

108TH CONGRESS
1ST SESSION

H. R. 1737

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer harm, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2003

Mr. DOOLEY of California (for himself, Mr. MORAN of Virginia, Mr. SMITH of Washington, Mr. LARSON of Connecticut, Mr. DAVIS of Alabama, Mr. LARSEN of Washington, and Mr. STENHOLM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer harm, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, 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 “Asbestos Victims’ Compensation Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Physical impairment.
- Sec. 5. Consolidation.
- Sec. 6. Venue.
- Sec. 7. Removal.
- Sec. 8. Limitations; two-disease rule; general releases.
- Sec. 9. Miscellaneous provisions.
- Sec. 10. Effective date.

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—The Congress finds that—

5 (1) asbestos is a mineral that was widely used
6 prior to the 1980s for insulation, fire-proofing, and
7 other purposes;

8 (2) millions of American workers and others
9 were significantly exposed to asbestos, especially
10 during and after the Second World War and prior
11 to the advent of regulation by the Occupational
12 Safety and Health Administration in the early
13 1970s;

14 (3) exposure to asbestos has been associated
15 with various types of cancer, including mesothelioma
16 and lung cancer, as well as such noncancerous condi-
17 tions as asbestosis, pleural plaques, and diffuse pleu-
18 ral thickening;

19 (4) the diseases caused by asbestos have latency
20 periods of up to 40 years or more;

1 (5) although the use of asbestos has dramati-
2 cally declined since 1980 and workplace exposures
3 have been regulated since 1971 by the Occupational
4 Safety and Health Administration, past exposures
5 will continue to result in significant death and dis-
6 ability from mesothelioma and other cancers well
7 into the 21st Century;

8 (6) exposure to asbestos has led to the filing of
9 at least 600,000 asbestos claims in State and Fed-
10 eral courts, with 50,000 to 100,000 new cases filed
11 each year, and, if nothing is done to control the liti-
12 gation, as many as 2,000,000 additional claims may
13 be filed before the litigation runs its course;

14 (7) asbestos personal injury litigation can be
15 unfair and inefficient, imposing a severe burden on
16 courts, litigants and taxpayers alike;

17 (8) asbestos personal injury litigation has al-
18 ready contributed to the bankruptcy of more than
19 60 companies, including nearly all manufacturers of
20 asbestos textile and insulation products, and the rate
21 of asbestos-driven bankruptcies is accelerating;

22 (9) the vast majority of asbestos claims are
23 filed by individuals who have been exposed to asbes-
24 tos and who may have some physical sign of expo-

1 sure, but who suffer no present asbestos-related im-
2 pairment;

3 (10) the cost of compensating exposed individ-
4 uals who are not sick—

5 (A) jeopardizes the ability of defendants to
6 compensate people with cancer and other seri-
7 ous asbestos-related diseases, now and in the
8 future;

9 (B) threatens the savings, retirement bene-
10 fits, and jobs of these defendants' current and
11 retired employees;

12 (C) adversely affects the communities in
13 which these defendants operate; and

14 (D) impairs the national economy and
15 interstate commerce;

16 (11) the several thousand asbestos-related can-
17 cer cases that are filed each year would be manage-
18 able by the courts and the litigants but for the vol-
19 ume of noncancer claims brought by those who suf-
20 fer no present asbestos-related impairment;

21 (12) concerns about statutes of limitations can
22 force claimants who have been exposed to asbestos
23 but who have no current injury to bring premature
24 lawsuits in order to protect against losing their

1 rights to future compensation should they become
2 impaired;

3 (13) consolidation, joinder, and similar proce-
4 dures, to which some courts have resorted to deal
5 with the mass of asbestos cases, can undermine the
6 appropriate functioning of the judicial process and
7 encourage the filing of thousands of cases by ex-
8 posed individuals who are not yet sick and who may
9 never become sick;

10 (14) similarly, the availability of sympathetic
11 forums in States with no connection to the plaintiff
12 or to the exposures that form the basis of the law-
13 suit has encouraged the filing of thousands of cases
14 on behalf of exposed individuals who are not yet sick
15 and may never become sick; and

16 (15) the United States Supreme Court has
17 characterized asbestos cases as “an elephantine
18 mass” that “defies customary judicial administration
19 and calls for national legislation”, *Ortiz v.*
20 *Fibreboard Corporation*, 119 S. Ct. 2295, 2302
21 (1999), and has reaffirmed its call for national legis-
22 lation in *Norfolk & Western Railway. Co. v. Ayers*,
23 No. 01-963 (decided March 10, 2003).

