

Calendar No. 472

108TH CONGRESS
2D SESSION**S. 2290**

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

APRIL 7, 2004

Mr. HATCH (for himself, Mr. FRIST, Mr. MILLER, Mr. DEWINE, Mr. VOINOVICH, Mr. ALLEN, Mr. CHAMBLISS, Mr. HAGEL, and Mr. DOMENICI) introduced the following bill; which was read the first time

APRIL 8, 2004

Read the second time and placed on the calendar

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 2004” or
6 the “FAIR Act of 2004”.

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

- Sec. 101. Establishment of Office of Asbestos Disease Compensation.
 Sec. 102. Advisory Committee on Asbestos Disease Compensation.
 Sec. 103. Medical Advisory Committee.
 Sec. 104. Claimant assistance.
 Sec. 105. Physicians panels.
 Sec. 106. Program startup.
 Sec. 107. Authority of the Administrator.

Subtitle B—Asbestos Disease Compensation Procedures

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

Subtitle C—Medical Criteria

- Sec. 121. Medical criteria requirements.

Subtitle D—Awards

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

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

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

Subtitle B—Asbestos Insurers Commission

- Sec. 210. Definition.
 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. Termination of Asbestos Insurers Commission.
 Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

- Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
- Sec. 222. Management of the Fund.
- Sec. 223. Enforcement of payment obligations.
- Sec. 224. Interest on underpayment or nonpayment.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of rules and regulations.
- Sec. 302. Judicial review of award decisions.
- Sec. 303. Judicial review of participants' assessments.
- Sec. 304. Other judicial challenges.
- Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.
- Sec. 404. Effect on insurance and reinsurance contracts.
- Sec. 405. Annual report of the Administrator.
- Sec. 406. Rules of construction relating to liability of the United States Government.
- Sec. 407. Rules of construction.
- Sec. 408. Violations of environmental and occupational health and safety requirements.
- Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

- Sec. 501. Prohibition on asbestos containing products.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) A great number of Americans have been ex-
 4 posed to forms of asbestos that can have devastating
 5 health effects.

6 (2) Various injuries can be caused by exposure
 7 to some forms of asbestos, including pleural disease
 8 and some forms of cancer.

9 (3) The injuries caused by asbestos can have la-
 10 tency periods of up to 40 years, and even limited ex-

1 posure to some forms of asbestos may result in in-
2 jury in some cases.

3 (4) Asbestos litigation has had a significant
4 detrimental effect on the country's economy, driving
5 companies into bankruptcy, diverting resources from
6 those who are truly sick, and endangering jobs and
7 pensions.

8 (5) The scope of the asbestos litigation crisis
9 cuts across every State and virtually every industry.

10 (6) The United States Supreme Court has rec-
11 ognized that Congress must act to create a more ra-
12 tional asbestos claims system. In 1991, a Judicial
13 Conference Ad Hoc Committee on Asbestos Litiga-
14 tion, appointed by Chief Justice William Rehnquist,
15 found that the "ultimate solution should be legisla-
16 tion recognizing the national proportions of the
17 problem . . . and creating a national asbestos dis-
18 pute resolution scheme . . .". The Court found in
19 1997 in *Amchem Products Inc. v. Windsor*, 521
20 U.S. 591, 595 (1997), that "[t]he argument is sen-
21 sibly made that a nationwide administrative claims
22 processing regime would provide the most secure,
23 fair, and efficient means of compensating victims of
24 asbestos exposure." In 1999, the Court in *Ortiz v.*
25 *Fibreboard Corp.*, 527 U.S. 819, 821 (1999), found

1 that the “elephantine mass of asbestos cases . . .
2 defies customary judicial administration and calls
3 for national legislation.” That finding was again rec-
4 ognized in 2003 by the Court in *Norfolk & Western*
5 *Railway Co. v. Ayers*, 123 S.Ct. 1210 (2003).

6 (7) This crisis, and its significant effect on the
7 health and welfare of the people of the United
8 States, on interstate and foreign commerce, and on
9 the bankruptcy system, compels Congress to exercise
10 its power to regulate interstate commerce and create
11 this legislative solution in the form of a national as-
12 bestos injury claims resolution program to supersede
13 all existing methods to compensate those injured by
14 asbestos, except as specified in this Act.

15 (b) PURPOSE.—The purpose of this Act is to—

16 (1) create a privately funded, publicly adminis-
17 tered fund to provide the necessary resources for a
18 fair and efficient system to resolve asbestos injury
19 claims that will provide compensation for legitimate
20 present and future claimants of asbestos exposure as
21 provided in this Act;

22 (2) provide compensation to those present and
23 future victims based on the severity of their injuries,
24 while establishing a system flexible enough to accom-
25 modate individuals whose conditions worsens;

1 (3) relieve the Federal and State courts of the
2 burden of the asbestos litigation; and

3 (4) increase economic stability by resolving the
4 asbestos litigation crisis that has bankrupted compa-
5 nies with asbestos liability, diverted resources from
6 the truly sick, and endangered jobs and pensions.

7 **SEC. 3. DEFINITIONS.**

8 In this Act, the following definitions shall apply:

9 (1) ADMINISTRATOR.—The term “Adminis-
10 trator” means the Administrator of the Office of As-
11 bestos Disease Compensation appointed under sec-
12 tion 101(b).

13 (2) ASBESTOS.—The term “asbestos” in-
14 cludes—

15 (A) chrysotile;

16 (B) amosite;

17 (C) crocidolite;

18 (D) tremolite asbestos;

19 (E) winchite asbestos;

20 (F) richterite asbestos;

21 (G) anthophyllite asbestos;

22 (H) actinolite asbestos;

23 (I) any of the minerals listed under sub-
24 paragraphs (A) through (H) that has been
25 chemically treated or altered, and any

1 asbestiform variety, type, or component thereof;
2 and

3 (J) asbestos-containing material, such as
4 asbestos-containing products, automotive or in-
5 dustrial parts or components, equipment, im-
6 provements to real property, and any other ma-
7 terial that contains asbestos in any physical or
8 chemical form.

9 (3) ASBESTOS CLAIM.—

10 (A) IN GENERAL.—The term “asbestos
11 claim” means any claim, premised on any the-
12 ory, allegation, or cause of action for damages
13 or other relief presented in a civil action or
14 bankruptcy proceeding, directly, indirectly, or
15 derivatively arising out of, based on, or related
16 to, in whole or part, the health effects of expo-
17 sure to asbestos, including loss of consortium,
18 wrongful death, and any derivative claim made
19 by, or on behalf of, any exposed person or any
20 representative, spouse, parent, child or other
21 relative of any exposed person.

22 (B) EXCLUSION.—The term does not in-
23 clude claims alleging damage or injury to tan-
24 gible property, or claims for benefits under a

1 workers' compensation law or veterans' benefits
2 program.

3 (4) ASBESTOS CLAIMANT.—The term “asbestos
4 claimant” means an individual who files a claim
5 under section 113.

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

13 (6) COLLATERAL SOURCE COMPENSATION.—
14 The term “collateral source compensation” means
15 the compensation that the claimant received, or is
16 entitled to receive, from a defendant or an insurer
17 of that defendant, or compensation trust as a result
18 of a judgment or settlement for an asbestos-related
19 injury that is the subject of a claim filed under sec-
20 tion 113.

21 (7) ELIGIBLE DISEASE OR CONDITION.—The
22 term “eligible disease or condition” means, to the
23 extent that the illness meets the medical criteria re-
24 quirements established under subtitle C of title I, as-
25 bestosis/pleural disease, severe asbestosis disease,

1 disabling asbestosis disease, mesothelioma, lung can-
2 cer I, lung cancer II, lung cancer III, and other can-
3 cers.

4 (8) FUND.—The term “Fund” means the As-
5 bestos Injury Claims Resolution Fund established
6 under section 221.

7 (9) INSURANCE RECEIVERSHIP PROCEEDING.—
8 The term “insurance receivership proceeding” means
9 any State proceeding with respect to a financially
10 impaired or insolvent insurer or reinsurer including
11 the liquidation, rehabilitation, conservation, super-
12 vision or ancillary receivership of an insurer under
13 State law.

