

108TH CONGRESS
1ST SESSION

S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mr. HATCH (for himself, Mr. NELSON of Nebraska, Mr. DEWINE, Mr. MILLER, Mr. VOINOVICH, Mr. ALLEN, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by 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 Injury Resolution Act of 2003” or
6 the “FAIR Act of 2003”.

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

Sec. 1. Short title; table of contents.

- Sec. 2. Purpose.
- Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—United States Court of Asbestos Claims

- Sec. 101. Establishment of Asbestos Court.

Subtitle B—Asbestos Injury Claims Resolution Procedures

- Sec. 111. Filing of claims.
- Sec. 112. General rule concerning no-fault compensation.
- Sec. 113. Essential elements of eligible asbestos claim.
- Sec. 114. Eligibility determinations and claim awards.
- Sec. 115. Medical evidence auditing procedures.
- Sec. 116. Claimant assistance program.

Subtitle C—Medical Criteria

- Sec. 121. Essential elements of eligible asbestos claim.
- Sec. 122. Diagnostic criteria requirements.
- Sec. 123. Latency criteria requirements.
- Sec. 124. Medical criteria requirements.
- Sec. 125. Exposure criteria requirements.

Subtitle D—Awards

- Sec. 131. Amount.
- Sec. 132. Medical monitoring.
- Sec. 133. Payments.
- Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E—En Banc Review

- Sec. 141. En banc review.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

- Sec. 201. Definitions.
- Sec. 202. Authority and tiers.
- Sec. 203. Subtier assessments.
- Sec. 204. Assessment administration.

Subtitle B—Asbestos Insurers Commission

- Sec. 211. Establishment of Asbestos Insurers Commission.
- Sec. 212. Duties of Asbestos Insurers Commission.
- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Nonapplication of FOIA and confidentiality of information.
- Sec. 216. Termination of Asbestos Insurers Commission.
- Sec. 217. Authorization of appropriations.

Subtitle C—Office of Asbestos Injury Claims Resolution

- Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.

- Sec. 222. Powers of the Administrator and management of the Fund.
 Sec. 223. Asbestos Injury Claims Resolution Fund.
 Sec. 224. Enforcement of contributions.
 Sec. 225. Additional contributing participants.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of decisions of the Asbestos Court.
 Sec. 302. Judicial review of final determinations of the Administrator and of the Asbestos Insurers Commission.
 Sec. 303. Exclusive review.
 Sec. 304. Private right of action against reinsurers.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
 Sec. 402. Effect on bankruptcy laws.
 Sec. 403. Effect on other laws and existing claims.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to create a privately fund-
 3 ed, publicly administered fund to provide the necessary re-
 4 sources for an asbestos injury claims resolution program.

5 **SEC. 3. DEFINITIONS.**

6 In this Act, the following definitions shall apply:

7 (1) **ADMINISTRATOR.**—The term “Adminis-
 8 trator” means the Administrator of the Office of As-
 9 bestos Injury Claims Resolution appointed under
 10 section 221(c).

11 (2) **ASBESTOS.**—The term “asbestos”
 12 includes—

- 13 (A) asbestos chrysotile;
 14 (B) asbestos amosite;
 15 (C) asbestos crocidolite;
 16 (D) asbestos tremolite;
 17 (E) asbestos winchite;

1 (F) asbestos richterite;

2 (G) asbestos anthophyllite;

3 (H) asbestos actinolite;

4 (I) any of the minerals listed under sub-
5 paragraphs (A) through (H) that has been
6 chemically treated or altered, and any
7 asbestiform variety, type, or component thereof;
8 and

9 (J) asbestos-containing material, such as
10 asbestos-containing products, automotive or in-
11 dustrial parts or components, equipment, im-
12 provements to real property, and any other ma-
13 terial that contains asbestos in any physical or
14 chemical form.

15 (3) ASBESTOS CLAIM.—

16 (A) IN GENERAL.—The term “asbestos
17 claim” means any personal injury claim for
18 damages or other relief presented in a civil ac-
19 tion or bankruptcy proceeding, arising out of,
20 based on, or related to, in whole or part, the
21 health effects of exposure to asbestos, including
22 loss of consortium, wrongful death, and any de-
23 rivative claim made by, or on behalf of, any ex-
24 posed person or any representative, spouse, par-

1 ent, child or other relative of any exposed per-
2 son.

3 (B) EXCLUSION.—The term does not in-
4 clude claims for benefits under a workers’ com-
5 pensation law or veterans’ benefits program, or
6 claims brought by any person as a subrogee by
7 virtue of the payment of benefits under a work-
8 ers’ compensation law.

9 (4) ASBESTOS CLAIMANT.—The term “asbestos
10 claimant” means an individual who files an asbestos
11 claim under section 111.

12 (5) ASBESTOS COURT; COURT.—The terms “As-
13 bestos Court” or “Court” means the United States
14 Court of Asbestos Claims established under section
15 101.

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

23 (7) COLLATERAL SOURCE.—The term “collat-
24 eral source”—

1 (A) means all collateral sources,
2 including—

3 (i) disability insurance;

4 (ii) health insurance;

5 (iii) medicare;

6 (iv) medicaid;

7 (v) death benefit programs;

8 (vi) defendants;

9 (vii) insurers of defendants; and

10 (viii) compensation trusts; and

11 (B) shall not include life insurance.

12 (8) ELIGIBLE DISEASE OR CONDITION.—The
13 term “eligible disease or condition” means, to the
14 extent that the illness meets the medical criteria re-
15 quirements established under subtitle C of title I, as-
16 bestosis/pleural disease, severe asbestosis disease,
17 mesothelioma, lung cancer I, lung cancer II, other
18 cancers, and qualifying nonmalignant asbestos-re-
19 lated diseases.

20 (9) FUND.—The term “Fund” means the As-
21 bestos Injury Claims Resolution Fund established
22 under section 223.

23 (10) LAW.—The term “law” includes all law,
24 judicial or administrative decisions, rules, regula-

1 tions, or any other principle or action having the ef-
 2 fect of law.

3 (11) PARTICIPANT.—The term “participant”
 4 means any person subject to the funding require-
 5 ments of title II, including—

6 (A) any defendant participant subject to
 7 an assessment for contribution under subtitle A
 8 of that title; and

9 (B) any insurer participant subject to an
 10 assessment for contribution under subtitle B of
 11 that title.

12 (12) PERSON.—The term “person”—

13 (A) means an individual, trust, firm, joint
 14 stock company, partnership, association, insur-
 15 ance company, reinsurance company, or cor-
 16 poration; and

17 (B) does not include the United States,
 18 any State or local government, or subdivision
 19 thereof, including school districts and any gen-
 20 eral or special function governmental unit es-
 21 tablished under State law.

22 (13) STATE.—The term “State” means any
 23 State of the United States and also includes the Dis-
 24 trict of Columbia, Commonwealth of Puerto Rico,
 25 the Northern Mariana Islands, the Virgin islands,

1 Guam, American Samoa, and any other territory or
2 possession of the United States or any political sub-
3 division of any of the entities under this paragraph.

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

9 (15) WORKER'S COMPENSATION LAW.—The
10 term “worker’s compensation law”—

11 (A) means a law respecting a program ad-
12 ministered by a State or the United States to
13 provide benefits, funded by a responsible em-
14 ployer or its insurance carrier, for occupational
15 diseases or injuries or for disability or death
16 caused by occupational diseases or injuries;

17 (B) includes the Longshore and Harbor
18 Workers’ Compensation Act (33 U.S.C. sections
19 901 et seq.) and chapter 81 of title 5, United
20 States Code; and

21 (C) does not include the Act of April 22,
22 1908 (45 U.S.C. 51 et seq.), commonly known
23 as the Federal Employers’ Liability Act, or
24 damages recovered by any employee in a liabil-
25 ity action against an employer.

1 **TITLE I—ASBESTOS CLAIMS**
 2 **RESOLUTION**
 3 **Subtitle A—United States Court of**
 4 **Asbestos Claims**

5 **SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.**

6 (a) IN GENERAL.—Part I of title 28, United States
 7 Code, is amended by inserting after chapter 7 the fol-
 8 lowing:

9 **“CHAPTER 9—UNITED STATES COURT OF**
 10 **ASBESTOS CLAIMS**

“Sec.

“201. Establishment of the United States Court of Asbestos Claims.

“202. Magistrates.

“203. Retirement of judges of the United States Court of Asbestos Claims.

11 **“§ 201. Establishment of the United States Court of**
 12 **Asbestos Claims**

13 “(a) ESTABLISHMENT AND APPOINTMENT OF
 14 JUDGES.—

15 “(1) IN GENERAL.—The President shall ap-
 16 point, by and with the advice and consent of the
 17 Senate, 5 judges, who shall constitute a court of
 18 record known as the United States Court of Asbes-
 19 tos Claims.

20 “(2) ARTICLE I COURT.—The Court of Asbestos
 21 Claims is declared to be a court established under
 22 article I of the Constitution of the United States.

23 “(b) TERM; REMOVAL; COMPENSATION.—

1 “(1) TERM.—Each judge appointed under sub-
2 section (a) shall serve for a term of 15 years, except
3 that judges initially appointed shall serve for stag-
4 gered terms as the President shall determine appro-
5 priate to assure continuity.

6 “(2) REMOVAL.—Judges may be removed by
7 the President only for good cause.

8 “(3) COMPENSATION.—Each judge shall receive
9 a salary at the rate of pay, and in the same manner,
10 as judges of the district courts of the United States.

11 “(c) CHIEF JUDGE.—

12 “(1) IN GENERAL.—The President shall des-
13 ignate 1 of the judges appointed under subsection
14 (b)(1), who is less than 70 years of age, to serve as
15 chief judge.

16 “(2) TERM.—The chief judge may continue to
17 serve as such until—

18 “(A) he or she reaches the age of 70 years;

19 “(B) another judge is designated as chief
20 judge by the President; or

21 “(C) the expiration of his or her term
22 under subsection (b)(1).

23 “(3) CONTINUITY OF SERVICE.—Upon the des-
24 ignation by the President of another judge to serve
25 as chief judge, the former chief judge may continue

1 to serve as a judge of the Court of Asbestos Claims
2 for the balance of the term to which he or she was
3 appointed.

4 “(4) POWERS OF CHIEF JUDGE.—The chief
5 judge is authorized to—

6 “(A) prescribe rules and procedures for
7 hearings and appeals of the Court of Asbestos
8 Claims and its magistrates;

9 “(B) appoint magistrates;

10 “(C) appoint or contract for the services of
11 such personnel as may be necessary and appro-
12 priate to carry out the responsibilities of the
13 Court of Asbestos Claims; and

14 “(D) make such expenditures as may be
15 necessary and appropriate in the administration
16 of the responsibilities of the Court of Asbestos
17 Claims and the chief judge under this chapter
18 and the Fairness in Asbestos Injury Resolution
19 Act of 2003.

20 “(d) TIME AND PLACES OF HOLDING COURT.—

21 “(1) IN GENERAL.—The principal office of the
22 Court of Asbestos Claims shall be in the District of
23 Columbia, but the Court of Asbestos Claims may
24 hold court at such times and in such places as the
25 chief judge may prescribe by rule.

1 “(2) LIMITATION.—The times and places of the
2 sessions of the Court of Asbestos Claims shall be
3 prescribed with a view to securing reasonable oppor-
4 tunity to citizens to appear before the Court of As-
5bestos Claims.

6 “(e) OFFICIAL DUTY STATION; RESIDENCE.—

7 “(1) DUTY STATION.—The official duty station
8 of each judge of the Court of Asbestos Claims is the
9 District of Columbia.

10 “(2) RESIDENCE.—After appointment and
11 while in active service, each judge of the Court of
12 Asbestos Claims shall reside within 50 miles of the
13 District of Columbia.

14 **“§ 202. Magistrates**

15 “(a) APPOINTMENT.—The chief judge shall appoint
16 such magistrates as necessary to facilitate the expeditious
17 processing of claims.

18 “(b) COMPENSATION.—The compensation of mag-
19 istrates shall be determined by the chief judge, but shall
20 not exceed the annual rate of basic pay of level V of the
21 Executive Schedule, as prescribed by section 5316 of title
22 5.

23 “(c) RETIREMENT.—For purposes of Federal laws
24 relating to retirement, including chapters 83 and 84 of

1 title 5, magistrates appointed under this section shall be
2 deemed to be appointed under section 631 of this title.

3 “(d) REGULATIONS.—Except as provided under sub-
4 section (c), chapter 43 shall not apply to magistrates ap-
5 pointed under this chapter, except the chief judge may
6 prescribe rules similar to the provisions of chapter 43 to
7 apply to magistrates.

8 **“§ 203. Retirement of judges of the United States**
9 **Court of Asbestos Claims**

10 “(a) IN GENERAL.—For purposes of Federal laws re-
11 lating to retirement, judges of the Court of Asbestos
12 Claims shall be treated in the same manner and to the
13 same extent as judges of the Court of Federal Claims.

14 “(b) REGULATIONS.—In carrying out this section—

15 “(1) the Director of the Administrative Office
16 of the United States Courts shall promulgate regula-
17 tions to apply provisions similar to section 178 of
18 this title (including the establishment of a Court of
19 Asbestos Claims Judges Retirement Fund) to judges
20 of the Court of Asbestos Claims; and

21 “(2) the Director of the Office of Personnel
22 Management shall promulgate regulations to apply
23 chapters 83 and 84 of title 5 to judges of the Court
24 of Asbestos Claims.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 The table of chapters for part I of title 28, United States
3 Code, is amended by striking the item relating to chapter
4 9, and inserting after the item relating to chapter 7 the
5 following:

“9. United States Court of Asbestos Claims.”.

6 **Subtitle B—Asbestos Injury Claims**
7 **Resolution Procedures**

8 **SEC. 111. FILING OF CLAIMS.**

9 (a) WHO MAY SUBMIT.—

10 (1) GENERAL RULE.—Any individual who has
11 suffered from an eligible disease or condition that is
12 believed to meet the requirements established under
13 subtitle C (or the spouse, parent, child, or other rel-
14 ative of such individual in a representative capacity,
15 or the executor of the estate of such individual) may
16 file a claim with the Asbestos Court for an award
17 with respect to such injury.

18 (2) RULES.—The Asbestos Court may issue
19 procedural rules to specify individuals who may file
20 an asbestos claim as a representative of another in-
21 dividual.

22 (3) LIMITATION.—An asbestos claim may not
23 be filed by any person seeking contribution or in-
24 demnity.

1 (b) REQUIRED INFORMATION.—To be valid, an as-
2 bestos claim filed under subsection (a) shall be notarized
3 and include—

4 (1) the name, social security number, gender,
5 date of birth, and, if applicable, date of death of the
6 claimant;

7 (2) information relating to the identity of de-
8 pendents and beneficiaries of the claimant;

9 (3) a detailed description of the work history of
10 the claimant, including social security records or a
11 signed release permitting access to such records;

12 (4) a detailed description of the asbestos expo-
13 sure of the claimant, including information on the
14 identity of any product or manufacturer, site, or lo-
15 cation of exposure, plant name, and duration and in-
16 tensity of exposure;

17 (5) a detailed description of the tobacco product
18 use history of the claimant, including frequency and
19 duration;

20 (6) an identification and description of the as-
21 bestos-related diseases of the claimant, including a
22 written report by the claimant's physician with med-
23 ical diagnoses and test results necessary to make a
24 determination of medical eligibility that complies

1 with the applicable requirements of this subtitle and
2 subtitle C;

3 (7) a description of any prior or pending civil
4 action or other claim brought by the claimant for as-
5 bestos-related injury or any other pulmonary, paren-
6 chymal or pleural injury, including an identification
7 of any recovery of compensation or damages through
8 settlement, judgment, or otherwise; and

9 (8) any other information that is required to be
10 included under procedural rules issued by the Court.