24 (b) PURPOSES.—The purposes of this Act are—

1 (1) to give priority to those asbestos claimants
2 who can demonstrate actual physical harm or illness
3 caused by asbestos;

4 (2) to fully preserve the rights of claimants who
5 were exposed to asbestos to pursue compensation
6 should they become sick in the future;

7 (3) to enhance the ability of the State and Fed-
8 eral judicial systems to supervise and control asbes-
9 tos litigation and asbestos-related bankruptcy pro-
10 ceedings; and

11 (4) to conserve the scarce resources of the de-
12 fendants, and marshal assets in bankruptcy, to allow
13 compensation of cancer victims and others who are
14 physically harmed by exposure to asbestos while se-
15 curing the right to similar compensation for those
16 who may suffer cancer or other physical harm in the
17 future.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) **AMA GUIDES TO THE EVALUATION OF PER-**
21 **MANENT IMPAIRMENT.**—The term “AMA Guides to
22 the Evaluation of Permanent Impairment” means
23 the American Medical Association’s Guides to the
24 Evaluation of Permanent Impairment (Fifth Edition
25 2000).

1 (2) ASBESTOS.—The term “asbestos” includes
2 all minerals defined as “asbestos” in 29 C.F.R.
3 1910 as amended from time to time.

4 (3) ASBESTOS CLAIM.—The term “asbestos
5 claim” means any claim for damages or other relief
6 presented in a civil action or bankruptcy proceeding,
7 arising out of, based on, or related to the health ef-
8 fects of exposure to asbestos, including loss of con-
9 sortium, wrongful death, and any derivative claim
10 made by or on behalf of any exposed person or any
11 representative, spouse, parent, child or other relative
12 of any exposed person. The term does not include
13 claims for benefits under a workers’ compensation
14 law or veterans’ benefits program, or claims brought
15 by any person as a subrogee by virtue of the pay-
16 ment of benefits under a workers’ compensation law.

17 (4) ASBESTOSIS.—The term “asbestosis”
18 means bilateral diffuse interstitial fibrosis of the
19 lungs caused by inhalation of asbestos fibers.

20 (5) CANCER CLAIM.—The term “cancer claim”
21 means an asbestos claim that is based upon the ex-
22 posed person’s diagnosed cancer.

23 (6) CERTIFIED B-READER.—The term “cer-
24 tified B-reader” means an individual qualified as a

1 “final” or “B-reader” under 42 C.F.R. 37.51(b) as
2 amended from time to time.

3 (7) CIVIL ACTION.—The term “civil action”
4 means all suits of a civil nature in State or Federal
5 court, whether cognizable as cases at law or in eq-
6 uity or in admiralty, but does not include an action
7 relating to any workers’ compensation law, or a pro-
8 ceeding for benefits under any veterans’ benefits
9 program.

10 (8) EXPOSED PERSON.—The term “exposed
11 person” means any person whose exposure to asbes-
12 tos or to asbestos-containing products is the basis
13 for an asbestos claim.

14 (9) FEV1.—The term “FEV1” means forced
15 expiratory volume in the first second, which is the
16 maximal volume of air that can be expired from a
17 full inspiration in one second.

18 (10) FVC.—The term “FVC” means forced
19 vital capacity, which is the maximal volume of air
20 expired with maximum effort from a position of full
21 inspiration.

22 (11) ILO SCALE.—The term “ILO Scale”
23 means the system for the classification of chest x-
24 rays set forth in the International Labour Office’s
25 Guidelines for the Use of ILO International Classi-

1 fication of Radiographs of Pneumoconioses (1980)
2 as amended from time to time by the International
3 Labour Office.