14 (10) LAW.—The term “law” includes all law,
15 judicial or administrative decisions, rules, regula-
16 tions, or any other principle or action having the ef-
17 fect of law.

18 (11) PARTICIPANT.—

19 (A) IN GENERAL.—The term “participant”
20 means any person subject to the funding re-
21 quirements of title II, including—

22 (i) any defendant participant subject
23 to liability for payments under subtitle A
24 of that title;

1 (ii) any insurer participant subject to
2 a payment under subtitle B of that title;
3 and

4 (iii) any successor in interest of a par-
5 ticipant.

6 (B) EXCEPTION.—

7 (i) IN GENERAL.—A defendant partic-
8 ipant shall not include any person pro-
9 tected from any asbestos claim by reason
10 of an injunction entered in connection with
11 a plan of reorganization under chapter 11
12 of title 11, United States Code, that has
13 been confirmed by a duly entered order or
14 judgment of a court that is no longer sub-
15 ject to any appeal or judicial review, and
16 the substantial consummation, as such
17 term is defined in section 1101(2) of title
18 11, United States Code, of such plan of re-
19 organization has occurred.

20 (ii) APPLICABILITY.—Clause (i) shall
21 not apply to a person who may be liable
22 under subtitle A of title II based on prior
23 asbestos expenditures related to asbestos
24 claims that are not covered by an injunc-
25 tion described under clause (i).

1 (12) PERSON.—The term “person”—

2 (A) means an individual, trust, firm, joint
3 stock company, partnership, association, insur-
4 ance company, reinsurance company, or cor-
5 poration; and

6 (B) does not include the United States,
7 any State or local government, or subdivision
8 thereof, including school districts and any gen-
9 eral or special function governmental unit es-
10 tablished under State law.

11 (13) STATE.—The term “State” means any
12 State of the United States and also includes the Dis-
13 trict of Columbia, Commonwealth of Puerto Rico,
14 the Northern Mariana Islands, the Virgin Islands,
15 Guam, American Samoa, and any other territory or
16 possession of the United States or any political sub-
17 division of any of the entities under this paragraph.

18 (14) SUBSTANTIALLY CONTINUES.—The term
19 “substantially continues” means that the business
20 operations have not been significantly modified by
21 the change in ownership.

22 (15) SUCCESSOR IN INTEREST.—The term
23 “successor in interest” means any person that ac-
24 quires assets, and substantially continues the busi-
25 ness operations, of a participant. The factors to be

1 considered in determining whether a person is a suc-
2 cessor in interest include—

3 (A) retention of the same facilities or loca-
4 tion;

5 (B) retention of the same employees;

6 (C) maintaining the same job under the
7 same working conditions;

8 (D) retention of the same supervisory per-
9 sonnel;

10 (E) continuity of assets;

11 (F) production of the same product or
12 offer of the same service;

13 (G) retention of the same name;

14 (H) maintenance of the same customer
15 base;

16 (I) identity of stocks, stockholders, and di-
17 rectors between the asset seller and the pur-
18 chaser; or

19 (J) whether the successor holds itself out
20 as continuation of previous enterprise, but ex-
21 pressly does not include whether the person ac-
22 tually knew of the liability of the participant
23 under this Act.

24 (16) VETERANS' BENEFITS PROGRAM.—The
25 term “veterans’ benefits program” means any pro-

1 gram for benefits in connection with military service
2 administered by the Veterans' Administration under
3 title 38, United States Code.

4 (17) WORKERS' COMPENSATION LAW.—The
5 term “workers' compensation law”—

6 (A) means a law respecting a program ad-
7 ministered by a State or the United States to
8 provide benefits, funded by a responsible em-
9 ployer or its insurance carrier, for occupational
10 diseases or injuries or for disability or death
11 caused by occupational diseases or injuries;

12 (B) includes the Longshore and Harbor
13 Workers' Compensation Act (33 U.S.C. 901 et
14 seq.) and chapter 81 of title 5, United States
15 Code; and

16 (C) does not include the Act of April 22,
17 1908 (45 U.S.C. 51 et seq.), commonly known
18 as the Federal Employers' Liability Act, or
19 damages recovered by any employee in a liabil-
20 ity action against an employer.

TITLE I—ASBESTOS CLAIMS
RESOLUTION
Subtitle A—Office of Asbestos
Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DIS-
EASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the “Office”), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).

(b) APPOINTMENT OF ADMINISTRATOR.—

1 (1) IN GENERAL.—The Administrator of the
2 Office of Asbestos Disease Compensation shall be
3 appointed by the President, by and with the advice
4 and consent of the Senate. The Administrator shall
5 serve for a term of 5 years.

6 (2) REPORTING.—The Administrator shall re-
7 port directly to the Assistant Secretary of Labor for
8 the Employment Standards Administration.

9 (c) DUTIES OF ADMINISTRATOR.—

10 (1) IN GENERAL.—The Administrator shall be
11 responsible for—

12 (A) processing claims for compensation for
13 asbestos-related injuries and paying compensa-
14 tion to eligible claimants under the criteria and
15 procedures established under title I;

16 (B) determining, levying, and collecting as-
17 sessments on participants under title II;

18 (C) appointing or contracting for the serv-
19 ices of such personnel, making such expendi-
20 tures, and taking any other actions as may be
21 necessary and appropriate to carry out the re-
22 sponsibilities of the Office, including entering
23 into cooperative agreements with other Federal
24 agencies or State agencies and entering into
25 contracts with non-governmental entities;

1 (D) conducting such audits and additional
2 oversight as necessary to assure the integrity of
3 the program;

4 (E) managing the Asbestos Injury Claims
5 Resolution Fund established under section 221,
6 including—

7 (i) administering, in a fiduciary capac-
8 ity, the assets of the Fund for the exclu-
9 sive purpose of providing benefits to asbes-
10 tos claimants and their beneficiaries;

11 (ii) defraying the reasonable expenses
12 of administering the Fund;

13 (iii) investing the assets of the Fund
14 in accordance with section 222(b);

15 (iv) retaining advisers, managers, and
16 custodians who possess the necessary fa-
17 cilities and expertise to provide for the
18 skilled and prudent management of the
19 Fund, to assist in the development, imple-
20 mentation and maintenance of the Fund's
21 investment policies and investment activi-
22 ties, and to provide for the safekeeping and
23 delivery of the Fund's assets; and

24 (v) borrowing amounts authorized by
25 section 221(b) on appropriate terms and

1 conditions, including pledging the assets of
2 or payments to the Fund as collateral;

3 (F) promulgating such rules, regulations,
4 and procedures as may be necessary and appro-
5 priate to implement the provisions of this Act;

6 (G) making such expenditures as may be
7 necessary and appropriate in the administration
8 of this Act;

9 (H) excluding evidence and disqualifying or
10 debarring any attorney, physician, provider of
11 medical or diagnostic services, including labora-
12 tories and others who provide evidence in sup-
13 port of a claimant's application for compensa-
14 tion where the Administrator determines that
15 materially false, fraudulent or fictitious state-
16 ments or practices have been submitted or en-
17 gaged in by such individuals or entities; and

18 (I) having all other powers incidental, nec-
19 essary, or appropriate to carrying out the func-
20 tions of the Office.

21 (2) CERTAIN ENFORCEMENTS.—For each in-
22 fraction relating to paragraph (1)(H), the Adminis-
23 trator also may impose a civil penalty not to exceed
24 \$10,000 on any person or entity found to have sub-
25 mitted or engaged in a materially false, fraudulent

1 or fictitious statement or practice under this Act.

2 The Administrator shall prescribe appropriate regu-
3 lations to implement paragraph (1)(H).

4 (3) SELECTION OF DEPUTY ADMINISTRA-
5 TORS.—The Administrator shall select a Deputy Ad-
6 ministrator for Claims Administration to carry out
7 the Administrator’s responsibilities under this title
8 and a Deputy Administrator for Fund Management
9 to carry out the Administrator’s responsibilities
10 under title II of this Act. The Deputy Administra-
11 tors shall report directly to the Administrator and
12 shall be in the Senior Executive Service.