11 (c) STATUTE OF LIMITATIONS.—

12 (1) IN GENERAL.—Except as provided in para-
13 graphs (2) and (3), if an individual fails to file an
14 asbestos claim with the Asbestos Court under this
15 section within 2 years after the date on which the
16 individual first—

17 (A) received a medical diagnosis of an eli-
18 gible disease or condition as provided for under
19 this subtitle and subtitle C; or

20 (B) discovered facts that would have led a
21 reasonable person to obtain a medical diagnosis
22 with respect to an eligible disease or condition,
23 any claim relating to that injury, and any other as-
24 bestos claim related to that injury, shall be extin-

1 guished, and any recovery thereon shall be prohib-
2 ited.

3 (2) EFFECT ON PENDING CLAIMS.—If an asbes-
4 tos claimant has any timely filed claim for an asbes-
5 tos-related injury that is pending in a Federal or
6 State court or with a trust established under title
7 11, United States Code, on the date of enactment of
8 this Act, such claimant shall file an asbestos claim
9 under this section within 2 years after such date of
10 enactment or be barred from receiving any award
11 under this title.

12 (3) EFFECT OF MULTIPLE INJURIES.—An as-
13 bestos claimant who receives an award under this
14 title for an eligible disease or condition, and who
15 subsequently develops another such injury, shall be
16 eligible for additional awards under this title (sub-
17 ject to appropriate setoffs for such prior recovery of
18 any award under this title and from any other collat-
19 eral source) and the statute of limitations under
20 paragraph (1) shall not begin to run with respect to
21 such subsequent injury until such claimant obtains
22 a medical diagnosis of such other injury or discovers
23 facts that would have led a reasonable person to ob-
24 tain such a diagnosis.

1 (4) RULE OF CONSTRUCTION.—Paragraph (2)
 2 shall be interpreted as a statute of limitations and
 3 be construed to the benefit of the Fund and of any
 4 person who might otherwise have been made subject
 5 to an asbestos claim to which such paragraph is ap-
 6 plied.

7 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**
 8 **PENSATION.**

9 An asbestos claimant shall not be required to dem-
 10 onstrate that the asbestos-related injury for which the
 11 claim is being made resulted from the negligence or other
 12 fault of any other person.

13 **SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS**
 14 **CLAIM.**

15 To be eligible for an award under this subtitle for
 16 an asbestos-related injury, an individual shall—

17 (1) file an asbestos claim in a timely manner in
 18 accordance with section 111; and

19 (2) prove, by a preponderance of the evidence
 20 that—

21 (A) the claimant suffers from an eligible
 22 disease or condition, as demonstrated by evi-
 23 dence (submitted as part of the claim) that
 24 meets the medical criteria requirements and di-

1 agnostic criteria requirements established under
 2 subtitle C; and

3 (B) the claimant meets the latency criteria
 4 requirements and the exposure criteria require-
 5 ments established under subtitle C.

6 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**
 7 **AWARDS.**

8 (a) CLAIMS EXAMINERS.—

9 (1) IN GENERAL.—The Asbestos Court shall
 10 appoint, or contract for the services of, qualified in-
 11 dividuals to assist magistrates by conducting eligi-
 12 bility reviews of asbestos claims filed with the Court.

13 (2) CRITERIA.—The Asbestos Court shall estab-
 14 lish criteria with respect to the qualifications of indi-
 15 viduals who are eligible to serve as claims examiners
 16 and, in developing such criteria, shall consult with
 17 such experts as the Court determines appropriate.

18 (b) REFERRAL OF ASBESTOS CLAIM.—Not later than
 19 20 days after the filing of an asbestos claim with the As-
 20 bestos Court, the Court shall refer such claim to a mag-
 21 istrate.

22 (c) INITIAL REVIEW.—

23 (1) IN GENERAL.—Under the direction of a
 24 magistrate, a claims examiner shall make an initial
 25 review of an asbestos claim to determine whether all

1 required information has been submitted by the
2 claimant.

3 (2) NOTICE OF INCOMPLETE CLAIM.—If the
4 claims examiner determines that all required infor-
5 mation has not been submitted, the examiner—

6 (A) shall notify the claimant of such deter-
7 mination and require the submission of addi-
8 tional information necessary for a determina-
9 tion of eligibility;

10 (B) may compel the submission of any ad-
11 ditional information;

12 (C) may request that the claimant undergo
13 additional medical examinations and tests if in-
14 formation from such examinations or tests is
15 necessary to enable the examiner to make a de-
16 termination of medical eligibility; and

17 (D) may require any releases necessary to
18 enable the examiner to obtain medical or other
19 information relevant to the determination of eli-
20 gibility.

21 (d) EXPEDITIOUS DETERMINATIONS.—The Asbestos
22 Court shall prescribe rules to expedite claims for asbestos
23 claimants with exigent circumstances.

24 (e) AUDIT AND PERSONNEL REVIEW PROCE-
25 DURES.—The Asbestos Court shall establish audit and

1 personnel review procedures for evaluating the accuracy
2 of eligibility recommendations of magistrates.

3 (f) ELIGIBILITY DETERMINATIONS.—

4 (1) IN GENERAL.—Not later than 60 days after
5 the receipt by a magistrate of all required informa-
6 tion and requested medical advice with respect to an
7 asbestos claim, the magistrate shall transmit a rec-
8 ommendation of the amount of any award to which
9 the claimant is entitled and findings of fact to a
10 judge of the Asbestos Court.

11 (2) ADMISSIBILITY OF FINDINGS OF FACT.—A
12 determination under paragraph (1) shall include rel-
13 evant findings of fact and shall be admissible as evi-
14 dence in any judicial review.

15 (g) DECISION OF JUDGE.—

16 (1) IN GENERAL.—Not later than 30 days after
17 receipt of a recommendation of a magistrate, a judge
18 of the Asbestos Court shall make a final decision of
19 any award to which the claimant is entitled.

20 (2) WAIVER OF JUDICIAL REVIEW.—The final
21 decision under paragraph (1) shall include an ac-
22 ceptance form by which the claimant may waive the
23 right to judicial review and expedite payment of an
24 award from the Fund.

25 (h) AWARDING OF COMPENSATION.—

1 (1) IN GENERAL.—If a judge of the Asbestos
2 Court determines that an asbestos claimant is enti-
3 tled to an award, the Court shall notify the Adminis-
4 trator to award the claimant an amount of the
5 judge’s decision from the Fund.

6 (2) CLAIM EXTINGUISHED.—The acceptance of
7 a payment under this Act shall extinguish all claims
8 related to such payment.

9 **SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.**

10 (a) DEVELOPMENT.—The Asbestos Court shall de-
11 velop methods for auditing the medical evidence submitted
12 as part of an asbestos claim, including methods to ensure
13 the independent reading of x-rays and results of pul-
14 monary function tests. The Court may develop additional
15 methods for auditing other types of evidence or informa-
16 tion received by the Court.

17 (b) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

18 (1) IN GENERAL.—If the Asbestos Court deter-
19 mines that an audit conducted in accordance with
20 the methods developed under subsection (a) dem-
21 onstrates that the medical evidence submitted by a
22 specific physician or medical facility is not consistent
23 with prevailing medical practices or the applicable
24 requirements of this Act, the Court shall notify
25 claims examiners and the magistrates that any med-

1 ical evidence from such physician or facility shall be
2 unacceptable for purposes of establishing eligibility
3 for an award under this Act.

4 (2) NOTIFICATION.—Upon a determination by
5 the Asbestos Court under paragraph (1), the Court
6 shall notify the physician or medical facility involved
7 of the results of the audit. Such physician or facility
8 shall have a right to appeal the determination of the
9 Court under procedures issued by the Court.

10 **SEC. 116. CLAIMANT ASSISTANCE PROGRAM.**

11 (a) ESTABLISHMENT.—The Asbestos Court shall es-
12 tablish an asbestos claimant assistance program to provide
13 assistance to claimants in preparing and submitting asbes-
14 tos claim applications and in responding to claimant in-
15 quiries.

16 (b) LEGAL ASSISTANCE.—

17 (1) IN GENERAL.—As part of the program es-
18 tablished under subsection (a), the Asbestos Court
19 shall establish a legal assistance program to provide
20 assistance to asbestos claimants concerning legal
21 representation issues.

22 (2) LIST OF QUALIFIED ATTORNEYS.—As part
23 of the program, the Court shall maintain a roster of
24 qualified attorneys who have agreed to provide pro
25 bono services to asbestos claimants under rules es-

1 medical diagnosis that meets the requirements of this sec-
2 tion.

3 (b) DIAGNOSIS.—A medical diagnosis meets the re-
4 quirements of this section if the diagnosis—

5 (1) is made by a physician who—

6 (A) treated, or is treating, the claimant;

7 (B) conducted an in-person medical exam-
8 ination of the claimant; and

9 (C) is licensed to practice medicine in the
10 State in which the examination occurred and in
11 which the diagnosis is rendered;

12 (2) includes a review by the physician of the
13 work history, asbestos exposure pattern, and smok-
14 ing history of the claimant, or other factors deter-
15 mined appropriate by the Asbestos Court;

16 (3) is independently verified with respect to the
17 duration, proximity, regularity, and intensity of the
18 asbestos exposure involved; and

19 (4) has excluded other more likely causes of the
20 injury of the claimant.

21 (c) RESULTS OF MEDICAL EXAMINATIONS AND
22 TESTS.—

23 (1) IN GENERAL.—In making the demonstra-
24 tion required under subsection (a), an asbestos
25 claimant shall submit—

1 (A) x-rays (including both films and B-
2 reader reports);

3 (B) detailed results of pulmonary function
4 tests (including spirometric tracings);

5 (C) laboratory tests; and

6 (D) the results of medical examination or
7 reviews of other medical evidence.

8 (2) PROCEDURAL REQUIREMENTS.—A submis-
9 sion under paragraph (1) shall comply with the re-
10 quirements of this Act and recognized medical
11 standards regarding equipment, testing methods,
12 and procedures to ensure that such medical evidence
13 is reliable.

14 (d) SUFFICIENCY OF MEDICAL EVIDENCE.—In mak-
15 ing determinations under this section, a magistrate shall
16 not make a determination unless the medical evidence pro-
17 vided in support of the asbestos claim is credible and con-
18 sistent with this section, the medical criteria described in
19 section 124, and recognized medical standards.

20 (e) ATTORNEY RETENTION AGREEMENTS.—An at-
21 torney retention agreement shall not be required as a pre-
22 requisite to a medical examination or medical screening
23 for purposes of obtaining a medical diagnosis or other
24 medical information under this section.

1 (f) RULES.—The Asbestos Court shall prescribe rules
2 to implement the diagnostic criteria requirements to be
3 used in applying this section.

4 **SEC. 123. LATENCY CRITERIA REQUIREMENTS.**

5 (a) IN GENERAL.—To be eligible to receive an award
6 under this title for an asbestos-related injury, the claim
7 submitted by the asbestos claimant shall demonstrate that
8 the claimant was exposed to asbestos—

9 (1) in a manner that meets the exposure re-
10 quirements of sections 124 and 125;

11 (2) within the United States or its territories or
12 possessions; and

13 (3) for at least 10 years before the initial diag-
14 nosis of any asbestos-related injury.

15 (b) CONSISTENCY WITH MEDICAL CRITERIA.—An
16 asbestos claimant shall be required to demonstrate that
17 any delay between asbestos exposure and the asbestos-re-
18 lated injury is consistent with medical criteria concerning
19 the latency periods typically associated with the disease
20 category for which the claim is being made.

21 (c) VARIATIONS IN LATENCY PERIODS.—Latency pe-
22 riods under this section may vary based on the eligible
23 disease or condition involved.

24 (d) RULES.—The Asbestos Court shall prescribe
25 rules, based on the medical literature or other appropriate

1 medical evidence concerning latency periods, for the pur-
2 pose of implementing the criteria used in applying this sec-
3 tion.

4 **SEC. 124. MEDICAL CRITERIA REQUIREMENTS.**

5 (a) DEFINITIONS.—In this section, the following defi-
6 nitions shall apply:

7 (1) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term “bilateral asbestos-re-
8 lated nonmalignant disease” means a diagnosis of
9 bilateral asbestos-related nonmalignant disease
10 based on—

12 (A) an x-ray reading of $\frac{1}{0}$ or higher on the
13 ILO scale; or

14 (B) an x-ray showing bilateral pleural
15 plaques or pleural thickening, bilateral intersti-
16 tial fibrosis, or bilateral interstitial markings.

17 (2) BILATERAL PLEURAL DISEASE OF B2.—The
18 term “bilateral pleural disease of B2” means a chest
19 wall pleural thickening or plaque with a maximum
20 width of at least 5 millimeters and a total length of
21 at least $\frac{1}{4}$ of the projection of the lateral chest wall.

22 (3) FEV1.—The term “FEV1” means forced
23 expiratory volume (1 second), which is the maximal
24 volume of air expelled in 1 second during perform-
25 ance of the spirometric test for forced vital capacity.

1 (4) FVC.—The term “FVC” means forced vital
2 capacity, which is the maximal volume of air expired
3 with a maximally forced effort from a position of
4 maximal inspiration.

5 (5) ILO GRADE.—The term “ILO grade”
6 means the radiological ratings for the presence of
7 lung or pleural changes as determined from a chest
8 x-ray, all as established from time to time by the
9 International Labor Organization.

10 (6) PATHOLOGICAL EVIDENCE OF ASBES-
11 TOSIS.—The term “pathological evidence of asbes-
12 tosis” means proof of asbestosis based on the patho-
13 logical grading system for asbestosis described in the
14 Special Issue of the Archives of Pathology and Lab-
15 oratory Medicine, “Asbestos-associated Diseases”,
16 Vol. 106, No. 11, App. 3 (October 8, 1982).

17 (7) PULMONARY FUNCTION TESTING.—The
18 term “pulmonary function testing” means
19 spirometry testing that is in compliance with the
20 quality criteria established from time to time by the
21 American Thoracic Society and is performed on
22 equipment which is in compliance with the standards
23 of the American Thoracic Society for technical qual-
24 ity and calibration.

1 (8) SIGNIFICANT OCCUPATIONAL EXPOSURE.—

2 The term “significant occupational exposure” means
3 employment for a cumulative period of at least 5
4 years, in an industry and an occupation in which the
5 claimant—

6 (A) handled raw asbestos fibers on a reg-
7 ular basis;

8 (B) fabricated asbestos-containing prod-
9 ucts so that the claimant in the fabrication
10 process was exposed on a regular basis to raw
11 asbestos fibers;

12 (C) altered, repaired, or otherwise worked
13 with an asbestos-containing product such that
14 the claimant was exposed on a regular basis to
15 asbestos fibers; or

16 (D) was employed in an industry and occu-
17 pation such that the claimant worked on a reg-
18 ular basis in close proximity to workers engaged
19 in the activities described under subparagraph
20 (A), (B), or (C).

