been released
23 by the claimant or dismissed from the proceeding.

24 (B) In addition to making a determination
25 under subparagraph (A), the arbitrator shall deter-

1 mine the amount allocable to each such respondent
2 based on principles of comparative fault or responsi-
3 bility.

4 (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.

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.

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

1 equal to 75 percent of the share of the total liability
2 (exclusive of prejudgment interest, if any) awarded
3 in arbitration against that respondent or that group
4 of respondents as a whole, the arbitrator shall add
5 a 10-percent penalty to the award against such re-
6 spondent or each member of such group of respond-
7 ents.

8 (3) EXCLUSION.—A penalty added under para-
9 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 mul-
13 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.**

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

23 (b) FEES.—The fees for attendance under subsection
24 (a) shall be the same as the fees of witnesses before mas-
25 ters 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 (A) compel—

- 1 (i) the attendance of that person be-
 2 fore the motions officer or arbitrator;
 3 (ii) the appearance of that person for
 4 a deposition; or
 5 (iii) the production of documents; or
 6 (B) punish that person for contempt.

7 **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 plain-
 11 tiff has obtained a certificate of medical eligibility and re-
 12 lease from mediation.

13 **SEC. 402. INDIVIDUAL TRIALS.**

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

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

22 (c) JURISDICTION.—The district courts of the United
 23 States shall have jurisdiction of all civil actions removed
 24 under this section without regard to diversity of citizen-
 25 ship or amount in controversy.

1 **SEC. 403. CERTIFICATE OF MEDICAL ELIGIBILITY PRE-**
2 **SUMED CORRECT.**

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

7 (b) EXTENT OF EXPOSURE TO ASBESTOS.—With re-
8 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 ac-
11 cordance with applicable State law.

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

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

20 (b) AMOUNT.—The amount specified in this para-
21 graph is, with respect to a respondent or a jointly rep-
22 resented group of respondents, an amount equal to 75 per-
23 cent of the share of the total liability (exclusive of prejudg-
24 ment interest, if any) assigned by the jury or other fact
25 finder to that respondent or that group of respondents as
26 a whole, the arbitrator shall add a 10-percent penalty to

1 the award against such respondent or each member of
 2 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.**

10 Subject to section 702 and notwithstanding any other
 11 provision of law, the following shall apply in all civil ac-
 12 tions 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
 22 that the exposure of the exposed person to as-
 23 bestos or an asbestos-containing product of a
 24 defendant or respondent was a substantial con-
 25 tributing factor in the exposed person's condi-

tion, as set forth in the certificate of medical eligibility.

(2) ISSUES TO BE DECIDED.—

(A) IN GENERAL.—Subject to subparagraph (B), the only issues that may be decided in any civil action or arbitration involving an asbestos claim are—

(i) whether the exposed person with respect to whom a claim is made has or had an asbestos-related disease or condition;

(ii) whether the exposure of the exposed person to asbestos or an asbestos-containing product of a defendant or respondent was a substantial contributing factor in causing that asbestos-related disease or condition; and

(iii) the amount of compensatory damages, if any to be awarded.

(B) DETERMINATION OF COMPENSATORY DAMAGES.—In addition to the issues referred to in subparagraph (A), in any proceeding in which, under applicable law, the share of compensatory damages allocable to a defendant or respondent is relevant to an issue described in

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

4 (C) PROHIBITION.—No evidence that is
5 not relevant to an issue referred to in subpara-
6 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.

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

1 (5) PUNITIVE DAMAGES.—No punitive damages
2 shall be awarded in any civil action or arbitration in-
3 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.**

12 (a) IN GENERAL.—Notwithstanding any other provi-
13 sion of law or any contract, the aggregate amount of fees,
14 including expenses and other charges, of a claimant's at-
15 torneys in any proceeding covered under this Act shall not
16 exceed an amount equal to 25 percent of the amount of
17 compensation received by the claimant as a result of that
18 proceeding.

19 (b) RULES OF PROCEDURE.—The Corporation shall
20 establish rules of procedure that require any attorney who
21 represents a claimant in any proceeding covered under this
22 Act to submit an itemized statement of expenses and fees
23 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-

1 nection with any proceeding under this Act, an amount
 2 that exceeds the amount that is allowable under this Act
 3 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 ABOL-**
 9 **ISHED.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
 11 sion of law, a judgment or settlement of an asbestos claim
 12 for a nonmalignant condition satisfying the requirements
 13 of section 201 shall not preclude a subsequent claim with
 14 respect to the same exposed person for a malignant condi-
 15 tion satisfying the requirements of section 202, 203, 204,
 16 or 206, as applicable.

17 (b) RULE OF CONSTRUCTION.—Subsection (a) shall
 18 not be construed to invalidate any provision of a settle-
 19 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.—

(A) IN GENERAL.—On or before August 1 of each year, the Corporation shall estimate the costs of the Corporation (exclusive of the cost of mediation and arbitration that may be recovered under section 602) for the following fiscal year (beginning on October 1 of that year).

(B) ALLOWANCES FOR CONTINGENCIES; COSTS OF MEDICAL REVIEW, OVERHEAD, AND ADMINISTRATION.—In estimating its costs under this section, the Corporation shall—

(i) make reasonable allowances for contingencies; and

(ii) state separately those costs directly related to—

(I) medical review; or

(II) general overhead and administration of the Corporation.

(2) ALLOCATION TO RESPONDENTS.—

(A) IN GENERAL.—The Corporation shall proportionally allocate the costs estimated under paragraph (1) among all persons named as a respondent during the 12-month period ending the preceding June 30 and shall notify each such person of the amount due under that 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.