13 (d) EXPEDITIOUS DETERMINATIONS.—The Adminis-
14 trator shall prescribe rules to expedite claims for asbestos
15 claimants with exigent circumstances.

16 (e) AUDIT AND PERSONNEL REVIEW PROCE-
17 DURES.—The Administrator shall establish audit and per-
18 sonnel review procedures for evaluating the accuracy of
19 eligibility recommendations of agency and contract per-
20 sonnel.

21 (f) APPLICATION OF FOIA.—

22 (1) IN GENERAL.—Section 552 of title 5,
23 United States Code (commonly referred to as the
24 Freedom of Information Act) shall apply to the Of-

1 fice of Asbestos Disease Compensation and the As-
 2 bestos Insurers Commission.

3 (2) CONFIDENTIALITY.—Any person may des-
 4 ignate any record submitted under this section as a
 5 confidential commercial or financial record for pur-
 6 poses of section 552 of title 5, United States Code.
 7 The Administrator and the Chairman of the Asbes-
 8 tos Insurers Commission shall adopt procedures for
 9 designating such records as confidential. Information
 10 on reserves and asbestos-related liabilities submitted
 11 by any participant for the purpose of the allocation
 12 of payments under subtitles A and B of title II shall
 13 be deemed to be confidential financial records.

14 **SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE**
 15 **COMPENSATION.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Not later than 120 days
 18 after the date of enactment of this Act, the Adminis-
 19 trator shall establish an Advisory Committee on As-
 20 bestos Disease Compensation (hereinafter the “Advi-
 21 sory Committee”).

22 (2) COMPOSITION AND APPOINTMENT.—The
 23 Advisory Committee shall be composed of 24 mem-
 24 bers, appointed as follows—

1 (A) The Majority and Minority Leaders of
2 the Senate, the Speaker of the House, and the
3 Minority Leader of the House shall each ap-
4 point 4 members. Of the 4—

5 (i) 2 shall be selected to represent the
6 interests of claimants, at least 1 of whom
7 shall be selected from among individuals
8 recommended by recognized national labor
9 federations; and

10 (ii) 2 shall be selected to represent the
11 interests of participants, 1 of whom shall
12 be selected to represent the interests of the
13 insurer participants and 1 of whom shall
14 be selected to represent the interests of the
15 defendant participants.

16 (B) The Administrator shall appoint 8
17 members, who shall be individuals with quali-
18 fications and expertise in occupational or pul-
19 monary medicine, occupational health, workers
20 compensation programs, financial administra-
21 tion, investment of funds, program auditing, or
22 other relevant fields.

23 (3) QUALIFICATIONS.—All of the members de-
24 scribed in paragraph (2) shall have expertise or ex-
25 perience relevant to the asbestos compensation pro-

1 gram, including experience or expertise in diagnosing
2 asbestos-related diseases and conditions, assessing
3 asbestos exposure and health risks, filing asbestos
4 claims, or administering a compensation or insur-
5 ance program. None of the members described in
6 paragraph (2)(B) shall be individuals who, for each
7 of the 5 years before their appointments, earned
8 more than 25 percent of their income by serving in
9 matters related to asbestos litigation as consultants
10 or expert witnesses.

11 (b) DUTIES.—The Advisory Committee shall advise
12 the Administrator on—

13 (1) claims filing and claims processing proce-
14 dures;

15 (2) claimant assistance programs;

16 (3) audit procedures and programs to ensure
17 the quality and integrity of the compensation pro-
18 gram;

19 (4) the development of a list of industries, occu-
20 pations and time periods for which there is a pre-
21 sumption of substantial occupational exposure to as-
22 bestos;

23 (5) recommended analyses or research that
24 should be conducted to evaluate past claims and to
25 project future claims under the program;

1 (6) the annual report required to be submitted
2 to Congress under section 405; and

3 (7) such other matters related to the implemen-
4 tation of this Act as the Administrator considers ap-
5 propriate.

6 (c) OPERATION OF THE COMMITTEE.—

7 (1) Each member of the Advisory Committee
8 shall be appointed for a term of 3 years, except that,
9 of the members first appointed—

10 (A) 8 shall be appointed for a term of 1
11 year;

12 (B) 8 shall be appointed for a term of 2
13 years; and

14 (C) 8 shall be appointed for a term of 3
15 years,

16 as determined by the Administrator at the time of
17 appointment.

18 (2) Any member appointed to fill a vacancy oc-
19 curring before the expiration of the term shall be ap-
20 pointed only for the remainder of such term.

21 (3) The Administrator shall designate a Chair-
22 person and Vice Chairperson from among members
23 of the Advisory Committee appointed under sub-
24 section (a)(2)(B).

1 (4) The Advisory Committee shall meet at the
2 call of the Chairperson or the majority of its mem-
3 bers, and at a minimum shall meet at least 4 times
4 per year during the first 5 years of the asbestos
5 compensation program, and at least 2 times per year
6 thereafter.

7 (5) The Administrator shall provide to the
8 Committee such information as is necessary and ap-
9 propriate for the Committee to carry out its respon-
10 sibilities under this section. The Administrator may,
11 upon request of the Advisory Committee, secure di-
12 rectly from any Federal department or agency such
13 information as may be necessary and appropriate to
14 enable the Advisory Committee to carry out its du-
15 ties under this section. Upon request of the Admin-
16 istrator, the head of such department or agency
17 shall furnish such information to the Advisory Com-
18 mittee.

19 (6) The Administrator shall provide the Advi-
20 sory Committee with such administrative support as
21 is reasonably necessary to enable it to perform its
22 functions.

23 (d) EXPENSES.—Members of the Advisory Com-
24 mittee, other than full-time employees of the United
25 States, while attending meetings of the Advisory Com-

1 mittee or while otherwise serving at the request of the Ad-
2 ministrator, and while serving away from their homes or
3 regular places of business, shall be allowed travel and meal
4 expenses, including per diem in lieu of subsistence, as au-
5 thorized by section 5703 of title 5, United States Code,
6 for individuals in the Government serving without pay.

7 **SEC. 103. MEDICAL ADVISORY COMMITTEE.**

8 (a) IN GENERAL.—The Administrator may establish
9 a Medical Advisory Committee to provide expert advice re-
10 garding medical issues arising under the statute.

11 (b) QUALIFICATIONS.—None of the members of the
12 Medical Advisory Committee shall be individuals who, for
13 each of the 5 years before their appointments, earned
14 more than 25 percent of their income by serving in mat-
15 ters related to asbestos litigation as consultants or expert
16 witnesses.

17 **SEC. 104. CLAIMANT ASSISTANCE.**

18 (a) ESTABLISHMENT.—Not later than 180 days after
19 the enactment of this Act, the Administrator shall estab-
20 lish a comprehensive asbestos claimant assistance program
21 to—

22 (1) publicize and provide information to poten-
23 tial claimants about the availability of benefits for
24 eligible claimants under this Act, and the procedures

1 for filing claims and for obtaining assistance in fil-
2 ing claims;

3 (2) provide assistance to potential claimants in
4 preparing and submitting claims, including assist-
5 ance in obtaining the documentation necessary to
6 support a claim;

7 (3) respond to inquiries from claimants and po-
8 tential claimants; and

9 (4) provide training with respect to the applica-
10 ble procedures for the preparation and filing of
11 claims to persons who provide assistance or rep-
12 resentation to claimants.

13 (b) RESOURCE CENTERS.—The claimant assistance
14 program shall provide for the establishment of resource
15 centers in areas where there are determined to be large
16 concentrations of potential claimants. These centers shall
17 be located, to the extent feasible, in facilities of the De-
18 partment of Labor or other Federal agencies.

19 (c) CONTRACTS.—The claimant assistance program
20 may be carried out in part through contracts with labor
21 organizations, community-based organizations, and other
22 entities which represent or provide services to potential
23 claimants, except that such organizations may not have
24 a financial interest in the outcome of claims filed with the
25 Office.

1 (d) LEGAL ASSISTANCE.—

2 (1) IN GENERAL.—As part of the program es-
3 tablished under subsection (a), the Administrator
4 shall establish a legal assistance program to provide
5 assistance to asbestos claimants concerning legal
6 representation issues.