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

24 (b) REQUIREMENT.—To be eligible for an award or
25 medical monitoring reimbursement under this title, a

1 claimant shall establish that the claimant meets the med-
2 ical criteria for 1 of the following categories:

3 (1) For Level I: Asymptomatic Exposure, the
4 claimant shall provide—

5 (A) a diagnosis that meets the require-
6 ments of section 122 of a bilateral asbestos-re-
7 lated nonmalignant disease or an asbestos-re-
8 lated malignancy (except mesothelioma); and

9 (B) meaningful and credible evidence of 6
10 months of occupational exposure to asbestos be-
11 fore December 31, 1982.

12 (2) For Level II: Asbestosis/Pleural Disease A,
13 the claimant shall provide—

14 (A) a diagnosis that meets the require-
15 ments of section 122 of a bilateral asbestos-re-
16 lated nonmalignant disease by B-reader cer-
17 tified chest x-rays; and

18 (B) meaningful and credible evidence of—

19 (i) 6 months of occupational exposure
20 to asbestos before December 31, 1982; and

21 (ii) significant occupational exposure.

22 (3) For Level III: Asbestosis/Pleural Disease B,
23 the claimant shall provide—

24 (A) a diagnosis that meets the require-
25 ments of section 122 of asbestosis by B-reader

1 certified chest x-rays showing bilateral pleural
2 disease of B2 or greater, or by pathological evi-
3 dence of asbestosis;

4 (B) pulmonary function testing that
5 shows—

6 (i) TLC less than 80 percent of pre-
7 dicted; or

8 (ii) FVC less than 80 percent of pre-
9 dicted, and a FEV1/FVC ratio of not less
10 than 65 percent;

11 (C) meaningful and credible evidence of—

12 (i) 6 months of occupational exposure
13 to asbestos before December 31, 1982; and

14 (ii) significant occupational exposure;
15 and

16 (D) supporting medical documentation es-
17 tablishing asbestos exposure as a contributing
18 factor in causing the pulmonary condition in
19 question.

20 (4) For Level IV: Severe Asbestosis, the claim-
21 ant shall provide—

22 (A) a diagnosis that meets the require-
23 ments of section 122 of asbestosis by B-reader
24 certified chest x-rays of ILO Grade $\frac{2}{1}$ or great-
25 er, or by pathological evidence of asbestosis;

1 (B) pulmonary function testing that
2 shows—

3 (i) TLC less than 65 percent of pre-
4 dicted; or

5 (ii) FVC less than 65 percent of pre-
6 dicted, and a FEV1/FVC ratio greater
7 than 65 percent;

8 (C) meaningful and credible evidence of—

9 (i) 6 months of occupational exposure
10 to asbestos before December 31, 1982; and

11 (ii) significant occupational exposure;
12 and

13 (D) supporting medical documentation es-
14 tablishing asbestos exposure as a contributing
15 factor in causing the pulmonary condition in
16 question.

17 (5) For Level V: Other Cancer, the claimant
18 shall provide—

19 (A) a diagnosis that meets the require-
20 ments of section 122 of a primary laryngeal,
21 esophageal, pharyngeal, or stomach cancer;

22 (B) evidence of an underlying bilateral as-
23 bestos-related nonmalignant disease;

24 (C) meaningful and credible evidence of—

1 (i) 6 months of occupational exposure
2 to asbestos before December 31, 1982; and

3 (ii) significant occupational exposure;
4 and

5 (D) supporting medical documentation es-
6 tablishing asbestos exposure as a contributing
7 factor in causing the other cancer in question.

8 (6) For Level VI: Lung Cancer One, the claim-
9 ant shall provide—

10 (A) a diagnosis that meets the require-
11 ments of section 122 of a primary lung cancer;

12 (B) meaningful and credible evidence of 6
13 months of occupational exposure to asbestos be-
14 fore December 31, 1982; and

15 (C) supporting medical documentation and
16 certification by or on behalf of the claimant es-
17 tablishing asbestos exposure as a contributing
18 factor causing the relevant lung cancer.

19 (7) For Level VII: Lung Cancer Two, the
20 claimant shall provide—

21 (A) a diagnosis that meets the require-
22 ments of section 122 of a primary lung cancer;

23 (B) evidence of an underlying bilateral as-
24 bestos-related nonmalignant disease;

25 (C) meaningful and credible evidence of—

1 (i) 6 months of occupational exposure
2 to asbestos before December 31, 1982; and

3 (ii) significant occupational exposure;
4 and

5 (D) supporting medical documentation and
6 certification by or on behalf of the claimant es-
7 tablishing asbestos exposure as a contributing
8 factor causing the relevant lung cancer.

9 (8) For Level VIII: Mesothelioma, the claimant
10 shall provide—

11 (A) a diagnosis that meets the require-
12 ments of section 122 of mesothelioma; and

13 (B) meaningful and credible evidence of
14 exposure to asbestos before December 31, 1982.

15 **SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.**

16 (a) REQUIREMENT.—To be eligible to receive an
17 award under this title for an asbestos-related injury, the
18 claim submitted by the asbestos claimant shall contain in-
19 formation to demonstrate that—

20 (1) the claimant meets the minimum exposure
21 requirements under this subtitle; and

22 (2) such exposure to asbestos occurred within
23 the United States, its territories, or possessions.

24 (b) BURDEN OF PROOF.—

1 (1) IN GENERAL.—An asbestos claimant has
2 the burden of demonstrating meaningful and cred-
3 ible exposure to asbestos for purposes of this sub-
4 title.

5 (2) EVIDENCE.—The demonstration under
6 paragraph (1) may be established by—

7 (A) an affidavit submitted by the claimant,
8 a coworker of the claimant, or a family mem-
9 ber, in the case of a deceased claimant;

10 (B) employment records;

11 (C) invoices;

12 (D) construction or other similar records;

13 or

14 (E) other credible evidence.

15 (c) RULES.—

16 (1) EXPOSURE INFORMATION.—The Asbestos
17 Court shall issue rules prescribing specific exposure
18 information that shall be submitted to permit the
19 Court to process an asbestos claim and prescribing
20 a proof of claim form. Such rules may provide that
21 a claims examiner or magistrate, as applicable, may
22 require the submission of other or additional evi-
23 dence of exposure when determined to be appro-
24 priate and necessary.

1 (2) REBUTTABLE PRESUMPTIONS.—The Asbes-
2 tos Court may prescribe rules identifying specific in-
3 dustries, occupations within those industries, time
4 periods, and employment periods for which signifi-
5 cant occupational exposure (as defined under section
6 124) may be a rebuttable presumption for asbestos
7 claimants who provide meaningful and credible evi-
8 dence that the claimant worked in that industry and
9 occupation for the requisite period of time. The Ad-
10 ministrator may provide evidence to rebut this pre-
11 sumption.

12 **Subtitle D—Awards**

13 **SEC. 131. AMOUNT.**

14 (a) IN GENERAL.—An asbestos claimant who meets
15 the requirements of section 113 shall be entitled to an
16 award in an amount determined by reference to the benefit
17 table contained in subsection (b).

18 (b) BENEFIT TABLE.—

19 (1) IN GENERAL.—An asbestos claimant with
20 an eligible disease or condition established in accord-
21 ance with section 124, other than an injury de-
22 scribed in paragraph (2), shall be eligible for an
23 award according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asymptomatic Exposure	\$0
II	Asbestosis/Pleural Disease A	\$0
III	Asbestosis/Pleural Disease B	\$40,000
IV	Severe Asbestosis	\$400,000
V	Other Cancer	\$200,000
VI	Lung Cancer I	\$0 or \$50,000
VII	Lung Cancer II	\$100,000 or \$400,000
VIII	Mesothelioma	\$750,000

1 (2) SCHEDULED VALUES FOR LEVELS VI AND
2 VII.—

3 (A) DEFINITION.—In this paragraph, the
4 term “nonsmoker” means a claimant who—

5 (i) never smoked; or

6 (ii) has not smoked during any por-
7 tion of the 12-year period preceding the di-
8 agnosis of the lung cancer.

9 (B) SCHEDULED VALUES.—In accordance
10 with subsection (a), a claimant—

11 (i) who is a nonsmoker shall receive—

12 (I) \$50,000 for Level VI; and

13 (II) \$400,000 for Level VII; and

14 (ii) who is not a nonsmoker shall
15 receive—

16 (I) \$0 for Level VI; and

17 (II) \$100,000 for Level VII.

1 (3) MEDICAL MONITORING.—An asbestos claim-
2 ant with asymptomatic exposure or asbestosis/pleu-
3 ral disease A, based on the criteria under section
4 124(b)(1), shall only be eligible for medical moni-
5 toring reimbursement.

6 **SEC. 132. MEDICAL MONITORING.**

7 (a) RELATION TO STATUTE OF LIMITATIONS.—The
8 filing of an asbestos claim that seeks reimbursement for
9 medical monitoring shall not be considered as evidence
10 that the claimant has discovered facts that would other-
11 wise commence the period applicable for purposes of the
12 statute of limitations under section 111(c).

13 (b) COSTS.—Reimbursable medical monitoring costs
14 shall include the costs of a claimant not covered by health
15 insurance for x-ray tests and pulmonary function tests
16 every 3 years.

17 (c) REGULATIONS.—The Administrator shall promul-
18 gate regulations that establish—

19 (1) the reasonable costs for medical monitoring
20 that is reimbursable; and

21 (2) the procedures applicable to asbestos claim-
22 ants.

23 **SEC. 133. PAYMENTS.**

24 (a) STRUCTURED PAYMENTS.—

1 (1) IN GENERAL.—An asbestos claimant who is
2 entitled to an award shall receive the amount of the
3 award through structured payments from the Fund,
4 made over a period of not less than 3 years.

5 (2) ACCELERATED PAYMENTS.—The Adminis-
6 trator shall develop guidelines to provide for acceler-
7 ated payments to asbestos claimants who are meso-
8 thelioma victims and who are alive on the date on
9 which the administrator receives notice of the eligi-
10 bility of the claimant. Such payments shall be cred-
11 ited against the first regular payment under the
12 structured payment plan for the claimant.

13 (3) EXPEDITED PAYMENTS.—The Adminis-
14 trator shall develop guidelines to provide for expe-
15 dited payments to asbestos claimants in cases of exi-
16 gent circumstances or extreme hardship caused by
17 asbestos-related injury.

18 (4) ANNUITY.—An asbestos claimant may elect
19 to receive any payments to which they are entitled
20 under this title in the form of an annuity.

21 (b) LIMITATION ON TRANSFERABILITY.—An asbestos
22 claim shall not be assignable or otherwise transferable
23 under this Act.

24 (c) CREDITORS.—An award under this title shall be
25 exempt from all claims of creditors and from levy, execu-

1 tion, and attachment or other remedy for recovery or col-
2 lection of a debt, and such exemption may not be waived.

3 (d) TREATMENT FOR INTERNAL REVENUE PUR-
4 POSES.—All amounts of an award received under this sub-
5 title shall be deemed to be compensation for personal phys-
6 ical injuries or physical sickness under section 104 of the
7 Internal Revenue Code of 1986.

8 (e) MEDICARE AS SECONDARY PAYER.—No award
9 under this title shall be deemed a payment for purposes
10 of section 1862 of the Social Security Act (42 U.S.C.
11 1395y).

12 **SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLAT-**
13 **ERAL SOURCES.**

14 (a) IN GENERAL.—The amount of an award other-
15 wise available to an asbestos claimant under this title shall
16 be reduced by the amount of collateral source compensa-
17 tion that the claimant received, or is entitled to receive,
18 for the asbestos-related injury that is the subject of the
19 compensation.

20 (b) EXCLUSIONS.—In no case shall statutory benefits
21 under workers' compensation laws and veterans benefits
22 programs be deemed as collateral source compensation for
23 purposes of this section.

1 **Subtitle E—En Banc Review**

2 **SEC. 141. EN BANC REVIEW.**

3 (a) IN GENERAL.—

4 (1) EN BANC PANELS.—The chief judge of the
5 Asbestos Court shall—

6 (A) establish en banc panels to carry out
7 this subtitle; and

8 (B) assign 3 judges of the Asbestos Court
9 to each en banc panel.

10 (2) RANDOM ASSIGNMENT OF PANELS.—In car-
11 rying out paragraph (1), the chief judge shall—

12 (A) except as necessary to effectuate sub-
13 paragraph (B), assign judges to panels ran-
14 domly; and

15 (B) assign appeals to panels in a manner
16 that results in no judge reviewing a decision
17 made by that judge.

18 (3) FILING OF APPEAL.—Not later than 30
19 days after receiving notice of the decision of a judge
20 under section 114, a claimant may file an appeal for
21 review with an en banc panel of the Asbestos Court.

22 (b) DE NOVO REVIEW.—An Asbestos Court panel
23 shall provide a de novo review of the magistrate’s deter-
24 mination and the judge’s decision.

1 (c) REPRESENTATION OF THE ADMINISTRATOR.—
 2 The Administrator may appoint counsel to represent the
 3 interests of the Fund and the Administrator in all pro-
 4 ceedings before a panel, including oral arguments and the
 5 submission of briefs.

6 (d) FEDERAL RULES OF APPELLATE PROCEDURE.—
 7 An Asbestos Court panel shall apply the Federal Rules
 8 of Appellate Procedures to all proceedings before the
 9 panel.

10 (e) DECISION OF PANEL.—An Asbestos Court panel
 11 shall enter a final decision on an appeal on the earlier
 12 date occurring—

13 (1) not later than 30 days after the date of the
 14 conclusion of oral arguments; or

15 (2) not later than 60 days after an appeal is
 16 filed under this section.

17 **TITLE II—ASBESTOS INJURY**
 18 **CLAIMS RESOLUTION FUND**
 19 **Subtitle A—Asbestos Defendants**
 20 **Funding Allocation**

21 **SEC. 201. DEFINITIONS.**

22 In this subtitle, the following definitions shall apply:

23 (1) AFFILIATED GROUP.—The term “affiliated
 24 group”—

1 (A) means a defendant participant that is
2 an ultimate parent and any person whose entire
3 beneficial interest is directly or indirectly owned
4 by that ultimate parent on the date of enact-
5 ment of this Act; and

6 (B) shall not include any person that is a
7 debtor or any direct or indirect majority-owned
8 subsidiary of a debtor.

9 (2) DEBTOR.—The term “debtor”—

10 (A) means—

11 (i) a person that is subject to a case
12 pending under a chapter of title 11, United
13 States Code, on the date of enactment of
14 this Act or at any time during the 1-year
15 period immediately preceding that date, ir-
16 respective of whether the debtor’s case
17 under that title has been dismissed; and

18 (ii) all of the direct or indirect major-
19 ity-owned subsidiaries of a person de-
20 scribed under clause (i), regardless of
21 whether any such majority-owned sub-
22 sidiary has a case pending under title 11,
23 United States Code; and

24 (B) shall not include an entity—

1 (i) subject to chapter 7 of title 11,
2 United States Code, if a final decree clos-
3 ing the estate shall have been entered be-
4 fore the date of enactment of this Act; or
5 (ii) subject to chapter 11 of title 11,
6 United States Code, if a plan of reorga-
7 nization for such entity shall have been
8 confirmed by a duly entered order or judg-
9 ment of a court that is no longer subject
10 to any appeal or judicial review.