1 (F) PROHIBITION.—The Corporation shall
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 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 OF DEFICIENCIES.**—If the
 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
 11 preceding fiscal year, that person shall pay the defi-
 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

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

1 estimated transitional costs to the Cor-
2 poration.

3 (3) RECONCILIATION.—

4 (A) IN GENERAL.—On or before November
5 30 following the end of the transitional period,
6 the Corporation shall—

7 (i) determine the total costs of the
8 Corporation (exclusive of the cost of medi-
9 ation and arbitration that may be recov-
10 ered from respondents under section 602)
11 for the transitional period, including start-
12 up costs; and

13 (ii) proportionally allocate those costs,
14 in substantially the same manner as the al-
15 location described in subsection (a)(2),
16 among defendants who were named as re-
17 spondents during that transitional period.

18 (B) STATEMENT OF COSTS.—In making an
19 allocation under this subsection, the Corpora-
20 tion shall state separately those costs directly
21 attributable to—

22 (i) the medical review process; or

23 (ii) general overhead and administra-
24 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.**

14 (a) MEDIATION.—The cost of mediation shall be
 15 charged, on a per capita basis, to each respondent who
 16 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
 23 dismissed from arbitration before the commencement of
 24 the hearing.

1 **SEC. 603. INFORMAL DISPUTE RESOLUTION.**

2 (a) PROCEDURES.—The Corporation shall establish
3 expeditious procedures for the informal resolution of dis-
4 putes regarding the assessment of costs under this title.
5 The Corporation may, in its sole discretion, postpone the
6 obligation to pay the disputed assessment, wholly or in
7 part, during the pendency of informal dispute resolution
8 procedures.

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

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

14 (a) JURISDICTION.—

15 (1) IN GENERAL.—The district courts of the
16 United States shall have exclusive jurisdiction, with-
17 out regard to the amount in controversy or citizen-
18 ship of the parties, to review any assessment of costs
19 made by the Corporation under this title.

20 (2) TREATMENT OF CHALLENGED ASSESS-
21 MENT.—The reviewing court shall uphold a chal-
22 lenged assessment unless that court determines that
23 that assessment is arbitrary and capricious or other-
24 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 de-

1 termination that a determination is not arbitrary
 2 and capricious or otherwise contrary to law.

3 (4) PAYMENT OF COSTS.—In any action under
 4 this subsection in which the Corporation prevails,
 5 the Corporation shall be entitled to costs, including
 6 reasonable attorneys’ fees, and interest on any un-
 7 paid funds. Interest under this subsection shall be
 8 equal to the rate applicable to underpaid taxes under
 9 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 pro-
 13 vide that information within the period of time specified
 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
 18 under section 604(b).

19 **SEC. 606. ASBESTOS RESOLUTION CORPORATION TRUST**
 20 **FUND.**

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

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

4 (b) TRANSFER OF AMOUNTS EQUIVALENT TO CER-
5 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 the
13 Corporation;

14 (4) amounts received by the Corporation as
15 judgments, costs (including reasonable attorneys'
16 fees) and interest under section 604 or any other ap-
17 plicable provision of law; and

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

20 (c) INVESTMENT OF TRUST FUND.—

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

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

4 (2) SALE OF OBLIGATIONS.—Any obligation ac-
 5 quired 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.

14 (d) OBLIGATIONS FROM TRUST FUND.—The Cor-
 15 poration may obligate such sums as are available in the
 16 Trust Fund (including any amounts not obligated in pre-
 17 vious fiscal years) in a manner consistent with this Act.
 18 Amounts in the Trust Fund shall be available for obliga-
 19 tion without fiscal year limitation.

20 **TITLE VII—APPLICABILITY;** 21 **PENDING CIVIL ACTIONS**

22 **SEC. 701. APPLICABILITY.**

23 Subject to section 702, beginning on the date of en-
 24 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

1 existence of an asbestos-related condition that meets the
 2 criteria for an eligible medical category under sections 201
 3 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 con-
 8 strued to make any director, officer, or employee of the
 9 Corporation, an officer or employee of the Federal Govern-
 10 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.

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

21 (c) DISCLOSURE OF INFORMATION.—In order to pre-
 22 serve the integrity of the settlement process in the resolu-
 23 tion of asbestos claims, the Corporation shall exempt from
 24 disclosure under section 552(b)(3) of title 5, United States
 25 Code, with respect to information or documents that con-

tain the results of settlements or settlement averages, individual party or attorney names, medical records, and related data collected for the purpose of resolving individual claims.

(d) EXEMPTIONS.—The Corporation shall be exempt from the requirements of the following provisions of law:

(1) Sections 504 and 552b of title 5, United States Code.

(2) Chapter 51 of title 5, United States Code.

(3) Chapter 53 of title 5, United States Code.

(4) The Ethics in Government Act (5 U.S.C. App.).

(5) Sections 2412 and 2672 of title 28, United States Code.

(6) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(7) Chapter 35 of title 44, United States Code.

SEC. 802. OBLIGATIONS OF THE CORPORATION NOT OBLIGATIONS OF THE UNITED STATES.

Obligations or liabilities of the Corporation shall not be obligations or liabilities of the United States. No action may be maintained against the United States to enforce 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.**

12 Nothing in this Act shall prohibit any claimant, plain-
13 tiff, respondent, or defendant from entering into a settle-
14 ment agreement or any other agreement concerning a
15 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.