7 (2) LIST OF QUALIFIED ATTORNEYS.—As part
8 of the program, the Administrator shall maintain a
9 roster of qualified attorneys who have agreed to pro-
10 vide pro bono services to asbestos claimants under
11 rules established by the Administrator. The claim-
12 ants shall not be required to use the attorneys listed
13 on such roster.

14 (3) NOTICE.—

15 (A) NOTICE BY ADMINISTRATOR.—The
16 Administrator shall provide asbestos claimants
17 with notice of, and information relating to—

18 (i) pro bono services for legal assist-
19 ance available to those claimants; and
20 (ii) any limitations on attorneys fees
21 for claims filed under this title.

22 (B) NOTICE BY ATTORNEYS.—Before a
23 person becomes a client of an attorney with re-
24 spect to an asbestos claim that attorney shall

1 provide notice to that person of pro bono services
2 for legal assistance available for that claim.

3 (e) ATTORNEY'S FEES.—

4 (1) IN GENERAL.—Notwithstanding any con-
5 tract, the representative of an individual may not re-
6 ceive, for services rendered in connection with the
7 claim of an individual under this Act, more than
8 that percentage specified in paragraph (2) of an
9 award made under this Act on such claim.

10 (2) APPLICABLE PERCENTAGE LIMITATIONS.—

11 (A) IN GENERAL.—The percentage limita-
12 tion under paragraph (1) shall be—

13 (i) 2 percent for the filing of an initial
14 claim; and

15 (ii) 10 percent with respect to any
16 claim under appellate review.

17 (B) EXCEPTION.—The Administrator may
18 by rule adopt a lower percentage limitation for
19 particular classes of cases if the Administrator
20 finds that—

21 (i) the percentage limitation otherwise
22 applicable under this paragraph would re-
23 sult in unreasonably high compensation to
24 claimants' representatives in such cases;
25 and

1 (ii) such lower percentage limitation
 2 would be reasonable and would not unduly
 3 limit the availability of representatives to
 4 claimants.

5 (3) PENALTY.—Any representative of an asbes-
 6 tos claimant who violates this subsection shall be
 7 fined not more than \$5,000.

8 **SEC. 105. PHYSICIANS PANELS.**

9 (a) APPOINTMENT.—The Administrator shall, in ac-
 10 cordance with section 3109 of title 5, United States Code,
 11 appoint physicians with experience and competency in di-
 12 agnosing asbestos-related diseases to be available to serve
 13 on Physicians Panels as necessary to carry out this Act.

14 (b) FORMATION OF PANELS.—

15 (1) IN GENERAL.—The Administrator shall pe-
 16 riodically determine—

17 (A) the number of Physicians Panels nec-
 18 essary for the efficient conduct of the medical
 19 review process under section 121;

20 (B) the number of Physicians Panels nec-
 21 essary for the efficient conduct of the excep-
 22 tional medical claims process under section 121;
 23 and

24 (C) the particular expertise necessary for
 25 each panel.

1 (2) EXPERTISE.—Each panel shall be composed
 2 of members having the particular expertise deter-
 3 mined necessary by the Administrator, randomly se-
 4 lected from among the physicians appointed under
 5 subsection (a) having such expertise.

6 (3) PANEL MEMBERS.—Each panel shall consist
 7 of 3 physicians, 2 of whom shall be designated to
 8 participate in each case submitted to the panel, and
 9 the third of whom shall be consulted in the event of
 10 disagreement.

11 (c) QUALIFICATIONS.—To be eligible to serve on a
 12 Physicians Panel under subsection (a), a person shall be—

13 (1) a physician licensed in any State;

14 (2) board-certified in pulmonary medicine, occu-
 15 pational medicine, internal medicine, oncology, or
 16 pathology; and

17 (3) an individual who, for each of the 5 years
 18 before and during his or her appointment to a Phy-
 19 sicians Panel, has earned no more than 25 percent
 20 of his or her income as an employee of a partici-
 21 pating defendant or insurer or a law firm rep-
 22 resenting any party in asbestos litigation or as a
 23 consultant or expert witness in matters related to
 24 asbestos litigation.

1 (d) DUTIES.—Members of the Physicians Panel
2 shall—

3 (1) make such medical determinations as are
4 required to be made by Physicians Panels under sec-
5 tion 121; and

6 (2) perform such other functions as required
7 under this Act.

8 (e) COMPENSATION.—Notwithstanding any limitation
9 otherwise established under section 3109 of title 5, United
10 States Code, the Administrator shall be authorized to pay
11 members of the Physician Panel such compensation as is
12 reasonably necessary to obtain their services.

13 (f) FEDERAL ADVISORY COMMITTEE ACT.—A panel
14 established under this section shall not be subject to the
15 Federal Advisory Committee Act (5 U.S.C. App. 2).

16 **SEC. 106. PROGRAM STARTUP.**

17 (a) INTERIM REGULATIONS.—Not later than 90 days
18 after the enactment of this Act, the Administrator shall
19 promulgate interim regulations and procedures for the
20 processing of claims under title I and the operation of the
21 Fund under title II, including procedures for the expe-
22 diting of exigent claims.

23 (b) INTERIM PERSONNEL.—The Secretary of Labor
24 and the Assistant Secretary of Labor for the Employment
25 Standards Administration may make available to the Ad-

1 administrator on a temporary basis such personnel and other
 2 resources as may be necessary to facilitate the expeditious
 3 startup of the program. The Administrator may in addi-
 4 tion contract with individuals or entities having relevant
 5 experience to assist in the expeditious startup of the pro-
 6 gram. Such relevant experience shall include, but not be
 7 limited to, experience with the review of workers' com-
 8 pensation, occupational disease, or similar claims and with
 9 financial matters relevant to the operation of the program.

10 (c) EXIGENT HEALTH CLAIMS.—

11 (1) IN GENERAL.—The Administrator shall de-
 12 velop procedures to provide for an expedited process
 13 to categorize, evaluate, and pay exigent health
 14 claims. Such procedures shall include, pending pro-
 15 mulgation of final regulations, adoption of interim
 16 regulations as needed for processing of exigent
 17 claims.

18 (2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A
 19 claim shall qualify for treatment as an exigent
 20 health claim if the claimant is living and the claim-
 21 ant provides—

22 (A) documentation that a physician has di-
 23 agnosed the claimant as having mesothelioma;
 24 or

1 (B) a declaration or affidavit, from a phy-
2 sician who has examined the claimant within
3 120 days before the date of such declaration or
4 affidavit, that the physician has diagnosed the
5 claimant as being terminally ill from an asbes-
6 tos-related illness and having a life expectancy
7 of less than 1 year.

8 (3) ADDITIONAL EXIGENT HEALTH CLAIMS.—

9 The Administrator may, in final regulations promul-
10 gated under section 101(c), designate additional cat-
11 egories of claims that qualify as exigent health
12 claims under this subsection.

13 (d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The
14 Administrator may, in final regulations promulgated
15 under section 101(c), designate categories of claims to be
16 handled on an expedited basis as a result of extreme finan-
17 cial hardship.

18 (e) INTERIM ADMINISTRATOR.—Until an Adminis-
19 trator is appointed and confirmed under section 101(b),
20 the responsibilities of the Administrator under this Act
21 shall be performed by the Assistant Secretary of Labor
22 for the Employment Standards Administration, who shall
23 have all the authority conferred by this Act on the Admin-
24 istrator and who shall be deemed to be the Administrator
25 for purposes of this Act. Before final regulations being

1 promulgated relating to claims processing, the Interim Ad-
 2 ministrator may prioritize claims processing, without re-
 3 gard to the time requirements prescribed in subtitle B of
 4 this title, based on severity of illness and likelihood that
 5 the illness in question was caused by exposure to asbestos.

6 **SEC. 107. AUTHORITY OF THE ADMINISTRATOR.**

7 The Administrator, on any matter within the jurisdic-
 8 tion of the Administrator under this Act, may—

- 9 (1) issue subpoenas for and compel the attend-
 10 ance of witnesses within a radius of 100 miles;
- 11 (2) administer oaths;
- 12 (3) examine witnesses; and
- 13 (4) require the production of books, papers,
 14 documents, and other evidence.