11 (3) INDEMNIFIABLE COST.—The term
12 “indemnifiable cost” means a cost, expense, debt,
13 judgment, or settlement incurred with respect to an
14 asbestos claim that, at any time before December
15 31, 2002, was or could have been subject to indem-
16 nification, contribution, surety, or guaranty.

17 (4) INDEMNITEE.—The term “indemnitee”
18 means a person against whom any asbestos claim
19 has been asserted before December 31, 2002, who
20 has received from any other person, or on whose be-
21 half a sum has been paid by such other person to
22 any third person, in settlement, judgment, defense,
23 or indemnity in connection with an alleged duty with
24 respect to the defense or indemnification of such

1 person concerning that asbestos claim, other than
2 under a policy of insurance or reinsurance.

3 (5) INDEMNITOR.—The term “indemnitor”
4 means a person who has paid under a written agree-
5 ment at any time before December 31, 2002, a sum
6 in settlement, judgment, defense, or indemnity to or
7 on behalf of any person defending against an asbes-
8 tos claim, in connection with an alleged duty with
9 respect to the defense or indemnification of such
10 person concerning that asbestos claim, except that
11 payments by an insurer or reinsurer under a con-
12 tract of insurance or reinsurance shall not make the
13 insurer or reinsurer an indemnitor for purposes of
14 this subtitle.

15 (6) PRIOR ASBESTOS EXPENDITURES.—The
16 term “prior asbestos expenditures”—

17 (A) means the gross total amount paid by
18 or on behalf of a person at any time before De-
19 cember 31, 2002, in settlement, judgment, de-
20 fense, or indemnity costs related to all asbestos
21 claims against that person;

22 (B) includes payments made by insurance
23 carriers to or for the benefit of such person or
24 on such person’s behalf with respect to such as-

1 bestos claims, except as provided in section
2 204(g);

3 (C) shall not include any payment made by
4 a person in connection with any activities or
5 disputes related to insurance coverage matters
6 for asbestos-related liabilities; and

7 (D) shall not include any payment made by
8 or on behalf of persons who are or were com-
9 mon carriers by railroad for asbestos claims
10 brought under the Act of April 22, 1908 (45
11 U.S.C. 51 et seq.), commonly known as the
12 Federal Employers' Liability Act, including set-
13 tlement, judgment, defense, or indemnity costs
14 associated with these claims.

15 (7) TRUST.—The term “trust” means any per-
16 son formed under section 524(g) of title 11, United
17 States Code, or formed under any plan under section
18 1129 of title 11, United States Code, for any pur-
19 pose, including administering and paying asbestos
20 claims.

21 (8) ULTIMATE PARENT.—The term “ultimate
22 parent” means a person—

23 (A) that owned, as of December 31, 2002,
24 the entire beneficial interest, directly or indi-
25 rectly, of at least 1 other person; and

1 (B) whose entire beneficial interest was not
2 owned, on December 31, 2002, directly or indi-
3 rectly, by any other single person.

4 **SEC. 202. AUTHORITY AND TIERS.**

5 (a) ASSESSMENT.—

6 (1) IN GENERAL.—The Administrator shall as-
7 sess from defendant participants contributions to the
8 Fund in accordance with this section based on tiers
9 and subtiers assigned to defendant participants.

10 (2) AGGREGATE CONTRIBUTION LEVEL.—The
11 total contribution required of all defendant partici-
12 pants over the life of the Fund shall be equal to
13 \$45,000,000,000.

14 (b) TIER I.—The Administrator shall assign to Tier
15 I all debtors that, together with all of their direct or indi-
16 rect majority-owned subsidiaries, have prior asbestos ex-
17 penditures greater than \$1,000,000.

18 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN
19 BANKRUPTCY.—

20 (1) DEFINITION.—In this subsection, the term
21 “bankrupt business entity” means a person that is
22 not a natural person that—

23 (A) filed under chapter 11, of title 11,
24 United States Code, before January 1, 2003;

1 (B) has not confirmed a plan of reorga-
2 nization as of the date of enactment of this Act;
3 and

4 (C) the Chief Executive Officer, Chief Fi-
5 nancial Officer, or Chief Legal Officer of that
6 business entity certifies in writing to the bank-
7 ruptcy court presiding over the business entity's
8 case, that asbestos liability was neither the sole
9 nor precipitating cause for the filing under
10 chapter 11.

11 (2) PROCEEDING WITH REORGANIZATION
12 PLAN.—A bankrupt business entity may proceed
13 with the filing, solicitation, and confirmation of a
14 plan of reorganization that does not comply with the
15 requirements of this Act, including a trust and chan-
16 neling injunction under section 524(g) of title 11,
17 United States Code, notwithstanding any other pro-
18 visions of this Act, if—

19 (A) the bankruptcy court presiding over
20 the chapter 11 case of the bankrupt business
21 entity determines that—

22 (i) confirmation is necessary to permit
23 the reorganization of that entity and as-
24 sure that all creditors and that entity are
25 treated fairly and equitably; and

1 (ii) confirmation is clearly favored by
2 the balance of the equities; and

3 (B) an order confirming the plan of reor-
4 ganization is entered by the bankruptcy court
5 within 9 months after the date of enactment of
6 this Act or such longer period of time approved
7 by the bankruptcy court for cause shown.

8 (3) APPLICABILITY.—If the bankruptcy court
9 does not make the required determination, or if an
10 order confirming the plan is not entered within 9
11 months after the effective date of this Act or such
12 longer period of time approved by the bankruptcy
13 court for cause shown, the provisions of the Act
14 shall apply to the bankrupt business entity notwith-
15 standing the certification. Any timely appeal under
16 title 11, United States Code, from a confirmation
17 order entered during the applicable time period shall
18 automatically extend the time during which this Act
19 is inapplicable to the bankrupt business entity, until
20 the appeal is fully and finally resolved.

21 (4) OFFSETS.—

22 (A) PAYMENTS BY INSURERS.—To the ex-
23 tent that a bankrupt business entity success-
24 fully confirms a plan of reorganization, includ-
25 ing a trust under section 524(g) of title 11,

1 United States Code, and channeling injunction
2 that involves payments by insurers who are oth-
3 erwise subject to this Act, an insurer who
4 makes payments to the trust under section
5 524(g) of title 11, United States Code, shall ob-
6 tain a dollar for dollar reduction in the amount
7 otherwise payable by that insurer under this
8 Act to the Fund.

9 (B) CONTRIBUTIONS TO FUND.—Any cash
10 payments by a bankrupt business entity, if any,
11 to a trust under section 524(g) of title 11,
12 United States Code, may be counted as a con-
13 tribution to the Fund.

14 (d) TIERS II THROUGH VI.—Except as provided in
15 sections 202(b), 204(b), and 204(g), persons or affiliated
16 groups shall be assigned to Tier II, III, IV, V, or VI ac-
17 cording to the prior asbestos expenditures paid by such
18 persons or affiliated groups as follows:

19 (1) Tier II: \$75,000,000 or greater.

20 (2) Tier III: \$50,000,000 or greater, but less
21 than \$75,000,000.

22 (3) Tier IV: \$10,000,000 or greater, but less
23 than \$50,000,000.

24 (4) Tier V: \$5,000,000 or greater, but less than
25 \$10,000,000.

1 (5) Tier VI: \$1,000,000 or greater, but less
2 than \$5,000,000.

3 (e) ASSIGNMENTS AND COSTS.—

4 (1) PERMANENT ASSIGNMENT.—Subject to sec-
5 tion 204(d), after the Administrator has assigned a
6 person or affiliated group to a tier under this sec-
7 tion, such person or affiliated group shall remain in
8 that tier throughout the life of the Fund, regardless
9 of subsequent events, including—

10 (A) the filing of a petition under a chapter
11 of title 11, United States Code;

12 (B) a discharge from bankruptcy;

13 (C) the confirmation of a plan of reorga-
14 nization; or

15 (D) the sale or transfer of assets to any
16 other person or affiliated group.

17 (2) COSTS.—The payment of contributions to
18 the Fund by all persons that are the subject of a
19 case under a chapter of title 11, United States Code,
20 after the date of enactment of this Act—

21 (A) shall constitute costs and expenses of
22 administration of the case under section 503 of
23 that title 11 and shall be payable in accordance
24 with the payment provisions under this subtitle

1 notwithstanding the pendency of the case under
2 that title 11;

3 (B) shall not be stayed or affected as to
4 enforcement or collection by any stay or injunc-
5 tion power of any court; and

6 (C) shall not be impaired or discharged in
7 any current or future case under title 11,
8 United States Code.

9 (f) SUPERSEDING PROVISIONS.—Any plan of reorga-
10 nization with respect to any debtor assigned to Tier I and
11 any agreement, understanding, or undertaking by any
12 such debtor or any third party with respect to the treat-
13 ment of any asbestos claim filed before the date of enact-
14 ment of this Act and subject to confirmation of a plan
15 under chapter 11 of title 11, United States Code, shall
16 be superseded in their entirety by this Act. Any such plan
17 of reorganization, agreement, understanding, or under-
18 taking by any debtor or any third party shall be of no
19 force or effect, and no person shall have any rights or
20 claims with respect to any of the foregoing.

21 **SEC. 203. SUBTIER ASSESSMENTS.**

22 (a) IN GENERAL.—

23 (1) ASSESSMENTS.—Except as provided under
24 subsections (a), (b), (d), (f), and (g) of section 204,
25 the Administrator shall assess contributions to per-

1 sons or affiliated groups within Tiers I through VII
2 in accordance with this section.

3 (2) REVENUES.—

4 (A) IN GENERAL.—For purposes of this
5 section, revenues shall be determined in accord-
6 ance with generally accepted accounting prin-
7 ciples, consistently applied, using the amount
8 reported as revenues in the annual report filed
9 with the Securities and Exchange Commission
10 in accordance with section 13(a)(2) of the Secu-
11 rities Exchange Act of 1934 (15 U.S.C.
12 78m(a)(2)) for the most recent fiscal year end-
13 ing on or before December 31, 2002. If the de-
14 fendant participant does not file reports with
15 the Securities and Exchange Commission, reve-
16 nues shall be the amount that the defendant
17 participant would have reported as revenues
18 under the rules of the Securities and Exchange
19 Commission in the event that it had been re-
20 quired to file.

21 (B) INSURANCE PREMIUMS.—Any portion
22 of revenues of a defendant participant that is
23 derived from insurance premiums shall not be
24 used to calculate the contribution of that de-
25 fendant participant under this subtitle.

1 (C) PRIVATELY HELD COMPANIES.—If the
2 defendant participant is not required to file an
3 earnings report with the Securities and Ex-
4 change Commission, revenues shall be the
5 amount that the defendant participant would
6 have reported as revenues in the event that it
7 had been required to file the report described
8 under subparagraph (A).

9 (D) DEBTORS.—Each debtor’s revenues
10 shall include the revenues of the debtor and all
11 of the direct or indirect majority-owned subsidi-
12 aries of that debtor, except that the pro forma
13 revenues of a person that is assigned to Subtier
14 2 of Tier I shall not be included in calculating
15 the revenues of any debtor that is a direct or
16 indirect majority owner of such Subtier 2 per-
17 son.

18 (b) TIER I SUBTIERS.—

19 (1) IN GENERAL.—Except as provided under
20 subsections (a), (b), (d), (f), and (g) of section 204,
21 the Administrator shall assign each debtor in Tier I
22 to subtiers. Each debtor or shall make contributions
23 to the Fund as provided under this section.

24 (2) SUBTIER 1.—

1 (A) IN GENERAL.—All persons that are
2 debtors with prior asbestos expenditures of
3 \$1,000,000 or greater, shall be assigned to
4 Subtier 1.

5 (B) ASSIGNMENT.—Each debtor assigned
6 to Subtier 1 shall make annual payments based
7 on a percentage of its 2002 revenues.

8 (C) PAYMENT.—Each debtor assigned to
9 Subtier 1 shall pay on an annual basis the fol-
10 lowing with respect to the year of the establish-
11 ment of the Fund:

12 (i) Years 1 through 5, 1.5005 percent
13 of the debtor's 2002 revenues.

14 (ii) Years 6 through 8, 1.3504 percent
15 of the debtor's 2002 revenues.

16 (iii) Years 9 through 11, 1.2154 per-
17 cent of the debtor's 2002 revenues.

18 (iv) Years 12 through 14, 1.0938 per-
19 cent of the debtor's 2002 revenues.

20 (v) Years 15 through 17, .9845 per-
21 cent of the debtor's 2002 revenues.

22 (vi) Years 18 through 20, .8860 per-
23 cent of the debtor's 2002 revenues.

24 (vii) Years 21 through 23, .7974 per-
25 cent of the debtor's 2002 revenues.

1 (viii) Years 24 through 26, .7177 per-
2 cent of the debtor's 2002 revenues.

3 (ix) Year 27, .1794 percent of the
4 debtor's 2002 revenues.

5 (3) SUBTIER 2.—

6 (A) IN GENERAL.—Notwithstanding para-
7 graph (2), all persons that are debtors that
8 have no material continuing business operations
9 but hold cash or other assets that have been al-
10 located or earmarked for asbestos settlements
11 shall be assigned to Subtier 2.

12 (B) ASSIGNMENT OF ASSETS.—Not later
13 than 30 days after the date of enactment of
14 this Act, each person assigned to Subtier 2
15 shall assign all of its assets to the Fund.

16 (4) SUBTIER 3.—

17 (A) IN GENERAL.—Notwithstanding para-
18 graph (2), all persons that are debtors other
19 than those included in Subtier 2, which have no
20 material continuing business operations and no
21 cash or other assets allocated or earmarked for
22 the settlement of any asbestos claim, shall be
23 assigned to Subtier 3.

24 (B) ASSIGNMENT OF UNENCUMBERED AS-
25 SETS.—Not later than 30 days after the date of

1 enactment of this Act, each person assigned to
 2 Subtier 3 shall contribute an amount equal to
 3 50 percent of its total unencumbered assets.

4 (C) CALCULATION OF UNENCUMBERED AS-
 5 SETS.—Unencumbered assets shall be cal-
 6 culated as the Subtier 3 person’s total assets,
 7 excluding insurance related assets, less—

8 (i) all allowable administrative ex-
 9 penses;

10 (ii) allowed priority claims under sec-
 11 tion 507 of title 11, United States Code;
 12 and

13 (iii) allowed secured claims.

14 (c) TIER II SUBTIERS.—

15 (1) IN GENERAL.—The Administrator shall as-
 16 sign each person or affiliated group in Tier II to 1
 17 of 5 subtiers, based on the person’s or affiliated
 18 group’s revenues. Such subtiers shall each contain as
 19 close to an equal number of total persons and affili-
 20 ated groups as possible, with—

21 (A) those persons or affiliated groups with
 22 the highest revenues assigned to Subtier 1;

23 (B) those persons or affiliated groups with
 24 the next highest revenues assigned to Subtier 2;

1 (C) those persons or affiliated groups with
2 the lowest revenues assigned to Subtier 5;

3 (D) those persons or affiliated groups with
4 the next lowest revenues assigned to Subtier 4;
5 and

6 (E) those persons or affiliated groups re-
7 maining assigned to Subtier 3.