4 (12) NONMALIGNANT CLAIM.—The term “non-
5 malignant claim” means an asbestos claim that is
6 based upon a condition of the exposed person that
7 is caused or may be caused by asbestos other than
8 a diagnosed cancer.

9 (13) PREDICTED LOWER LIMIT OF NORMAL.—
10 The term “predicted lower limit of normal” for any
11 test means the fifth percentile of healthy populations
12 based on age, height, and gender, based on an ap-
13 propriate reference population.

14 (14) PULMONARY FUNCTION TESTING.—The
15 term “pulmonary function testing” means
16 spirometry, lung volume tests, diffusing capacity
17 tests, and arterial gas tests.

18 (15) STATE.—The term “State” means any
19 State of the United States, the District of Columbia,
20 Commonwealth of Puerto Rico, the Northern Mar-
21 iana Islands, the Virgin Islands, Guam, American
22 Samoa, and any other territory or possession of the
23 United States or any political subdivision of any of
24 the foregoing.

1 (16) TLC.—The term “TLC” means total lung
2 capacity, which is the volume of air in the lungs
3 after maximal inspiration as measured by
4 plethysmography or timed gas dilution.

5 (17) VETERANS’ BENEFITS PROGRAM.—The
6 term “veterans’ benefits program” means any pro-
7 gram for benefits in connection with military service
8 administered by the Veterans’ Administration under
9 title 38, United States Code.

10 (18) WORKERS’ COMPENSATION LAW.—The
11 term “workers’ compensation law” means a law re-
12 specting a program administered by a State or the
13 United States to provide benefits, funded by a re-
14 sponsible employer or its insurance carrier, for occu-
15 pational diseases or injuries or for disability or death
16 caused by occupational diseases or injuries. The
17 term includes the Longshore and Harbor Workers’
18 Compensation Act (33 U.S.C. 901–944, 948–950),
19 and chapter 81 of title 5, United States Code
20 (known as the Federal Employees Compensation
21 Act), but does not include the Act of April 22, 1908
22 (45 U.S.C. 51 et seq.) (popularly referred to as the
23 “Federal Employers’ Liability Act”).

1 **SEC. 4. PHYSICAL IMPAIRMENT.**

2 (a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—
3 Physical impairment of the exposed person, to which as-
4bestos exposure was a substantial contributing factor,
5 shall be an essential element of an asbestos claim. For
6 purposes of this section, cancer shall satisfy the require-
7ment for physical impairment.

8 (b) MEDICAL REPORT AND DIAGNOSIS: FILING.—
9 The plaintiff in any civil action involving an asbestos claim
10 shall file, together with the complaint or other initial
11 pleading, a narrative medical report and diagnosis, signed
12 by a diagnosing doctor, that meets the requirements of
13 this section. In any civil action involving an asbestos claim
14 that is pending on the effective date of this Act, the plain-
15tiff shall file a narrative medical report and diagnosis
16 within 60 days following such effective date but in no
17 event later than 30 days prior to trial. The plaintiff's claim
18 shall be dismissed without prejudice if a medical report
19 and diagnosis fail to substantially meet the requirements
20 of this section or are not timely filed.

21 (c) MEDICAL REPORT AND DIAGNOSIS: CONTENTS.—
22 The medical report and diagnosis filed under this section
23 shall contain each of the following:

24 (1) An employment and exposure history, which
25 shall include all of the principal employments and
26 exposures of the exposed person to airborne contami-

1 nants and shall state whether each such employment
2 involved exposure to airborne contaminants (includ-
3 ing but not limited to asbestos) that can cause pul-
4 monary impairment, and the nature, duration, and
5 level of any such exposure. The employment and ex-
6 posure history shall be obtained from the exposed
7 person or, if that person is deceased or otherwise
8 unable to provide the required information, from the
9 person or persons most knowledgeable about the ex-
10 posed person's employment or exposures. The diag-
11 nosing doctor shall certify that the employment and
12 exposure history was taken by the diagnosing doctor,
13 or a medical professional employed by and under the
14 direct supervision and control of the diagnosing doc-
15 tor.