15 **Subtitle B—Asbestos Disease**
 16 **Compensation Procedures**

17 **SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.**

18 To be eligible for an award under this Act for an as-
 19 bestos-related disease or injury, an individual shall—

- 20 (1) file a claim in a timely manner in accord-
 21 ance with section 113; and
- 22 (2) prove, by a preponderance of the evidence,
 23 that the claimant suffers from an eligible disease or
 24 condition, as demonstrated by evidence that meets
 25 the requirements established under subtitle C.

1 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**
2 **PENSATION.**

3 An asbestos claimant shall not be required to dem-
4 onstrate that the asbestos-related injury for which the
5 claim is being made resulted from the negligence or other
6 fault of any other person.

7 **SEC. 113. FILING OF CLAIMS.**

8 (a) WHO MAY SUBMIT.—

9 (1) IN GENERAL.—Any individual who has suf-
10 fered from a disease or condition that is believed to
11 meet the requirements established under subtitle C
12 (or the personal representative of the individual, if
13 the individual is deceased) may file a claim with the
14 Office for an award with respect to such injury.

15 (2) DEFINITION.—In this Act, the term “per-
16 sonal representative” shall have the same meaning
17 as that term is defined in section 104.4 of title 28
18 of the Code of Federal Regulations, as in effect De-
19 cember 31, 2003.

20 (3) LIMITATION.—A claim may not be filed by
21 any person seeking contribution or indemnity.

22 (b) STATUTE OF LIMITATIONS.—

23 (1) IN GENERAL.—Except as provided in para-
24 graphs (2) and (3), if an individual fails to file a
25 claim with the Office under this section within 4
26 years after the date on which the individual first—

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

4 (B) discovered facts that would have led a
5 reasonable person to obtain a medical diagnosis
6 with respect to an eligible disease or condition,
7 any claim relating to that injury, and any other as-
8bestos claim related to that injury, shall be extin-
9guished, and any recovery thereon shall be prohib-
10 ited.

11 (2) EFFECT ON PENDING CLAIMS.—If an asbes-
12 tos claimant has any timely filed asbestos claim that
13 is pending in a Federal or State court or with a
14 trust established under title 11, United States Code,
15 on the date of enactment of this Act, such claimant
16 shall file a claim under this section within 4 years
17 after such date of enactment or be barred from re-
18 ceiving any award under this title. For purposes of
19 this paragraph, a claim shall not be treated as pend-
20 ing with a trust established under title 11, United
21 States Code, solely because a claimant whose claim
22 was previously compensated by the trust has or al-
23 leges—

24 (A) a non-contingent right to the payment
25 of future installments of a fixed award; or

1 (B) a contingent right to recover some ad-
2 ditional amount from the trust on the occur-
3 rence of a future event, such as the reevaluation
4 of the trust's funding adequacy or projected
5 claims experience.

6 (3) EFFECT OF MULTIPLE INJURIES.—

7 (A) IN GENERAL.—An asbestos claimant
8 who receives an award under this title for an el-
9 igible disease or condition, and who subse-
10 quently develops another such injury, shall be
11 eligible for additional awards under this title
12 (subject to appropriate setoffs for such prior re-
13 covery of any award under this title and from
14 any other collateral source) and the statute of
15 limitations under paragraph (1) shall not begin
16 to run with respect to such subsequent injury
17 until such claimant obtains a medical diagnosis
18 of such other injury or discovers facts that
19 would have led a reasonable person to obtain
20 such a diagnosis.

21 (B) SETOFFS.—Except as provided in sub-
22 paragraph (C), any amounts paid or to be paid
23 for a prior award under this Act shall be de-
24 ducted as a setoff against amounts payable for
25 the second injury claim.

1 (C) EXCEPTION.—Any amounts paid or to
2 be paid for a prior claim for a non-malignant
3 disease (Levels I through V) filed against the
4 Fund shall not be deducted as a setoff against
5 amounts payable for the second injury claim for
6 a malignant disease (Levels VI through X), un-
7 less the malignancy was diagnosed, or the as-
8 bestos claimant had discovered facts that would
9 have led a reasonable person to obtain such a
10 diagnosis, before the date on which the non-ma-
11 lignancy claim was compensated.

12 (c) REQUIRED INFORMATION.—A claim filed under
13 subsection (a) shall be in such form, and contain such in-
14 formation in such detail, as the Administrator shall by
15 regulation prescribe. At a minimum, a claim shall in-
16 clude—

17 (1) the name, social security number, gender,
18 date of birth, and, if applicable, date of death of the
19 claimant;

20 (2) information relating to the identity of de-
21 pendants and beneficiaries of the claimant;

22 (3) a complete employment history of the claim-
23 ant, accompanied by social security records or a
24 signed release permitting access to such records;

1 (4) a description of the asbestos exposure of the
2 claimant, including, to the extent known, informa-
3 tion on the site, or location of exposure, and dura-
4 tion and intensity of exposure;

5 (5) a description of the tobacco product use his-
6 tory of the claimant, including frequency and dura-
7 tion;

8 (6) an identification and description of the as-
9 bestos-related diseases or conditions of the claimant,
10 accompanied by a written report by the claimant's
11 physician with medical diagnoses and x-ray films,
12 and other test results necessary to establish eligi-
13 bility for an award under this Act;

14 (7) a description of any prior or pending civil
15 action or other claim brought by the claimant for as-
16 bestos-related injury or any other pulmonary, paren-
17 chymal or pleural injury, including an identification
18 of any recovery of compensation or damages through
19 settlement, judgment, or otherwise; and

20 (8) for any claimant who asserts that he or she
21 is a nonsmoker or an ex-smoker, as defined in sec-
22 tion 131, for purposes of an award under Malignant
23 Level VI, Malignant Level VII, Malignant Level
24 VIII, or Malignant Level IX, evidence to support the

1 assertion of nonsmoking or ex-smoking, including
2 relevant medical records.

3 (d) DATE OF FILING.—A claim shall be considered
4 to be filed on the date that the claimant mails the claim
5 to the Office, as determined by postmark, or on the date
6 that the claim is received by the Office, whichever is the
7 earliest determinable date.

8 (e) INCOMPLETE CLAIMS.—If a claim filed under
9 subsection (a) is incomplete, the Administrator shall notify
10 the claimant of the information necessary to complete the
11 claim and inform the claimant of such services as may
12 be available through the Claimant Assistance Program es-
13 tablished under section 104 to assist the claimant in com-
14 pleting the claim. Any time periods for the processing of
15 the claim shall be suspended until such time as the claim-
16 ant submits the information necessary to complete the
17 claim. If such information is not received within 1 year
18 after the date of such notification, the claim shall be dis-
19 missed.

20 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**
21 **AWARDS.**

22 (a) IN GENERAL.—

23 (1) REVIEW OF CLAIMS.—The Administrator
24 shall, in accordance with this section, determine
25 whether each claim filed under this Act satisfies the

1 requirements for eligibility for an award under this
2 Act and, if so, the value of the award. In making
3 such determinations, the Administrator shall con-
4 sider the claim presented by the claimant, the fac-
5 tual and medical evidence submitted by the claimant
6 in support of the claim, the medical determinations
7 of any Physicians Panel to which a claim is referred
8 under section 121, and the results of such investiga-
9 tion as the Administrator may deem necessary to de-
10 termine whether the claim satisfies the criteria for
11 eligibility established by this Act.

12 (2) ADDITIONAL EVIDENCE.—The Adminis-
13 trator may request the submission of medical evi-
14 dence in addition to the minimum requirements of
15 section 113(c) if necessary or appropriate to make
16 a determination of eligibility for an award, in which
17 case the cost of obtaining such additional informa-
18 tion or testing shall be borne by the Office.