8 (2) PAYMENT.—Each person or affiliated group
9 within an assigned subtier shall pay, on an annual
10 basis, the following:

11 (A) Subtier 1: \$25,000,000.

12 (B) Subtier 2: \$22,500,000.

13 (C) Subtier 3: \$20,000,000.

14 (D) Subtier 4: \$17,500,000.

15 (E) Subtier 5: \$15,000,000.

16 (d) TIER III SUBTIERS.—

17 (1) IN GENERAL.—The Administrator shall as-
18 sign each person or affiliated group in Tier III to 1
19 of 5 subtiers, based on the person's or affiliated
20 group's revenues. Such subtiers shall each contain as
21 close to an equal number of total persons and affili-
22 ated groups as possible, with—

23 (A) those persons or affiliated groups with
24 the highest revenues assigned to Subtier 1;

1 (B) those persons or affiliated groups with
2 the next highest revenues assigned to Subtier 2;

3 (C) those persons or affiliated groups with
4 the lowest revenues assigned to Subtier 5;

5 (D) those persons or affiliated groups with
6 the next lowest revenues assigned to Subtier 4;

7 and

8 (E) those persons or affiliated groups re-
9 maining assigned to Subtier 3.

10 (2) PAYMENT.—Each person or affiliated group
11 within an assigned subtier shall pay, on an annual
12 basis, the following:

13 (A) Subtier 1: \$15,000,000.

14 (B) Subtier 2: \$12,500,000.

15 (C) Subtier 3: \$10,000,000.

16 (D) Subtier 4: \$7,500,000.

17 (E) Subtier 5: \$5,000,000.

18 (e) TIER IV SUBTIERS.—

19 (1) IN GENERAL.—The Administrator shall as-
20 sign each person or affiliated group in Tier IV to 1
21 of 4 subtiers, based on the person's or affiliated
22 group's revenues. Such subtiers shall each contain as
23 close to an equal number of total persons and affili-
24 ated groups as possible, with those persons or affili-
25 ated groups with the highest revenues in Subtier 1,

1 those with the lowest revenues in Subtier 4. Those
2 persons or affiliated groups with the highest reve-
3 nues among those remaining will be assigned to
4 Subtier 2 and the rest in Subtier 3.

5 (2) PAYMENT.—Each person or affiliated group
6 within an assigned subtier shall pay, on an annual
7 basis, the following:

8 (A) Subtier 1: \$3,500,000.

9 (B) Subtier 2: \$2,250,000.

10 (C) Subtier 3: \$1,500,000.

11 (D) Subtier 4: \$500,000.

12 (f) TIER V SUBTIERS.—

13 (1) IN GENERAL.—The Administrator shall as-
14 sign each person or affiliated group in Tier V to 1
15 of 3 subtiers, based on the person's or affiliated
16 group's revenues. Such subtiers shall each contain as
17 close to an equal number of total persons and affili-
18 ated groups as possible, with those persons or affili-
19 ated groups with the highest revenues in Subtier 1,
20 those with the lowest revenues in Subtier 3, and
21 those remaining in Subtier 2.

22 (2) PAYMENT.—Each person or affiliated group
23 within an assigned subtier shall pay, on an annual
24 basis, the following:

25 (A) Subtier 1: \$1,000,000.

1 (B) Subtier 2: \$500,000.

2 (C) Subtier 3: \$200,000.

3 (g) TIER VI SUBTIERS.—

4 (1) IN GENERAL.—The Administrator shall as-
5 sign each person or affiliated group in Tier VI to 1
6 of 3 subtiers, based on the person's or affiliated
7 group's revenues. Such subtiers shall each contain as
8 close to an equal number of total persons and affili-
9 ated groups as possible, with those persons or affili-
10 ated groups with the highest revenues in Subtier 1,
11 those with the lowest revenues in Subtier 3, and
12 those remaining in Subtier 2.

13 (2) PAYMENT.—Each person or affiliated group
14 within an assigned subtier shall pay, on an annual
15 basis, the following:

16 (A) Subtier 1: \$500,000.

17 (B) Subtier 2: \$250,000.

18 (C) Subtier 3: \$100,000.

19 (h) TIER VII.—

20 (1) IN GENERAL.—Notwithstanding any assign-
21 ment to Tiers II, III, IV, V, and VI based on prior
22 asbestos expenditures under section 204(d), a person
23 shall be assigned to Tier VII if the person—

24 (A) is subject to asbestos claims brought
25 under the Federal Employers' Liability Act (45

1 U.S.C. 51 et seq.) as a result of operations as
2 a common carrier by railroad; and

3 (B) have paid not less than \$5,000,000 in
4 settlement, judgment, defense, or indemnity
5 costs relating to such claims.

6 (2) ADDITIONAL AMOUNT.—The contribution
7 requirement for persons assigned to Tier VII shall
8 be in addition to any applicable contribution require-
9 ment that such person may be assessed under Tiers
10 II through VI.

11 (3) SUBTIER 1.—The Administrator shall as-
12 sign each person or affiliated group in Tier VII with
13 revenues of not less than \$5,000,000,000 to Subtier
14 1 and shall require each such person or affiliated
15 group to make annual payments of \$10,000,000 into
16 the Fund.

17 (4) SUBTIER 2.—The Administrator shall as-
18 sign each person or affiliated group in Tier VII with
19 revenues of less than \$5,000,000,000, but not less
20 than \$3,000,000,000 to Subtier 2, and shall require
21 each such person or affiliated group to make annual
22 payments of \$5,000,000 into the Fund.

23 (5) SUBTIER 3.—The Administrator shall as-
24 sign each person or affiliated group in Tier VII with
25 revenues of less than \$3,000,000,000, but not less

1 than \$500,000,000 to Subtier 3, and shall require
2 each such person or affiliated group to make annual
3 payments of \$500,000 into the Fund.

4 (6) JOINT VENTURE REVENUES AND LIABIL-
5 ITY.—

6 (A) REVENUES.—For purposes of this sub-
7 section, the revenues of a joint venture shall be
8 included on a pro rata basis reflecting relative
9 joint ownership to calculate the revenues of the
10 parents of that joint venture. The joint venture
11 shall not be responsible for a contribution
12 amount under this subsection.

13 (B) LIABILITY.—For purposes of this sub-
14 section, the liability under the Act of April 22,
15 1908 (45 U.S.C. 51 et seq.), commonly known
16 as the Federal Employers' Liability Act, shall
17 be attributed to the parent owners of the joint
18 venture on a pro rata basis, reflecting their rel-
19 ative share of ownership. The joint venture
20 shall not be responsible for a contribution
21 amount under this provision.

22 **SEC. 204. ASSESSMENT ADMINISTRATION.**

23 (a) REDUCTION ADJUSTMENTS.—The Administrator
24 shall assess contributions based on amounts provided
25 under this subtitle for each person or affiliated group

1 within Tiers II, III, IV, V, VI, and VII for the first 5
2 years of the operation of the Fund. Beginning in year 6,
3 and thereafter, the Administrator shall reduce the con-
4 tribution amount for each defendant participant in each
5 of these tiers in proportion to the reductions in the sched-
6 ule under subsection (h)(2).

7 (b) SMALL BUSINESS EXEMPTION.—A person or af-
8 filiated group that is a small business concern (as defined
9 under section 3 of the Small Business Act (15 U.S.C.
10 632)), on December 31, 2002, is exempt from any con-
11 tribution requirement under this subtitle.

12 (c) PROCEDURES.—The Administrator shall pre-
13 scribe procedures on how contributions assessed under
14 this subtitle are to be paid.

15 (d) EXCEPTIONS.—

16 (1) IN GENERAL.—Under expedited procedures
17 established by the Administrator, a defendant partic-
18 ipant may seek adjustment of the amount of its con-
19 tribution based on severe financial hardship or dem-
20 onstrated inequity. The Administrator may deter-
21 mine whether to grant an adjustment and the size
22 of any such adjustment, in accordance with this sub-
23 section. Such determinations shall not prejudice the
24 integrity of the Fund and shall not be subject to ju-
25 dicial review.

1 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

2 (A) IN GENERAL.—A defendant may apply
3 for an adjustment based on financial hardship
4 at any time during the life of the Fund and
5 may qualify for such adjustment by dem-
6 onstrating that the amount of its contribution
7 under the statutory allocation would constitute
8 a severe financial hardship.

9 (B) TERM.—A hardship adjustment under
10 this subsection shall have a term of 3 years.

11 (C) RENEWAL.—A defendant may renew
12 its hardship adjustment by demonstrating that
13 it remains justified.

14 (D) LIMITATION.—The Administrator may
15 not grant hardship adjustments under this sub-
16 section in any year that exceed, in the aggre-
17 gate, 3 percent of the total annual contributions
18 required of all defendant participants.

19 (3) INEQUITY ADJUSTMENTS.—

20 (A) IN GENERAL.—A defendant may qual-
21 ify for an adjustment based on inequity by dem-
22 onstrating that the amount of its contribution
23 under the statutory allocation is exceptionally
24 inequitable when measured against the amount
25 of the likely cost to the defendant of its future

1 liability in the tort system in the absence of the
2 Fund.

3 (B) TERM.—Subject to the annual avail-
4 ability of funds in the Orphan Share Reserve
5 Account established under section 223(e), an
6 inequity adjustment granted by the Adminis-
7 trator under this subsection shall remain in ef-
8 fect for the life of the Fund.

9 (C) LIMITATION.—The Administrator may
10 grant inequity adjustments only to the extent
11 that—

12 (i) the financial condition of the Fund
13 is sufficient to accommodate such adjust-
14 ments;

15 (ii) the Orphan Share Reserve Ac-
16 count is sufficient to cover such adjust-
17 ments for that year; and

18 (iii) such adjustments do not exceed 2
19 percent of the total annual contributions
20 required of all defendant participants.

21 (4) ADVISORY PANELS.—

22 (A) APPOINTMENT.—The Administrator
23 shall appoint a Financial Hardship Adjustment
24 Panel and an Inequity Adjustment Panel to ad-

1 wise the Administrator in carrying out this sub-
2 section.

3 (B) MEMBERSHIP.—The membership of
4 the panels appointed under subparagraph (A)
5 may overlap.

6 (C) COORDINATION.—The panels ap-
7 pointed under subparagraph (A) shall coordi-
8 nate their deliberations and recommendations.

9 (e) LIMITATION ON LIABILITY.—The liability of each
10 defendant participant to contribute to the Fund shall be
11 limited to the payment obligations under this subtitle, and,
12 except as provided in subsection (f), no defendant partici-
13 pant shall have any liability for the payment obligations
14 of any other defendant participant.

15 (f) CONSOLIDATION OF CONTRIBUTIONS.—

16 (1) IN GENERAL.—For purposes of determining
17 the contribution levels of defendant participants, any
18 affiliated group including 1 or more defendant partici-
19 pants may irrevocably elect, as part of the sub-
20 mission to be made under subsection (i), to report
21 on a consolidated basis all of the information nec-
22 essary to determine the contribution level under this
23 subtitle and contribute to the Fund on a consoli-
24 dated basis.

1 (2) ELECTION.—If an affiliated group elects
2 consolidation as provided in this subsection—

3 (A) for purposes of this Act other than
4 this subsection, the affiliated group shall be
5 treated as if it were a single participant, includ-
6 ing without limitation with respect to the as-
7 sessment of a single annual contribution under
8 this subtitle for the entire affiliated group;

9 (B) the ultimate parent of the affiliated
10 group shall prepare and submit the submission
11 to be made under subsection (i), on behalf of
12 the entire affiliated group and shall be solely
13 liable, as between the Administrator and the af-
14 filiated group only, for the payment of the an-
15 nual contribution assessed against the affiliated
16 group, except that, if the ultimate parent does
17 not pay when due any contribution for the af-
18 filiated group, the Administrator shall have the
19 right to seek payment of all or any portion of
20 the entire amount due from any member of the
21 affiliated group;

22 (C) all members of the affiliated group
23 shall be identified in the submission under sub-
24 section (i) and shall certify compliance with this

1 subsection and the Administrator's regulations
2 implementing this subsection; and

3 (D) the obligations under this subtitle shall
4 not change even if, after the date of enactment
5 of this Act, the beneficial ownership interest be-
6 tween any members of the affiliated group shall
7 change.

8 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
9 TURES.—

10 (1) IN GENERAL.—For purposes of determining
11 a defendant participant's prior asbestos expenditure,
12 the Administrator shall prescribe such rules as may
13 be necessary or appropriate to assure that payments
14 by indemnitors before December 31, 2002, shall be
15 counted as part of the indemnitor's prior asbestos
16 expenditure, rather than the indemnitee's prior as-
17 bestos expenditure, in accordance with this sub-
18 section.

19 (2) INDEMNIFIABLE COSTS.—If an indemnitor
20 has paid or reimbursed to an indemnitee any
21 indemnifiable cost or otherwise made a payment on
22 behalf of or for the benefit of an indemnitee to a
23 third party for an indemnifiable cost before Decem-
24 ber 31, 2002, the amount of such indemnifiable cost

1 shall be solely for the account of the indemnitor for
2 purposes under this Act.

3 (3) INSURANCE PAYMENTS.—When computing
4 the prior asbestos expenditure with respect to an as-
5 bestos claim, any amount paid or reimbursed by in-
6 surance shall be solely for the account of the
7 indemnitor, even if the indemnitor would have no di-
8 rect right to the benefit of the insurance, if—

9 (A) such insurance has been paid or reim-
10 bursed to the indemnitor or the indemnitee, or
11 paid on behalf of or for the benefit of the
12 indemnitee, any indemnifiable cost related to
13 the asbestos claim; and

14 (B) the indemnitor has either, with respect
15 to such asbestos claim or any similar asbestos
16 claim, paid or reimbursed to its indemnitee any
17 indemnifiable cost or paid to any third party on
18 behalf of or for the benefit of the indemnitee
19 any indemnifiable cost.

20 (h) MINIMUM CONTRIBUTIONS.—Minimum aggre-
21 gate contributions of defendant participants to the Fund
22 in any calendar year shall be as follows:

23 (1) For each of the first 5 years of the Fund,
24 the aggregate contributions of defendant partici-
25 pants to the fund shall be at least \$2,500,000,000.

1 (2) After the 5th year, the minimum aggregate
2 contribution shall be reduced as follows:

3 (A) For years 6 through 8,
4 \$2,250,000,000.

5 (B) For years 9 through 11,
6 \$2,000,000,000.

7 (C) For years 12 through 14,
8 \$1,750,000,000.

9 (D) For years 15 through 17,
10 \$1,500,000,000.

11 (E) For years 18 through 20,
12 \$1,250,000,000.

13 (F) For years 21 through 26,
14 \$1,000,000,000.

15 (G) For year 27, \$250,000,000.

16 (i) PROCEDURES TO DETERMINE FUND CONTRIBU-
17 TION ASSESSMENTS.—

18 (1) NOTICE TO PARTICIPANTS.—Not later than
19 60 days after the initial appointment of the Admin-
20 istrator, the Administrator shall—

21 (A) directly notify all reasonably identifi-
22 able defendant participants of the requirement
23 to submit information necessary to calculate the
24 amount of any required contribution to the
25 Fund; and

1 (B) publish in the Federal Register a no-
2 tice requiring any person who may be a defend-
3 ant participant (as determined by criteria out-
4 lined in the notice) to submit such information.