16 (2) A detailed medical and smoking history,
17 which shall include a thorough review of the exposed
18 person's past and present medical conditions and
19 their most probable cause and full information re-
20 garding the exposed person's history of smoking of
21 tobacco products. The diagnosing doctor shall certify
22 that the medical and smoking history was taken by
23 the diagnosing doctor, or a medical professional em-
24 ployed by and under the direct supervision and con-
25 trol of the diagnosing doctor.

1 (3) Certification that, in the opinion of the di-
2 agnosing doctor, at least 15 years have elapsed be-
3 tween the exposed person's first exposure to asbestos
4 and the time of diagnosis.

5 (4) Certification that—

6 (A) in the opinion of a certified B-reader,
7 the exposed person's chest x-ray shows either—

8 (i) bilateral small irregular opacities
9 (s, t, or u) graded 1/0 or higher on the
10 ILO scale; or

11 (ii) bilateral diffuse pleural thickening
12 graded b2 or higher on the ILO scale and
13 including blunting of at least one
14 costophrenic angle; or

15 (B) in the opinion of a board-certified pa-
16 thologist, the exposed person has pathological
17 evidence of asbestosis graded 1(B) or higher ac-
18 cording to criteria published in Asbestos-Associ-
19 ated Diseases, Special Issue of the Archives of
20 Pathology and Laboratory Medicine, Volume
21 106, Number 11, Appendix 3 (October 8,
22 1982).

23 (5)(A) Certification that the exposed person has
24 asbestos-related pulmonary impairment as dem-

1 onstrated by pulmonary function testing that
2 shows—

3 (i) FVC below the predicted lower limit of
4 normal and FEV1/FVC (using actual values) at
5 or above the predicted lower limit of normal; or

6 (ii) TLC below the predicted lower limit of
7 normal.

8 (B) Notwithstanding subparagraph (A), where
9 pulmonary function test results do not meet the re-
10 quirement of such subparagraph, a claimant may
11 submit an additional report, by a board-certified
12 pulmonologist, internist, or occupational physician,
13 that states that the doctor providing the report has
14 a doctor/patient relationship with the exposed per-
15 son, that the exposed person has a chest x-ray meet-
16 ing the requirements of this Act which in the opinion
17 of a certified B-reader shows bilateral small irreg-
18 ular opacities (s, t, or u) graded 2/1 or higher on the
19 ILO scale, and that the exposed person has restric-
20 tive impairment from asbestosis. The additional re-
21 port shall set forth in detail the specific pulmonary
22 function test findings that the doctor relies upon to
23 establish that the claimant has restrictive impair-
24 ment and shall include the reports and readouts

1 from all pulmonary function or other testing upon
2 which the report is based.

3 (6) A statement that the diagnosing doctor has
4 concluded the exposed person's respiratory impair-
5 ment is not more probably the result of causes other
6 than exposure to asbestosis.

7 (7) Copies of the B-reader's report and the re-
8 sults of pulmonary function tests (including print-
9 outs of flow volume loops and all other elements nec-
10 essary to demonstrate compliance with the technical
11 standards required by this section).

12 (d) COMPLIANCE WITH TECHNICAL STANDARDS.—
13 The technical standards required by this section are as
14 follows:

15 (1) Chest x-rays shall be administered in ac-
16 cordance with all applicable State and Federal regu-
17 latory requirements and shall be quality 1 unless the
18 exposed person is deceased and tissue is unavailable
19 for pathological analysis, in which case the chest x-
20 ray may be quality 2.

21 (2) Pulmonary function testing shall be per-
22 formed using equipment, methods of calibration, and
23 technique that meet the criteria incorporated in the
24 AMA Guides to the Evaluation of Permanent Im-
25 pairment and reported as set forth in 20 C.F.R.