19 (b) PROPOSED DECISIONS.—Not later than 90 days
20 after the filing of a claim, the Administrator shall provide
21 to the claimant (and the claimant's representative) a pro-
22 posed decision accepting or rejecting the claim in whole
23 or in part and specifying the amount of the proposed
24 award, if any. The proposed decision shall be in writing,
25 shall contain findings of fact and conclusions of law, and

1 shall contain an explanation of the procedure for obtaining
2 review of the proposed decision.

3 (c) REVIEW OF PROPOSED DECISIONS.—

4 (1) RIGHT TO HEARING.—

5 (A) IN GENERAL.—Any claimant not satis-
6 fied with a proposed decision of the Adminis-
7 trator under subsection (b) shall be entitled, on
8 written request made within 90 days after the
9 date of the issuance of the decision, to a hear-
10 ing on the claim of that claimant before a rep-
11 resentative of the Administrator. At the hear-
12 ing, the claimant shall be entitled to present
13 oral evidence and written testimony in further
14 support of that claim.

15 (B) CONDUCT OF HEARING.—When prac-
16 ticable, the hearing will be set at a time and
17 place convenient for the claimant. In conducting
18 the hearing, the representative of the Adminis-
19 trator shall not be bound by common law or
20 statutory rules of evidence, by technical or for-
21 mal rules of procedure, or by section 554 of
22 title 5, United States Code, except as provided
23 by this Act, but shall conduct the hearing in
24 such manner as to best ascertain the rights of
25 the claimant. For this purpose, the representa-

tive shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30

1 days after the date of the original
2 hearing request; and

3 (II) explain why the testimony or
4 evidence is directly relevant to the
5 issues at hand, and a subpoena is the
6 best method or opportunity to obtain
7 such evidence because there are no
8 other means by which the documents
9 or testimony could have been ob-
10 tained.

11 (iii) FEES AND MILEAGE.—Any per-
12 son required by such subpoena to attend as
13 a witness shall be allowed and paid the
14 same fees and mileage as are paid wit-
15 nesses in the district courts of the United
16 States.

17 (2) REVIEW OF WRITTEN RECORD.—In lieu of
18 a hearing under paragraph (1), any claimant not
19 satisfied with a proposed decision of the Adminis-
20 trator shall have the option, on written request made
21 within 90 days after the date of the issuance of the
22 decision, of obtaining a review of the written record
23 by a representative of the Administrator. If such re-
24 view is requested, the claimant shall be afforded an

1 opportunity to submit any written evidence or argu-
2 ment which he or she believes relevant.

3 (d) FINAL DECISIONS.—

4 (1) IN GENERAL.—If the period of time for re-
5 questing review of the proposed decision expires and
6 no request has been filed, or if the claimant waives
7 any objections to the proposed decision, the Admin-
8 istrator shall issue a final decision. If such decision
9 materially differs from the proposed decision, the
10 claimant shall be entitled to review of the decision
11 under subsection (c).

12 (2) TIME AND CONTENT.—If the claimant re-
13 quests review of all or part of the proposed decision
14 the Administrator shall issue a final decision on the
15 claim not later than 180 days after the request for
16 review is received, if the claimant requests a hearing,
17 or not later than 90 days after the request for re-
18 view is received, if the claimant requests review of
19 the written record. Such decision shall be in writing
20 and contain findings of fact and conclusions of law.

21 (e) REPRESENTATION.—A claimant may authorize
22 an attorney or other individual to represent him or her
23 in any proceeding under this Act.

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

25 (a) IN GENERAL.—

1 (1) DEVELOPMENT.—The Administrator shall
2 develop methods for auditing and evaluating the
3 medical evidence submitted as part of a claim. The
4 Administrator may develop additional methods for
5 auditing and evaluating other types of evidence or
6 information received by the Administrator.

7 (2) REFUSAL TO CONSIDER CERTAIN EVI-
8 DENCE.—

9 (A) IN GENERAL.—If the Administrator
10 determines that an audit conducted in accord-
11 ance with the methods developed under para-
12 graph (1) demonstrates that the medical evi-
13 dence submitted by a specific physician or med-
14 ical facility is not consistent with prevailing
15 medical practices or the applicable requirements
16 of this Act, any medical evidence from such
17 physician or facility shall be unacceptable for
18 purposes of establishing eligibility for an award
19 under this Act.

20 (B) NOTIFICATION.—Upon a determina-
21 tion by the Administrator under subparagraph
22 (A), the Administrator shall notify the physi-
23 cian or medical facility involved of the results of
24 the audit. Such physician or facility shall have

1 a right to appeal such determination under pro-
2 cedures issued by the Administrator.

3 (b) REVIEW OF CERTIFIED B-READERS.—

4 (1) IN GENERAL.—At a minimum, the Adminis-
5 trator shall prescribe procedures to randomly assign
6 claims for evaluation by an independent certified B-
7 reader of x-rays submitted in support of a claim, the
8 cost of which shall be borne by the Office.

9 (2) DISAGREEMENT.—If an independent cer-
10 tified B-reader assigned under paragraph (1) dis-
11 agrees with the quality grading or ILO level as-
12 signed to an x-ray submitted in support of a claim,
13 the Administrator shall require a review of such x-
14 rays by a second independent certified B-reader.

15 (3) EFFECT ON CLAIM.—If neither certified B-
16 reader under paragraph (2) agrees with the quality
17 grading and the ILO grade level assigned to an x-
18 ray as part of the claim, the Administrator shall
19 take into account the findings of the 2 independent
20 B readers in making the determination on such
21 claim.

22 (4) CERTIFIED B-READERS.—The Adminis-
23 trator shall maintain a list of a minimum of 50 cer-
24 tified B-readers eligible to participate in the inde-
25 pendent reviews, chosen from all certified B-readers.

1 When an x-ray is sent for independent review, the
2 Administrator shall choose the certified B-reader at
3 random from that list.

4 (c) SMOKING ASSESSMENT.—

5 (1) IN GENERAL.—

6 (A) RECORDS AND DOCUMENTS.—To aid
7 in the assessment of the accuracy of claimant
8 representations as to their smoking status for
9 purposes of determining eligibility and amount
10 of award under Malignant Level VI, Malignant
11 Level VII, Malignant Level VIII, Malignant
12 Level IX, and exceptional medical claims, the
13 Administrator shall have the authority to obtain
14 relevant records and documents, including—

15 (i) records of past medical treatment
16 and evaluation;

17 (ii) affidavits of appropriate individ-
18 uals;

19 (iii) applications for insurance and
20 supporting materials; and

21 (iv) employer records of medical ex-
22 aminations.

23 (B) CONSENT.—The claimant shall provide
24 consent for the Administrator to obtain such
25 records and documents where required.

1 (2) REVIEW.—The frequency of review of
 2 records and documents submitted under paragraph
 3 (1)(A) shall be at the discretion of the Adminis-
 4 trator, but shall address at least 5 percent of the
 5 claimants asserting status as nonsmokers or ex-
 6 smokers.

7 (3) CONSENT.—The Administrator may require
 8 the performance of blood tests or any other appro-
 9 priate medical test where claimants assert they are
 10 nonsmokers or ex-smokers for purposes of an award
 11 under Malignant Level VI, Malignant Level VII,
 12 Malignant Level VIII, Malignant Level IX, or as an
 13 exceptional medical claim, the cost of which shall be
 14 borne by the Office.

15 (4) PENALTY FOR FALSE STATEMENTS.—Any
 16 false information submitted under this subsection
 17 shall be subject to criminal prosecution or civil pen-
 18 alties as provided under section 1348 of title 18,
 19 United States Code (as added by this Act) and sec-
 20 tion 101(c)(2).

21 **Subtitle C—Medical Criteria**

22 **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

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

1 (1) ASBESTOSIS DETERMINED BY PATHOL-
 2 OGY.—The term “asbestosis determined by pathol-
 3 ogy” means indications of asbestosis based on the
 4 pathological grading system for asbestosis described
 5 in the Special Issues of the Archives of Pathology
 6 and Laboratory Medicine, “Asbestos-associated Dis-
 7 eases”, Vol. 106, No. 11, App. 3 (October 8, 1982).