5 (2) RESPONSE REQUIRED.—

6 (A) IN GENERAL.—Any person who re-
7 ceives notice under paragraph (1)(A), and any
8 other person meeting the criteria specified in
9 the notice published under paragraph (1)(B),
10 shall respond by providing the Administrator
11 with all the information requested in the notice
12 at the earlier of—

13 (i) 30 days after the receipt of direct
14 notice; or

15 (ii) 30 days after the publication of
16 notice in the Federal Register.

17 (B) CERTIFICATION.—The response sub-
18 mitted under subparagraph (A) shall be signed
19 by a responsible corporate officer, general part-
20 ner, proprietor, or individual of similar author-
21 ity, who shall certify under penalty of law the
22 completeness and accuracy of the information
23 submitted.

24 (3) NOTICE OF INITIAL DETERMINATION.—

1 (A) IN GENERAL.—Not later than 60 days
2 after receiving a response under paragraph (2),
3 the Administrator shall send the participant a
4 notice of initial determination assessing a con-
5 tribution to the Fund, which shall be based on
6 the information received from the participant in
7 response to the Administrator’s request for in-
8 formation.

9 (B) NO RESPONSE; INCOMPLETE RE-
10 SPONSE.—If no response is received from the
11 participant, or if the response is incomplete, the
12 initial determination assessing a contribution
13 from the participant shall be based on the best
14 information available to the Administrator.

15 (4) CONFIDENTIALITY.—Any person may des-
16 ignate any information submitted under this sub-
17 section as confidential commercial or financial infor-
18 mation for purposes of section 552 of title 5, United
19 States Code (commonly referred to as the Freedom
20 of Information Act). The Administrator shall adopt
21 procedures for designating such information as con-
22 fidential.

23 (5) NEW INFORMATION.—

24 (A) EXISTING PARTICIPANT.—The Admin-
25 istrator shall adopt procedures for revising ini-

1 tial assessments based on new information re-
2 ceived after the initial assessments are cal-
3 culated.

4 (B) ADDITIONAL PARTICIPANT.—If the
5 Administrator, at any time, receives information
6 that an additional person may qualify as a par-
7 ticipant, the Administrator shall require such
8 person to submit information necessary to de-
9 termine whether an initial determination assess-
10 ing a contribution from that person should be
11 issued, in accordance with the requirements of
12 this subsection.

13 (6) PAYMENT SCHEDULE.—Any initial deter-
14 mination issued under this subsection may allow for
15 periodic payments, if the full annual amount as-
16 sessed is paid each year. Each participant shall pay
17 its contribution to the Fund in the amount specified
18 at the initial determination of assessment from the
19 Administrator, according to the schedule specified in
20 the initial determination.

21 (7) SUBPOENAS.—The Administrator may re-
22 quest the Attorney General to subpoena persons to
23 compel testimony, records, and other information
24 relevant to its responsibilities under this section. The
25 Attorney General may enforce such subpoena in ap-

1 appropriate proceedings in the United States district
2 court for the district in which the person to whom
3 the subpoena was addressed resides, was served, or
4 transacts business.

5 (8) REHEARING.—A participant has a right to
6 obtain rehearing of the Administrator’s initial deter-
7 mination under section 202.

8 **Subtitle B—Asbestos Insurers** 9 **Commission**

10 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-** 11 **MISSION.**

12 (a) ESTABLISHMENT.—There is established the As-
13 bestos Insurers Commission (referred to in this subtitle
14 as the “Commission”) to carry out the duties described
15 in section 212.

16 (b) MEMBERSHIP.—

17 (1) APPOINTMENT.—The Commission shall be
18 composed of 5 members who shall be appointed by
19 the President, after consultation with—

20 (A) the majority leader of the Senate;

21 (B) the minority leader of the Senate;

22 (C) the Speaker of the House of Rep-
23 resentatives; and

24 (D) the minority leader of the House of
25 Representatives.

1 (2) QUALIFICATIONS.—

2 (A) EXPERTISE.—Members of the Com-
3 mission shall have sufficient expertise to fulfill
4 their responsibilities under this subtitle.

5 (B) CONFLICT OF INTEREST.—No member
6 of the Commission appointed under paragraph
7 (1) may be an employee, former employee, or
8 shareholder of any insurer participant, or an
9 immediate family member of any such indi-
10 vidual.

11 (C) FEDERAL EMPLOYMENT.—A member
12 of the Commission may not be an officer or em-
13 ployee of the Federal Government, except by
14 reason of membership on the Commission.

15 (3) DATE.—The appointments of the members
16 of the Commission shall be made not later than 60
17 days after the date of enactment of this Act.

18 (4) PERIOD OF APPOINTMENT.—Members shall
19 be appointed for the life of the Commission.

20 (5) VACANCIES.—Any vacancy in the Commis-
21 sion shall be filled in the same manner as the origi-
22 nal appointment.

23 (6) CHAIRMAN.—The Commission shall select a
24 Chairman from among its members.

25 (c) MEETINGS.—

1 (1) INITIAL MEETING.—Not later than 30 days
2 after the date on which all members of the Commis-
3 sion have been appointed, the Commission shall hold
4 its first meeting.

5 (2) SUBSEQUENT MEETINGS.—The Commission
6 shall meet at the call of the Chairman as necessary
7 to accomplish the duties under section 212.

8 (3) QUORUM.—No business may be conducted
9 or hearings held without the participation of all of
10 the members of the Commission.

11 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

12 (a) DETERMINATION OF INSURER LIABILITY FOR AS-
13 BESTOS INJURIES.—

14 (1) IN GENERAL.—The Commission shall deter-
15 mine the amount that each insurer participant will
16 be required to pay into the Fund to satisfy their
17 contractual obligation to compensate claimants for
18 asbestos injuries.

19 (2) ALLOCATION AGREEMENT.—

20 (A) IN GENERAL.—Not later than 30 days
21 after the Commission issues its initial deter-
22 mination, the insurer participants may submit
23 an allocation agreement, approved by all of the
24 insurer participants, to—

25 (i) the Commission;

1 (ii) the Committee on the Judiciary of
2 the Senate; and

3 (iii) the Committee on the Judiciary
4 of the House of Representatives.

5 (B) CERTIFICATION.—The authority of the
6 Commission under this subtitle shall terminate
7 on the day after the Commission certifies that
8 an allocation agreement submitted under sub-
9 paragraph (A) meets the requirements of this
10 subtitle.

11 (3) GENERAL PROVISIONS.—

12 (A) AGGREGATE CONTRIBUTION LEVEL.—
13 The total contribution required of all insurer
14 participants over the life of the Fund shall be
15 equal to \$45,000,000,000.

16 (B) DECLINING PAYMENTS.—Since the
17 payments from the Fund are expected to de-
18 cline over time, the annual contributions from
19 insurer participants is also expected to decline
20 over time. The proportionate share of each in-
21 surer participant's contributions to the Fund
22 will remain the same throughout the life of the
23 Fund.

24 (C) SEVERAL LIABILITY.—Each insurer
25 participant's obligation to contribute to the

1 Fund is several. There is no joint liability and
2 the future insolvency of any insurer participant
3 shall not affect the assessment assigned to any
4 other insurer participant.

5 (4) ASSESSMENT CRITERIA.—

6 (A) MANDATORY PARTICIPANTS.—Insurers
7 that have paid, or been assessed by a legal
8 judgment or settlement, at least \$1,000,000 in
9 defense and indemnity costs before the date of
10 enactment of this Act in response to claims for
11 compensation for asbestos injuries shall be
12 mandatory participants in the Fund. Other in-
13 surers shall be exempt from mandatory pay-
14 ments.

15 (B) PARTICIPANT TIERS.—Contributions
16 shall be determined by assigning mandatory in-
17 surer participants into tiers, which shall be de-
18 termined and defined based on—

19 (i) net written premiums received
20 from policies covering asbestos that were in
21 force at any time during the period begin-
22 ning on January 1, 1940 and ending on
23 December 31, 1986;

1 (ii) net paid losses for asbestos inju-
2 ries compared to all such losses for the in-
3 surance industry;

4 (iii) net carried reserve level for asbes-
5 tos claims on the most recent financial
6 statement of the insurer participant; and

7 (iv) future liability.

8 (C) PAYMENT SCHEDULE.—Any final de-
9 termination of assessment issued under sub-
10 section (b) may allow for periodic payments,
11 provided that the full annual amount assessed
12 is paid each year. Each insurer participant shall
13 pay its contribution to the Fund in the amount
14 specified in the final determination of assess-
15 ment from the Commission, according to the
16 schedule specified in the final determination.

17 (b) PROCEDURE.—

18 (1) NOTICE TO PARTICIPANTS.—Not later than
19 30 days after the initial meeting of the Commission,
20 the Commission shall—

21 (A) directly notify all reasonably identifi-
22 able insurer participants of the requirement to
23 submit information necessary to calculate the
24 amount of any required contribution to the
25 Fund; and

1 (B) publish in the Federal Register a no-
2 tice requiring any person who may be an in-
3 surer participant (as determined by criteria out-
4 lined in the notice) to submit such information.

5 (2) RESPONSE REQUIRED.—

6 (A) IN GENERAL.—Any person who re-
7 ceives notice under paragraph (1)(A), and any
8 other person meeting the criteria specified in
9 the notice published under paragraph (1)(B),
10 shall respond by providing the Commission with
11 all the information requested in the notice at
12 the earlier of—

13 (i) 30 days after the receipt of direct
14 notice; or

15 (ii) 30 days after the publication of
16 notice in the Federal Register.

17 (B) CERTIFICATION.—The response sub-
18 mitted under subparagraph (A) shall be signed
19 by a responsible corporate officer, general part-
20 ner, proprietor, or individual of similar author-
21 ity, who shall certify under penalty of law the
22 completeness and accuracy of the information
23 submitted.

24 (3) NOTICE OF INITIAL DETERMINATION.—

1 (A) IN GENERAL.—Not later than 120
2 days after the initial meeting of the Commis-
3 sion, the Commission shall send each insurer
4 participant a notice of initial determination as-
5 sessing a contribution to the Fund, which shall
6 be based on the information received from the
7 participant in response to the Commission’s re-
8 quest for information.

9 (B) NO RESPONSE; INCOMPLETE RE-
10 SPONSE.—If no response is received from an in-
11 surer participant, or if the response is incom-
12 plete, the initial determination assessing a con-
13 tribution from the insurer participant shall be
14 based on the best information available to the
15 Commission.

16 (4) REVIEW PERIOD.—

17 (A) COMMENTS FROM INSURER PARTICI-
18 PANTS.—Not later than 30 days after receiving
19 a notice of initial determination from the Com-
20 mission, an insurer participant may provide the
21 Commission with additional information to sup-
22 port limited adjustments to the assessment re-
23 ceived to reflect exceptional circumstances.

24 (B) ADDITIONAL PARTICIPANTS.—If, be-
25 fore the final determination of the Commission,

1 the Commission receives information that an
2 additional person may qualify as an insurer
3 participant, the Commission shall require such
4 person to submit information necessary to de-
5 termine whether a contribution from that per-
6 son should be assessed, in accordance with the
7 requirements of this subsection.

8 (C) REVISION PROCEDURES.—The Com-
9 mission shall adopt procedures for revising ini-
10 tial assessments based on information received
11 under subparagraphs (A) and (B). Any adjust-
12 ments to assessment levels shall comply with
13 the criteria under subsection (a).

14 (5) SUBPOENAS.—The Commission may re-
15 quest the Attorney General to subpoena persons to
16 compel testimony, records, and other information
17 relevant to its responsibilities under this section. The
18 Attorney General may enforce such subpoena in ap-
19 propriate proceedings in the United States district
20 court for the district in which the person to whom
21 the subpoena was addressed resides, was served, or
22 transacts business.

23 (6) NOTICE OF FINAL DETERMINATION.—

24 (A) IN GENERAL.—Not later than 60 days
25 after the notice of initial determination is sent

1 to the insurer participants, the Commission
2 shall send each insurer participant a notice of
3 final determination.

4 (B) JUDICIAL REVIEW.—A participant has
5 a right to obtain judicial review of the Commis-
6 sion's final determination under title III.

7 (c) DETERMINATION OF RELATIVE LIABILITY FOR
8 ASBESTOS INJURIES.—The Commission shall determine
9 the percentage of the total liability of each participant
10 identified under subsection (a).

11 (d) REPORT.—

12 (1) RECIPIENTS.—Not later than 1 year after
13 the date of enactment of this Act, the Commission
14 shall submit a report, containing the information de-
15 scribed under paragraph (2), to—

16 (A) the Committee on the Judiciary of the
17 Senate;

18 (B) the Committee on the Judiciary of the
19 House of Representatives; and

20 (C) the Court of Asbestos Claims.

21 (2) CONTENTS.—The report under paragraph
22 (1) shall contain the amount that each insurer par-
23 ticipant is required to contribute to the Fund, in-
24 cluding the payment schedule for such contributions.

1 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

2 (a) HEARINGS.—The Commission may hold such
3 hearings, sit and act at such times and places, take such
4 testimony, and receive such evidence as the Commission
5 considers advisable to carry out this Act.

6 (b) INFORMATION FROM FEDERAL AGENCIES.—The
7 Commission may secure directly from any Federal depart-
8 ment or agency such information as the Commission con-
9 siders necessary to carry out this Act. Upon request of
10 the Chairman of the Commission, the head of such depart-
11 ment or agency shall furnish such information to the Com-
12 mission.

13 (c) POSTAL SERVICES.—The Commission may use
14 the United States mails in the same manner and under
15 the same conditions as other departments and agencies of
16 the Federal Government.

17 (d) GIFTS.—The Commission may not accept, use, or
18 dispose of gifts or donations of services or property.

19 **SEC. 214. PERSONNEL MATTERS.**

20 (a) COMPENSATION OF MEMBERS.—Each member of
21 the Commission shall be compensated at a rate equal to
22 the daily equivalent of the annual rate of basic pay pre-
23 scribed for level IV of the Executive Schedule under sec-
24 tion 5315 of title 5, United States Code, for each day (in-
25 cluding travel time) during which such member is engaged
26 in the performance of the duties of the Commission.

1 (b) TRAVEL EXPENSES.—The members of the Com-
2 mission shall be allowed travel expenses, including per
3 diem in lieu of subsistence, at rates authorized for employ-
4 ees of agencies under subchapter I of chapter 57 of title
5 5, United States Code, while away from their homes or
6 regular places of business in the performance of services
7 for the Commission.

8 (c) STAFF.—

9 (1) IN GENERAL.—The Chairman of the Com-
10 mission may, without regard to the civil service laws
11 and regulations, appoint and terminate an executive
12 director and such other additional personnel as may
13 be necessary to enable the Commission to perform
14 its duties. The employment of an executive director
15 shall be subject to confirmation by the Commission.

16 (2) COMPENSATION.—The Chairman of the
17 Commission may fix the compensation of the execu-
18 tive director and other personnel without regard to
19 chapter 51 and subchapter III of chapter 53 of title
20 5, United States Code, relating to classification of
21 positions and General Schedule pay rates, except
22 that the rate of pay for the executive director and
23 other personnel may not exceed the rate payable for
24 level V of the Executive Schedule under section 5316
25 of such title.