1 404, Subpt. P, App.1, Part (A) section 3.00 (E) and
2 (F), and the interpretative standards set forth in the
3 Official Statement of the American Thoracic Society
4 titled “Lung Function Testing: Selection of Ref-
5 erence Values and Interpretative Strategies” as pub-
6 lished in the American Review of Respiratory Dis-
7 eases 1991: 144: 1202-1218. No adjustments with
8 respect to the interpretation of pulmonary function
9 testing shall be made on the basis of race.

10 (e) NO PRESUMPTION AT TRIAL.—Submission of a
11 medical report and diagnosis meeting the requirements of
12 this section shall not result in any presumption at trial
13 that the exposed person is impaired by an asbestos-related
14 condition, and evidence that such a report was submitted
15 shall not be admissible at trial.

16 (f) APPLICABILITY.—This section shall govern the
17 substantive rule of decision, regardless of forum.

18 **SEC. 5. CONSOLIDATION.**

19 Unless all parties otherwise consent, a court may not
20 consolidate for trial—

21 (1) asbestos claims relating to more than 20
22 different exposed persons; and

23 (2) a nonmalignant claim relating to one ex-
24 posed person with a cancer claim relating to another
25 exposed person.

1 **SEC. 6. VENUE.**

2 A civil action asserting a nonmalignant claim may
3 only be brought in the State of plaintiff's domicile or a
4 State in which there occurred exposure to asbestos that
5 is a substantial contributing factor to the physical impair-
6 ment on which the claim is based. This section does not
7 affect venue for civil actions asserting a cancer claim,
8 which shall be governed by otherwise applicable State or
9 Federal law.

10 **SEC. 7. REMOVAL.**

11 (a) IN GENERAL.—Any party in a civil action involv-
12 ing an asbestos claim may remove such action to a district
13 court of the United States in accordance with chapter 89
14 of title 28, United States Code. A civil action may be re-
15 moved to the district court of the United States in accord-
16 ance with this subsection by any defendant without the
17 consent of all defendants.

18 (b) REMAND.—The district court shall remand any
19 civil action removed solely under subsection (a) if it finds
20 that the plaintiffs substantially met the requirements of
21 section 4.

22 **SEC. 8. LIMITATIONS; TWO-DISEASE RULE; GENERAL RE-**
23 **LEASES.**

24 (a) STATUTE OF LIMITATIONS.—Notwithstanding
25 any other provision of law, with respect to any nonmalignant
26 asbestos claim not barred as of the effective date of

1 this Act, the limitations period on an asbestos claim shall
2 not commence as a result of a purported diagnosis or find-
3 ing of a nonmalignant condition related to asbestos that
4 does not meet the substantive criteria in section 4.

5 (b) TWO-DISEASE RULE.—An asbestos claim arising
6 out of a nonmalignant condition shall be a distinct cause
7 of action from an asbestos claim relating to the same ex-
8 posed person arising out of asbestos-related cancer. No
9 damages shall be awarded for fear or risk of cancer in
10 any civil action asserting only a nonmalignant asbestos
11 claim.

12 (c) GENERAL RELEASES FROM LIABILITY PROHIB-
13 ITED.—No settlement of a nonmalignant asbestos claim
14 concluded after the effective date of this Act shall require,
15 as a condition of settlement, release of any future claim
16 for asbestos-related cancer.

17 **SEC. 9. MISCELLANEOUS PROVISIONS.**

18 (a) CONSTRUCTION WITH OTHER LAWS.—This Act
19 shall not be construed to affect the scope or operation of
20 any workers' compensation law or veterans' benefit pro-
21 gram, to affect the exclusive remedy or subrogation provi-
22 sions of any such law, or to authorize any lawsuit which
23 is barred by any such provision of law.

24 (b) CONSTITUTIONAL AUTHORITY.—The constitu-
25 tional authority for this Act is contained in Article I, sec-

1 tion 8, clause 3 of the Constitution of the United States
2 and in Article III, section 1 of the Constitution of the
3 United States.

4 **SEC. 10. EFFECTIVE DATE.**

5 This Act shall be effective on the date of the enact-
6 ment of this Act and shall apply to any civil action assert-
7 ing an asbestos claim in which trial has not commenced
8 as of such date.

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