8 (2) BILATERAL ASBESTOS-RELATED NONMALIG-
 9 NANT DISEASE.—The term “bilateral asbestos-re-
 10 lated nonmalignant disease” means a diagnosis of
 11 bilateral asbestos-related nonmalignant disease
 12 based on—

13 (A) an x-ray reading of 1/0 or higher
 14 based on the ILO grade scale;

15 (B) bilateral pleural plaques;

16 (C) bilateral pleural thickening; or

17 (D) bilateral pleural calcification.

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

23 (4) CERTIFIED B-READER.—The term “cer-
 24 tified B-reader” means an individual who is certified
 25 by the National Institute of Occupational Safety and

1 Health and whose certification by the National Insti-
2 tute of Occupational Safety and Health is up to
3 date.

4 (5) DIFFUSE PLEURAL THICKENING.—The
5 term “diffuse pleural thickening” means blunting of
6 either costophrenic angle and bilateral pleural plaque
7 or bilateral pleural thickening.

8 (6) DLCO.—The term “DLCO” means the sin-
9 gle-breath diffusing capacity of the lung (carbon
10 monoxide) technique used to measure the volume of
11 carbon monoxide transferred from the alveoli to
12 blood in the pulmonary capillaries for each unit of
13 driving pressure of the carbon monoxide.

14 (7) FEV1.—The term “FEV1” means forced
15 expiratory volume (1 second), which is the maximal
16 volume of air expelled in 1 second during perform-
17 ance of the spirometric test for forced vital capacity.

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

22 (9) ILO GRADE.—The term “ILO grade”
23 means the radiological ratings for the presence of
24 lung changes as determined from a chest x-ray, all

1 as established from time to time by the International
2 Labor Organization.

3 (10) LOWER LIMITS OF NORMAL.—The term
4 “lower limits of normal” means the fifth percentile
5 of healthy populations as defined in the American
6 Thoracic Society statement on lung function testing
7 (Amer. Rev. Resp. Disease 1991, 144:1202–1218)
8 and any future revision of the same statement.

9 (11) NONSMOKER.—The term “nonsmoker”
10 means that the claimant never smoked.

11 (12) PO₂.—The term “PO₂” means the partial
12 pressure (tension) of oxygen, which measures the
13 amount of dissolved oxygen in the blood.

14 (13) PULMONARY FUNCTION TESTING.—The
15 term “pulmonary function testing” means
16 spirometry testing that is in material compliance
17 with the quality criteria established by the American
18 Thoracic Society and is performed on equipment
19 which is in material compliance with the standards
20 of the American Thoracic Society for technical qual-
21 ity and calibration.

22 (14) SUBSTANTIAL OCCUPATIONAL EXPOSURE
23 TO ASBESTOS.—

24 (A) IN GENERAL.—The term “substantial
25 occupational exposure” means employment in

1 an industry and an occupation where for a sub-
2 stantial portion of a normal work year for that
3 occupation, the claimant—

4 (i) handled raw asbestos fibers;

5 (ii) fabricated asbestos-containing
6 products so that the claimant in the fab-
7 rication process was exposed to raw asbes-
8 tos fibers;

9 (iii) altered, repaired, or otherwise
10 worked with an asbestos-containing prod-
11 uct such that the claimant was exposed on
12 a regular basis to asbestos fibers; or

13 (iv) worked in close proximity to other
14 workers engaged in the activities described
15 under clause (i), (ii), or (iii) such that the
16 claimant was exposed on a regular basis to
17 asbestos fibers.

18 (B) REGULAR BASIS.—In this paragraph,
19 the term “on a regular basis” means on a fre-
20 quent or recurring basis.

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

24 (16) WEIGHTED OCCUPATIONAL EXPOSURE.—

1 (A) IN GENERAL.—The term “weighted oc-
2 cupational exposure” means exposure for a pe-
3 riod of years calculated according to the expo-
4 sure weighting formula under subparagraphs
5 (B) through (E).

6 (B) MODERATE EXPOSURE.—Subject to
7 subparagraph (E), each year that a claimant’s
8 primary occupation, during a substantial por-
9 tion of a normal work year for that occupation,
10 involved working in areas immediate to where
11 asbestos-containing products were being in-
12 stalled, repaired, or removed under cir-
13 cumstances that involved regular airborne emis-
14 sions of asbestos fibers, shall count as 1 year
15 of substantial occupational exposure.

16 (C) HEAVY EXPOSURE.—Subject to sub-
17 paragraph (E), each year that a claimant’s pri-
18 mary occupation, during a substantial portion
19 of a normal work year for that occupation, in-
20 volved the direct installation, repair, or removal
21 of asbestos-containing products such that the
22 person was exposed on a regular basis to asbes-
23 tos fibers, shall count as 2 years of substantial
24 occupational exposure.

1 (D) VERY HEAVY EXPOSURE.—Subject to
2 subparagraph (E), each year that a claimant's
3 primary occupation, during a substantial por-
4 tion of a normal work year for that occupation,
5 was in primary asbestos manufacturing, a
6 World War II shipyard, or the asbestos insula-
7 tion trades, such that the person was exposed
8 on a regular basis to asbestos fibers, shall count
9 as 4 years of substantial occupational exposure.

10 (E) DATES OF EXPOSURE.—Each year of
11 exposure calculated under subparagraphs (B),
12 (C), and (D) that occurred before 1976 shall be
13 counted at its full value. Each year from 1976
14 to 1986 shall be counted as $\frac{1}{2}$ its value. Each
15 year after 1986 shall be counted as $\frac{1}{10}$ its
16 value.

17 (F) OTHER CLAIMS.—Individuals who do
18 not meet the provisions of subparagraphs (A)
19 through (E) and believe their post-1976 or
20 post-1986 exposures exceeded the Occupational
21 Safety and Health Administration standard
22 may submit evidence, documentation, work his-
23 tory or other information to substantiate non-
24 compliance with the Occupational Safety and
25 Health Administration standard (such as lack

1 of engineering or work practice controls, or pro-
2 tective equipment) such that exposures would
3 be equivalent to exposures before 1976 or 1986
4 or to documented exposures in similar jobs or
5 occupations where control measures had not
6 been implemented. Claims under this subpara-
7 graph shall be evaluated on an individual basis
8 by a Physicians Panel.

9 (b) MEDICAL EVIDENCE.—

10 (1) LATENCY.—Unless otherwise specified, all
11 diagnoses of an asbestos-related disease for a level
12 under this section shall be accompanied by—

13 (A) a statement by the physician providing
14 the diagnosis that at least 10 years have
15 elapsed between the date of first exposure to as-
16 bestos or asbestos-containing products and the
17 diagnosis; or

18 (B) a history of the claimant's exposure
19 that is sufficient to establish a 10-year latency
20 period between the date of first exposure to as-
21 bestos or asbestos-containing products and the
22 diagnosis.

23 (2) DIAGNOSTIC GUIDELINES.—All diagnoses of
24 asbestos-related diseases shall be based upon—

1 (A) for disease Levels I through V, in the
2 case of a claimant who was living at the time
3 the claim was filed—

4 (i) a physical examination of the
5 claimant by the physician providing the di-
6 agnosis;

7 (ii) an evaluation of smoking history
8 and exposure history before making a diag-
9 nosis;

10 (iii) an x-ray reading by a certified B-
11 reader; and

12 (iv) pulmonary function testing in the
13 case of disease Levels III, IV, and V;

14 (B) for disease Levels I through V, in the
15 case of a claimant who was deceased at the
16 time the claim was filed, a report from a physi-
17 cian based upon a review of the claimant's med-
18 ical records which shall include—

19 (i) pathological evidence of the non-
20 malignant asbestos-related disease; or

21 (ii) an x-ray reading by a certified B-
22 reader;

23 (C) for disease Levels VI through X, in the
24 case of a claimant who was living at the time
25 the claim was filed—

1 (i) a physical examination by the
2 claimant's physician providing the diag-
3 nosis; or

4 (ii) a diagnosis of such a malignant
5 asbestos-related disease, as described in
6 this section, by a board-certified patholo-
7 gist; and

8 (D) for disease Levels VI through X, in
9 the case of a claimant who was deceased at the
10 time the claim was filed—

11 (i) a diagnosis of such a malignant as-
12 bestos-related disease, as described in this
13 section, by a board-certified pathologist;
14 and

15 (ii) a report from a physician based
16 upon a review of the claimant's medical
17 records.