1 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
2 Federal Government employee may be detailed to the
3 Commission without reimbursement, and such detail shall
4 be without interruption or loss of civil service status or
5 privilege.

6 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
7 TENT SERVICES.—The Chairman of the Commission may
8 procure temporary and intermittent services under section
9 3109(b) of title 5, United States Code, at rates for individ-
10 uals which do not exceed the daily equivalent of the annual
11 rate of basic pay prescribed for level V of the Executive
12 Schedule under section 5316 of such title.

13 **SEC. 215. NONAPPLICATION OF FOIA AND CONFIDEN-**
14 **TIALITY OF INFORMATION.**

15 (a) IN GENERAL.—Section 552 of title 5, United
16 States Code (commonly referred to as the Freedom of In-
17 formation Act) shall not apply to the Commission.

18 (b) CONFIDENTIALITY OF INFORMATION.—All infor-
19 mation submitted to the Commission shall be privileged
20 and confidential information and shall not be disclosed to
21 any person outside the Commission, unless such privilege
22 is knowingly and intentionally waived by the person sub-
23 mitting the information. An appeal of an assessment to
24 the Fund under this subtitle shall be deemed a waiver for

1 the purposes of this subsection unless the appellee partici-
 2 pant makes a motion for an in camera review of its appeal.

3 **SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMIS-**
 4 **SION.**

5 The Commission shall terminate 60 days after the
 6 date on which the Commission submits its report under
 7 section 212(c).

8 **SEC. 217. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) IN GENERAL.—There are authorized to be appro-
 10 priated to the Commission such sums as may be necessary
 11 for fiscal year 2004 to carry out the provisions of this sub-
 12 title.

13 (b) AVAILABILITY.—Any sums appropriated under
 14 the authorization contained in this section shall remain
 15 available, without fiscal year limitation, until expended.

16 **Subtitle C—Office of Asbestos**
 17 **Injury Claims Resolution**

18 **SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS**
 19 **INJURY CLAIMS RESOLUTION.**

20 (a) IN GENERAL.—There is established the Office of
 21 Asbestos Injury Claims Resolution.

22 (b) RESPONSIBILITIES.—The Office shall be respon-
 23 sible for—

24 (1) administering the Fund;

1 (2) providing payments from the Fund to as-
2 bestos claimants who are determined to be eligible
3 for awards; and

4 (3) carrying out other applicable provisions of
5 this title and other activities determined appropriate
6 by the Administrator.

7 (c) ADMINISTRATOR.—

8 (1) APPOINTMENT.—The Office shall be headed
9 by an Administrator who shall be appointed by the
10 President, by and with the advice and consent of the
11 Senate.

12 (2) TERM; REMOVAL.—The Administrator shall
13 serve for a term of 5 years and may be removable
14 by the President only for good cause.

15 **SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGE-**
16 **MENT OF THE FUND.**

17 (a) GENERAL POWERS.—The Administrator shall
18 have the following general powers:

19 (1) To promulgate such regulations as the Ad-
20 ministrator determines to be necessary to implement
21 the provisions of this subtitle.

22 (2) To appoint employees or contract for the
23 services of other personnel as may be necessary and
24 appropriate to carry out the provisions of this sub-

1 title, including entering into cooperative agreements
2 with other Federal agencies.

3 (3) To make such expenditures as may be nec-
4 essary and appropriate in the administration of this
5 subtitle.

6 (4) To take all actions necessary to prudently
7 manage the Fund, including—

8 (A) administering, in a fiduciary capacity,
9 the assets of the Fund for the exclusive purpose
10 of providing benefits to asbestos claimants and
11 their beneficiaries;

12 (B) defraying the reasonable expenses of
13 administering the Fund;

14 (C) investing the assets of the Fund in ac-
15 cordance with subsection (b)(2); and

16 (D) retaining advisers, managers, and
17 custodians who possess the necessary facilities
18 and expertise to provide for the skilled and pru-
19 dent management of the Fund, to assist in the
20 development, implementation and maintenance
21 of the Fund's investment policies and invest-
22 ment activities, and to provide for the safe-
23 keeping and delivery of the Fund's assets.

1 (5) To have all other powers incidental, nec-
2 essary, or appropriate to carrying out the functions
3 of the Office.

4 (b) REQUIREMENTS RELATING TO FUND ASSETS.—

5 (1) IN GENERAL.—Amounts in the Fund shall
6 be held for the exclusive purpose of providing bene-
7 fits to asbestos claimants and their beneficiaries and
8 to otherwise defray the reasonable expenses of ad-
9 ministering the Fund.

10 (2) INVESTMENTS.—

11 (A) IN GENERAL.—Amounts in the Fund
12 shall be administered and invested with the
13 care, skill, prudence, and diligence, under the
14 circumstances prevailing at the time of such in-
15 vestment, that a prudent person acting in a like
16 capacity and manner would use.

17 (B) STRATEGY.—The Administrator shall
18 invest amounts in the Fund in a manner that
19 enables the Fund to make current and future
20 distributions to or for the benefit of asbestos
21 claimants. In pursuing an investment strategy
22 under this subparagraph, the Administrator
23 shall consider, to the extent relevant to an in-
24 vestment decision or action—

25 (i) the size of the Fund;

1 (ii) the nature and estimated duration
2 of the Fund;

3 (iii) the liquidity and distribution re-
4 quirements of the Fund;

5 (iv) general economic conditions at the
6 time of the investment;

7 (v) the possible effect of inflation or
8 deflation on Fund assets;

9 (vi) the role that each investment or
10 course of action plays with respect to the
11 overall assets of the Fund;

12 (vii) the expected amount to be earned
13 (including both income and appreciation of
14 capital) through investment of amounts in
15 the Fund; and

16 (viii) the needs of asbestos claimants
17 for current and future distributions au-
18 thorized under this Act.

19 (c) VIOLATIONS OF ENVIRONMENTAL AND OCCUPA-
20 TIONAL HEALTH AND SAFETY REQUIREMENTS.—

21 (1) ASBESTOS IN COMMERCE.—If the Adminis-
22 trator receives information concerning conduct oc-
23 ccurring after the date of enactment of this Act that
24 may have been a violation of standards issued by the
25 Environmental Protection Agency under section 6(a)

1 of the Toxic Substances Control Act (15 U.S.C.
2 2605(a)), relating to the manufacture, importation,
3 processing and distribution in commerce of asbestos-
4 containing products, the Administrator may refer
5 the matter to the Administrator of the Environ-
6 mental Protection Agency and the United States At-
7 torney for possible civil or criminal penalties under
8 section 16(a) of the Toxic Substances Control Act
9 (15 U.S.C. 2615(a)).

10 (2) ASBESTOS AS AIR POLLUTANT.—If the Ad-
11 ministrator receives information concerning conduct
12 occurring after the date of enactment of this Act
13 that may have been a violation of standards issued
14 by the Environmental Protection Agency under sec-
15 tion 112(d) of the Clean Air Act (42 U.S.C.
16 7412(d)), relating to asbestos as a hazardous air
17 pollutant, the Administrator may refer the matter to
18 the Administrator of the Environmental Protection
19 Agency and the United States Attorney for possible
20 criminal and civil penalties under section 113 of the
21 Clean Air Act (42 U.S.C. 7413).

22 (3) OCCUPATIONAL EXPOSURE.—If the Admin-
23 istrator receives information concerning conduct oc-
24 ccurring after the date of enactment of this Act that
25 may have been a violation of standards issued by the

1 Occupational Safety and Health Administration
2 under the Occupational Safety and Health Act of
3 1970 (29 U.S.C. 651 et seq.), relating to occupa-
4 tional exposure to asbestos, the Administrator may
5 refer the matter to the United States Attorney for
6 possible criminal prosecution under section 5(a) of
7 such Act (29 U.S.C. 654(a)), and to the Secretary
8 of Labor for possible civil penalties under section 17
9 (a)–(d) of such Act (29 U.S.C. 666 (a)–(d)).

10 **SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.**

11 (a) ESTABLISHMENT.—There is established in the
12 Office of Asbestos Injury Claims Resolution, the Asbestos
13 Injury Claims Resolution Fund, which shall be available
14 to pay—

15 (1) claims for awards for an eligible disease or
16 condition determined under title I;

17 (2) claims for reimbursement for medical moni-
18 toring determined under title I;

19 (3) principal and interest on borrowings under
20 subsection (c); and

21 (4) administrative expenses to carry out this
22 subtitle.

23 (b) LIMITATIONS ON CONTRIBUTIONS BY MANDA-
24 TORY PARTICIPANTS.—The aggregate contributions of all

1 mandatory participants to the Fund may not exceed
2 \$5,000,000,000 in any calendar year.

3 (c) BORROWING AUTHORITY.—The Administrator is
4 authorized to borrow, in any calendar year, an amount not
5 to exceed anticipated contributions to the Fund in the fol-
6 lowing calendar year for purposes of carrying out the obli-
7 gations of the Fund under this Act.

8 (d) GUARANTEED PAYMENT ACCOUNT.—

9 (1) IN GENERAL.—The Administrator shall es-
10 tablish a guaranteed payment account within the
11 Fund to insure payment of the total amount of con-
12 tributions required to be paid into the Fund by all
13 participants.

14 (2) SURCHARGE.—The Administrator shall im-
15 pose, on each participant required to pay contribu-
16 tions into the Fund under this Act, in addition to
17 the amount of such contributions, a reasonable sur-
18 charge to be paid into the guaranteed payment ac-
19 count in an amount that the Administrator deter-
20 mines appropriate to insure against the risk of non-
21 payment of required contributions by any such par-
22 ticipant.

23 (3) PROCEDURE.—The surcharge required
24 under this section shall be paid in such manner, at

1 such times, and in accordance with such procedures
2 as the Administrator determines appropriate.

3 (4) USES OF GUARANTEED PAYMENT AC-
4 COUNT.—Amounts in the guaranteed payment ac-
5 count shall be used as necessary to pay claims from
6 the Fund, to the extent that amounts in the Fund
7 are insufficient to pay such claims due to non-
8 payment by any participant.

9 (5) ENFORCEMENT.—The enforcement of the
10 payment of a surcharge under this subsection may
11 be enforced in the same manner and to the same ex-
12 tent as the enforcement of a contribution under sec-
13 tion 224.

14 (e) ORPHAN SHARE RESERVE ACCOUNT.—

15 (1) IN GENERAL.—To the extent the total
16 amount of contributions of the participants in any
17 given year exceed the maximum aggregate contribu-
18 tion under section 204(h), the excess monies shall be
19 placed in an orphan share reserve account estab-
20 lished within the Fund by the Administrator.

21 (2) USE OF ACCOUNT MONIES.—Monies from
22 the orphan share reserve account shall be preserved
23 and administered like the remainder of the Fund,
24 but shall be reserved and may be used only—

1 (A) in the event that a petition for relief
2 is filed and not withdrawn for the participant
3 under title 11, United States Code, after the
4 date of enactment of this Act and the partici-
5 pant cannot meet its obligations under this sub-
6 title; and

7 (B) to the extent the Administrator grants
8 a participant relief for severe financial hardship
9 or demonstrated inequity under this section.

10 **SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.**

11 (a) **DEFAULT.**—If any participant fails to make any
12 payment in the amount and according to the schedule
13 specified in a determination of assessment, after demand
14 and 30 days opportunity to cure the default, there shall
15 be a lien in favor of the United States for the amount
16 of the delinquent payment (including interest) upon all
17 property and rights to property, whether real or personal,
18 belonging to such participant.

19 (b) **BANKRUPTCY.**—In the case of a bankruptcy or
20 insolvency proceeding, the lien imposed under subsection
21 (a) shall be treated in the same manner as a lien for taxes
22 due and owing to the United States for purposes of the
23 provisions of title 11, United States Code, or section
24 3713(a) of title 31, United States Code.

25 (c) **CIVIL ACTION.**—

1 (1) IN GENERAL.—In any case in which there
2 has been a refusal or neglect to pay the liability im-
3 posed by the final determination under section 202
4 or 212, the Administrator may bring a civil action
5 in the Federal district court for the District of Co-
6 lumbia to—

7 (A) enforce such liability and the lien of
8 the United States under this section; or

9 (B) subject any property, of whatever na-
10 ture, of the participant, or in which the partici-
11 pant has any right, title, or interest, to the pay-
12 ment of such liability.

13 (2) DEFENSE LIMITATION.—In any proceeding
14 under this subsection, the participant shall be barred
15 from bringing any challenge to the assessment if
16 such challenge could have been made during the re-
17 view period under section 202(b)(4) or 212(b)(4), or
18 a judicial review proceeding under title III.

19 **SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.**

20 (a) DEFINITION.—In this section, the term “addi-
21 tional contributing participant” means any defendant in
22 an asbestos claim that is not a mandatory participant
23 under subtitle A and is likely to avoid future civil liability
24 as a result of this Act.

1 (b) ASSESSMENT.—In addition to contributions as-
 2 sessed under subtitle A, the Administrator may assess ad-
 3 ditional contributing participants for contributions to the
 4 Fund. Any additional contributing participant assessed
 5 under this section shall be treated as a defendant partici-
 6 pant for purposes of procedures and appeals under this
 7 Act.

8 (c) ASSESSMENT LIMITATIONS.—The Administrator
 9 may assess under subsection (b), over the life of the Fund,
 10 an amount not to exceed \$14,000,000,000 from all addi-
 11 tional contributing participants.

12 **TITLE III—JUDICIAL REVIEW**

13 **SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBES-** 14 **TOS COURT.**

15 (a) EXCLUSIVE JURISDICTION.—The United States
 16 Court of Appeals for the District of Columbia shall have
 17 exclusive jurisdiction over any action to review a final deci-
 18 sion of the Asbestos Court.

19 (b) PROCEDURE FOR APPEALS.—

20 (1) PERIOD FOR FILING APPEAL.—An appeal
 21 under this section shall be filed not later than 30
 22 days after the issuance of a final decision by the As-
 23 bestos Court.

24 (2) TRANSMITTAL OF RECORD.—Upon the fil-
 25 ing of an appeal, a copy of the filing shall be trans-

1 mitted by the clerk of the court to the Asbestos
2 Court, and the Asbestos Court shall file in the court
3 the record in the proceeding, as provided in section
4 2112 of title 28, United States Code.

5 (3) STANDARD OF REVIEW.—

6 (A) IN GENERAL.—The court shall uphold
7 the decision of the Asbestos Court if the court
8 determines, upon review of the record as a
9 whole, that the decision is not arbitrary and ca-
10 pricious.

11 (B) EFFECT OF DETERMINATION.—If the
12 court determines that a final decision of the As-
13 bestos Court is arbitrary and capricious, the
14 court shall remand the case to the Asbestos
15 Court.

16 (4) FINALITY OF DETERMINATION.—The deci-
17 sion of the United States Court of Appeals for the
18 District of Columbia shall be final, except that the
19 same shall be subject to review by the Supreme
20 Court of the United States, as provided in section
21 1254 of title 28, United States Code.

1 **SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS**
2 **OF THE ADMINISTRATOR AND OF THE ASBES-**
3 **TOS INSURERS COMMISSION.**

4 (a) **EXCLUSIVE JURISDICTION.**—The United States
5 District Court for the District of Columbia shall have ex-
6 clusive jurisdiction over any action to review a final deter-
7 mination by the Administrator or the Asbestos Insurers
8 Commission regarding the assessment of a contribution to
9 the Fund from a participant.

10 (b) **PROCEDURE FOR APPEAL.**—

11 (1) **PERIOD FOR FILING APPEAL.**—An appeal
12 under this section shall be filed not later than 30
13 days after the issuance of a final determination by
14 the Administrator or the Commission.

15 (2) **TRANSMITTAL OF RECORD.**—Upon the fil-
16 ing of an appeal, a copy of the filing shall be trans-
17 mitted by the clerk of the court to the Administrator
18 or the Commission.

19 (c) **STANDARD OF REVIEW.**—

20 (1) **IN GENERAL.**—The United States District
21 Court for the District of Columbia shall uphold the
22 final determination of the Administrator or the
23 Commission with respect to the assessment of a con-
24 tribution to the Fund from a participant if such de-
25 termination is not arbitrary and capricious.

1 (2) EFFECT OF DETERMINATION.—If the court
2 determines that a final determination with respect to
3 the amount of a contribution to the Fund by a par-
4 ticipant may not be upheld, the court shall remand
5 the decision to the Administrator or the Commis-
6 sion, with instructions to modify the final determina-
7 tion.

8 (3) NO STAYS.—The court may not issue a stay
9 of payment into the Fund pending its final judg-
10 ment.

11 (4) FINALITY OF DETERMINATION.—The judg-
12 ment and decree of the court shall be final, except
13 that the same shall be subject to review by the Su-
14 preme Court, as provided in section 1254 of title 28,
15 United States Code.

16 **SEC. 303. EXCLUSIVE REVIEW.**

17 (a) EXCLUSIVITY OF REVIEW.—An action of the As-
18 bestos Court, the Administrator, or the Asbestos Insurers
19 Commission for which review could have been obtained
20 under section 301 or 302 shall not be subject to judicial
21 review in any other proceeding, including proceedings be-
22 fore the Asbestos Court.

23 (b) CONSTITUTIONAL REVIEW.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of law, any interlocutory or final judgment,

1 decree, or order of a Federal court holding this Act,
2 or any provision or application thereof, unconstitu-
3 tional shall be reviewable as a matter of right by
4 direct appeal to the Supreme Court.

5 (2) PERIOD FOR FILING APPEAL.—Any such
6 appeal shall be filed not more than 30 days after
7 entry of such judgment, decree, or order.

8 **SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REIN-**
9 **SURERS.**

10 (a) IN GENERAL.—Any insurer participant may file
11 a claim in the United States District Court for the District
12 of Columbia against any reinsurer that is contractually ob-
13 ligated to reimburse such insurer participant for a portion
14 of costs incurred as a result of payment of asbestos related
15 claims.

16 (b) EXPEDITED PROCEDURES.—

17 (1) IN GENERAL.—A claim filed under sub-
18 section (a) shall be subject to expedited procedures,
19 as prescribed by the United States District Court for
20 the District of Columbia.

21 (2) EVIDENTIARY STANDARD.—The plaintiff
22 shall not recover in a claim under subsection (a) un-
23 less the plaintiff demonstrates the right to recover
24 by a preponderance of the evidence.

1 (3) FINAL JUDGMENT.—A final judgment shall
2 be issued on a claim filed under subsection (a) not
3 later than 30 days after such filing.

4 (c) APPEALS.—

5 (1) IN GENERAL.—An appeal from a decision
6 under subsection (b) may be filed with the Court of
7 Appeals for the District of Columbia.

8 (2) STANDARD OF REVIEW.—The final judg-
9 ment of the district court shall be upheld unless the
10 court of appeals finds the judgment to be arbitrary
11 and capricious.

12 (3) FINAL JUDGMENT.—A final judgment shall
13 be issued on an appeal filed under paragraph (1) not
14 later than 30 days after such filing.

15 **TITLE IV—MISCELLANEOUS**
16 **PROVISIONS**

17 **SEC. 401. FALSE INFORMATION.**

18 Any person who knowingly provides false information
19 in connection with an assessment of contributions, a claim
20 for an award, or an audit under this Act shall be subject
21 to—

22 (1) criminal prosecution under section 1001 of
23 title 18, United States Code; and

24 (2) civil penalties under section 3729 of title
25 31, United States Code.

1 **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

2 (a) NO AUTOMATIC STAY.—Section 362(b) of title
3 11, United States Code, is amended—

4 (1) in paragraph (17), by striking “or” at the
5 end;

6 (2) in paragraph (18), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (18) the fol-
9 lowing:

10 “(19) under subsection (a) of this section of the
11 enforcement of any payment obligations under sec-
12 tion 204 of the Fairness in Asbestos Injury Resolu-
13 tion Act of 2003, against a debtor, or the property
14 of the estate of a debtor, that is a participant (as
15 that term is defined in section 3 of that Act).”.

16 (b) ASSUMPTION OF EXECUTORY CONTRACTS.—Sec-
17 tion 365 of title 11, United States Code, is amended by
18 adding at the end the following:

19 “(q) If a debtor is a participant (as that term is de-
20 fined in section 3 of the Fairness in Asbestos Injury Reso-
21 lution Act of 2003), the trustee shall be deemed to have
22 assumed all executory contracts entered into by the partic-
23 ipant under section 204 of that Act. The trustee may not
24 reject any such executory contract.”.

1 (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section
2 503 of title 11, United States Code, is amended by adding
3 at the end the following:

4 “(c)(1) Claims or expenses of the United States, the
5 Attorney General, or the Administrator (as that term is
6 defined in section 3 of the Fairness in Asbestos Injury
7 Resolution Act of 2003) based upon the asbestos payment
8 obligations of a debtor that is a Participant (as that term
9 is defined in section 3 of that Act), shall be paid as an
10 allowed administrative expense. The debtor shall not be
11 entitled to either notice or a hearing with respect to such
12 claims.

13 “(2) For purposes of paragraph (1), the term ‘asbes-
14 tos payment obligation’ means any payment obligation
15 under subtitle B of title II of the Fairness in Asbestos
16 Injury Resolution Act of 2003.”.

17 (d) NO DISCHARGE.—Section 523 of title 11, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(f) A discharge under section 727, 1141, 1228, or
21 1328 of this title does not discharge any debtor that is
22 a participant (as that term is defined in section 3 of the
23 Fairness in Asbestos Injury Resolution Act of 2003) of
24 the payment obligations that is a debtor under subtitle B
25 of title II of that Act.”.

1 (e) PAYMENT.—Section 524 of title 11, United States
2 Code, is amended by adding at the end the following:

3 “(i) PARTICIPANT DEBTORS.—

4 “(1) IN GENERAL.—Paragraphs (2) and (3)
5 shall apply to a debtor who—

6 “(A) is a participant that has made prior
7 asbestos expenditures (as such terms are de-
8 fined in the Fairness in Asbestos Injury Resolu-
9 tion Act of 2003); and

10 “(B) is subject to a case under this title
11 that is pending—

12 “(i) on the date of enactment of the
13 Fairness in Asbestos Injury Resolution Act
14 of 2003; or

15 “(ii) at any time during the 1-year pe-
16 riod preceding the date of enactment of
17 that Act.

18 “(2) TIER I DEBTORS.—A debtor that has been
19 assigned to tier I under section 202 of the Fairness
20 in Asbestos Injury Resolution Act of 2003 shall
21 make payments in accordance with sections 202 and
22 203 of that Act.

23 “(3) TREATMENT OF PAYMENT OBLIGA-
24 TIONS.—All payment obligations of a debtor under

1 sections 202 and 203 of the Fairness in Asbestos
2 Injury Resolution Act of 2003 shall—

3 “(A) constitute costs and expenses of ad-
4 ministration of a case under section 503 of this
5 title;

6 “(B) notwithstanding any case pending
7 under this title, be payable in accordance with
8 section 202 of that Act;

9 “(C) not be stayed;

10 “(D) not be affected as to enforcement or
11 collection by any stay or injunction of any
12 court; and

13 “(E) not be impaired or discharged in any
14 current or future case under this title.”.

15 (f) TREATMENT OF TRUSTS.—Section 524 of title
16 11, United States Code, as amended by this Act, is
17 amended by adding at the end the following:

18 “(j) ASBESTOS TRUSTS.—

19 “(1) IN GENERAL.—A trust shall assign a por-
20 tion of the corpus of the trust to the Asbestos Injury
21 Claims Resolution Fund (referred to in this sub-
22 section as the ‘Fund’) as is required under section
23 202 of the Fairness in Asbestos Injury Resolution
24 Act of 2003 if the trust qualifies as a ‘trust’ under
25 section 201 of that Act.

1 “(2) TRANSFER OF TRUST ASSETS.—

2 “(A) IN GENERAL.—Except as provided
3 under subparagraphs (B) and (C), the assets in
4 any trust established to provide compensation
5 for asbestos claims (as defined in section 3 of
6 the Fairness in Asbestos Injury Resolution Act
7 of 2003) shall be transferred to the Fund not
8 later than 6 months after the date of enactment
9 of the Fairness in Asbestos Injury Resolution
10 Act of 2003. Except as provided under subpara-
11 graph (B), the Administrator of the Fund shall
12 accept such assets and utilize them for any pur-
13 poses of the Fund under section 223 of such
14 Act, including the payment of claims for awards
15 under such Act to beneficiaries of the trust
16 from which the assets were transferred. After
17 such transfer, each trustee of such trust shall
18 have no liability to any beneficiary of such
19 trust.

20 “(B) AUTHORITY TO REFUSE ASSETS.—

21 The Administrator of the Fund may refuse to
22 accept any asset that the Administrator deter-
23 mines may create liability for the Fund in ex-
24 cess of the value of the asset.

1 “(C) ALLOCATION OF TRUST ASSETS.—If
2 a trust under subparagraph (A) has bene-
3 ficiaries with claims that are not asbestos
4 claims, the assets transferred to the Fund
5 under subparagraph (A) shall not include assets
6 allocable to such beneficiaries. The trustees of
7 any such trust shall determine the amount of
8 such trust assets to be reserved for the con-
9 tinuing operation of the trust in processing and
10 paying claims that are not asbestos claims.
11 Such reserved amount shall not be greater than
12 3 percent of the total assets in the trust and
13 shall not be transferred to the Fund.

14 “(D) SALE OF FUND ASSETS.—The invest-
15 ment requirements under section 222 of the
16 Fairness in Asbestos Injury Resolution Act of
17 2003 shall not be construed to require the Ad-
18 ministrator of the Fund to sell assets trans-
19 ferred to the Fund under subparagraph (A).

20 “(E) LIQUIDATED CLAIMS.—A trust shall
21 not make any payment relating to asbestos
22 claims unless such claims were liquidated in the
23 ordinary course and the normal and usual ad-
24 ministration of the trust consistent with past
25 practices before the date of enactment of the

1 Fairness in Asbestos Injury Resolution Act of
2 2003.

3 “(3) INJUNCTION.—Any injunction issued as
4 part of the formation of a trust described in para-
5 graph (1) shall remain in full force and effect until
6 the assignment required under paragraph (1) has
7 been made.”.

8 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of
9 title 11, United States Code, is amended by adding at the
10 end the following:

11 “(h) Notwithstanding the rights and powers of a
12 trustee under sections 544, 545, 547, 548, 549, and 550
13 of this title, if a debtor is a participant (as that term is
14 defined in section 3 of the Fairness in Asbestos Injury
15 Resolution Act of 2003), the trustee may not avoid a
16 transfer made by the debtor pursuant to its payment obli-
17 gations under section 202 or 203 of that Act.”.

18 (h) CONFIRMATION OF PLAN.—Section 1129(a) of
19 title 11, United States Code, is amended by adding at the
20 end the following:

21 “(14) If the debtor is a participant (as that
22 term is defined in section 3 of the Fairness in As-
23 bestos Injury Resolution Act of 2003), the plan pro-
24 vides for the continuation after its effective date of

1 payment of all payment obligations under title II of
2 that Act.”.

3 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

4 (a) **EFFECT ON FEDERAL AND STATE LAW.**—The
5 provisions of this Act shall supersede any and all Federal
6 and State laws insofar as they may relate to any asbestos
7 claim filed under this Act.

8 (b) **SUPERSEDING PROVISIONS.**—

9 (1) **IN GENERAL.**—Any agreement, under-
10 standing, or undertaking by any person or affiliated
11 group assigned to Tiers II through VI with respect
12 to the treatment of any asbestos claim filed before
13 the date of enactment of this Act that requires fu-
14 ture performance by any party shall be superseded
15 in its entirety by this Act.

16 (2) **NO FORCE OR EFFECT.**—Any such agree-
17 ment, understanding, or undertaking by any such
18 person or affiliated group shall be of no force or ef-
19 fect, and no person shall have any rights or claims
20 with respect to any of the foregoing.

21 (c) **EXCLUSIVE REMEDY.**—The remedies provided
22 under this Act shall be the exclusive remedy for any asbes-
23 tos claim under any Federal or State law.

24 (d) **BAR ON ASBESTOS CLAIMS.**—

1 (1) IN GENERAL.—No asbestos claim may be
2 pursued in any Federal or State court, except for
3 enforcement of claims for which an order or judg-
4 ment has been duly entered by a court that is no
5 longer subject to any appeal or judicial review before
6 the date of enactment of this Act.

7 (2) PREEMPTION.—Any action asserting an as-
8 bestos claim in a court of any State, except actions
9 for which an order or judgment has been duly en-
10 tered by a court that is no longer subject to any ap-
11 peal or judicial review before the date of enactment
12 of this Act, is preempted by this Act.

13 (3) DISMISSAL.—No judgment other than a
14 judgment of dismissal may be entered in any such
15 action, including an action pending on appeal, or on
16 petition or motion for discretionary review, on or
17 after the date of enactment of this Act. A court may
18 dismiss any such action on its motion. If the district
19 court denies the motion to dismiss, it shall stay fur-
20 ther proceedings until final disposition of any appeal
21 taken under this Act.

22 (4) REMOVAL.—

23 (A) IN GENERAL.—If an action under
24 paragraph (2) is not dismissed, or if an order
25 entered after the date of enactment of this Act

1 purporting to enter judgment or deny review is
2 not rescinded and replaced with an order of dis-
3 missal within 30 days after the filing of a mo-
4 tion by any party to the action advising the
5 court of the provisions of this Act, any party
6 may remove the case to the district court of the
7 United States for the district in which such ac-
8 tion is pending.

9 (B) TIME LIMITS.—For actions originally
10 filed after the date of enactment of this Act, the
11 notice of removal shall be filed within the time
12 limits specified in section 1441(b) of title 28,
13 United States Code.

14 (C) PROCEDURES.—The procedures for re-
15 moval and proceedings after removal shall be in
16 accordance with sections 1446 through 1450 of
17 title 28, United States Code, except as may be
18 necessary to accommodate removal of any ac-
19 tions pending (including on appeal) on the date
20 of enactment of this Act.

21 (D) JURISDICTION.—The jurisdiction of
22 the district court shall be limited to—

- 23 (i) determining whether removal was
24 proper; and

1 (ii) ruling on a motion to dismiss
2 based on this Act.

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