18 (3) CREDIBILITY OF MEDICAL EVIDENCE.—To
19 ensure the medical evidence provided in support of
20 a claim is credible and consistent with recognized
21 medical standards, a claimant under this title may
22 be required to submit—

23 (A) x-rays or computerized tomography;

24 (B) detailed results of pulmonary function
25 tests;

- 1 (C) laboratory tests;
- 2 (D) tissue samples;
- 3 (E) results of medical examinations;
- 4 (F) reviews of other medical evidence; and
- 5 (G) medical evidence that complies with
- 6 recognized medical standards regarding equip-
- 7 ment, testing methods, and procedure to ensure
- 8 the reliability of such evidence as may be sub-
- 9 mitted.

10 (c) EXPOSURE EVIDENCE.—

- 11 (1) IN GENERAL.—To qualify for any disease
12 level, the claimant shall demonstrate—

- 13 (A) a minimum exposure to asbestos or as-
14 bestos-containing products;

- 15 (B) the exposure occurred in the United
16 States, its territories or possessions, or while a
17 United States citizen while an employee of an
18 entity organized under any Federal or State law
19 regardless of location, or while a United States
20 citizen while serving on any United States
21 flagged or owned ship, provided the exposure
22 results from such employment or service; and

- 23 (C) any additional asbestos exposure re-
24 quirement under this section.

1 (2) GENERAL EXPOSURE REQUIREMENTS.—In
2 order to establish exposure to asbestos, a claimant
3 shall present meaningful and credible evidence—

4 (A) by an affidavit of the claimant;

5 (B) by an affidavit of a coworker or family
6 member, if the claimant is deceased and such
7 evidence is found in proceedings under this title
8 to be reasonably reliable;

9 (C) by invoices, construction, or similar
10 records; or

11 (D) any other credible evidence.

12 (3) TAKE-HOME EXPOSURE.—

13 (A) IN GENERAL.—A claimant may alter-
14 natively satisfy the medical criteria require-
15 ments of this section where a claim is filed by
16 a person who alleges their exposure to asbestos
17 was the result of living with a person who, if
18 the claim had been filed by that person, would
19 have met the exposure criteria for the given dis-
20 ease level, and the claimant lived with such per-
21 son for the time period necessary to satisfy the
22 exposure requirement, for the claimed disease
23 level.

24 (B) REVIEW.—Except for claims for dis-
25 ease Level X (mesothelioma), all claims alleging

1 take-home exposure shall be submitted as an ex-
2 ceptional medical claim under section 121(f) for
3 review by a Physicians Panel.

4 (4) WAIVER FOR WORKERS AND RESIDENTS OF
5 LIBBY, MONTANA.—Because of the unique nature of
6 the asbestos exposure related to the vermiculite min-
7 ing and milling operations in Libby, Montana, the
8 Administrator shall waive the exposure requirements
9 under this subtitle for individuals who worked at the
10 vermiculite mining and milling facility in Libby,
11 Montana, or lived or worked within a 20-mile radius
12 of Libby, Montana, for at least 12 consecutive
13 months before December 31, 2003. Claimants under
14 this section shall provide such supporting docu-
15 mentation as the Administrator shall require.

16 (5) EXPOSURE PRESUMPTIONS.—The Adminis-
17 trator shall prescribe rules identifying specific indus-
18 tries, occupations within those industries, and time
19 periods for which substantial occupational exposure
20 (as defined under section 121(a)) shall be a rebut-
21 table presumption for asbestos claimants who pro-
22 vide meaningful and credible evidence that the
23 claimant worked in that industry and occupation
24 during such time periods. The Administrator may
25 provide evidence to rebut this presumption.

1 (d) ASBESTOS DISEASE LEVELS.—

2 (1) NONMALIGNANT LEVEL I.—To receive Level
3 I compensation, a claimant shall provide—

4 (A) a diagnosis of bilateral asbestos-related
5 nonmalignant disease; and

6 (B) evidence of 5 years cumulative occupa-
7 tional exposure to asbestos.

8 (2) NONMALIGNANT LEVEL II.—To receive
9 Level II compensation, a claimant shall provide—

10 (A) a diagnosis of bilateral asbestos-related
11 nonmalignant disease with ILO grade of 1/1 or
12 greater, and showing small irregular opacities
13 of shape or size either ss, st, or tt and present
14 in both lower lung zones, or asbestosis deter-
15 mined by pathology, or blunting of either
16 costophrenic angle and bilateral pleural plaque
17 or bilateral pleural thickening of at least grade
18 B2 or greater, or bilateral pleural disease of
19 grade B2 or greater;

20 (B) evidence of TLC less than 80 percent
21 or FVC less than the lower limits of normal,
22 and FEV1/FVC ratio less than 65 percent;

23 (C) evidence of 5 or more weighted years
24 of substantial occupational exposure to asbes-
25 tos; and

1 (D) supporting medical documentation es-
2 tablishing asbestos exposure as a contributing
3 factor in causing the pulmonary condition in
4 question.

5 (3) NONMALIGNANT LEVEL III.—To receive
6 Level III compensation a claimant shall provide—

7 (A) a diagnosis of bilateral asbestos-related
8 nonmalignant disease with ILO grade of 1/0 or
9 greater and showing small irregular opacities of
10 shape or size either ss, st, or tt and present in
11 both lower lung zones, or asbestosis determined
12 by pathology, or diffuse pleural thickening, or
13 bilateral pleural disease of B2 or greater;

14 (B) evidence of TLC less than 80 percent;
15 FVC less than the lower limits of normal and
16 FEV1/FVC ratio greater than or equal to 65
17 percent; or evidence of a decline in FVC of 20
18 percent or greater, after allowing for the ex-
19 pected decrease due to aging, and an FEV1/
20 FVC ratio greater than or equal to 65 percent
21 documented with a second spirometry;

22 (C) evidence of 5 or more weighted years
23 of substantial occupational exposure to asbes-
24 tos; and

25 (D) supporting medical documentation—

1 (i) establishing asbestos exposure as a
2 contributing factor in causing the pul-
3 monary condition in question; and

4 (ii) excluding other more likely causes
5 of that pulmonary condition.

6 (4) NONMALIGNANT LEVEL IV.—To receive
7 Level IV compensation a claimant shall provide—

8 (A) diagnosis of bilateral asbestos-related
9 nonmalignant disease with ILO grade of 1/1 or
10 greater and showing small irregular opacities of
11 shape or size either ss, st, or tt and present in
12 both lower lung zones, or asbestosis determined
13 by pathology, or diffuse pleural thickening, or
14 bilateral pleural disease of B2 or greater;

15 (B) evidence of TLC less than 60 percent
16 or FVC less than 60 percent, and FEV1/FVC
17 ratio greater than or equal to 65 percent;

18 (C) evidence of 5 or more weighted years
19 of substantial occupational exposure to asbestos
20 before diagnosis; and

21 (D) supporting medical documentation—

22 (i) establishing asbestos exposure as a
23 contributing factor in causing the pul-
24 monary condition in question; and

1 (ii) excluding other more likely causes
2 of that pulmonary condition.

3 (5) NONMALIGNANT LEVEL V.—To receive
4 Level V compensation a claimant shall provide—

5 (A) diagnosis of bilateral asbestos-related
6 nonmalignant disease with ILO grade of 1/1 or
7 greater and showing small irregular opacities of
8 shape or size either ss, st, or tt and present in
9 both lower lung zones, or asbestosis determined
10 by pathology, or diffuse pleural thickening, or
11 bilateral pleural disease of B2 or greater;

12 (B)(i) evidence of TLC less than 50 per-
13 cent or FVC less than 50 percent, and FEV1/
14 FVC ratio greater than or equal to 65 percent;

15 (ii) DLCO less than 40 percent of pre-
16 dicted, plus a FEV1/FVC ratio not less than 65
17 percent; or

18 (iii) PO2 less than 55 mm/Hg, plus a
19 FEV1/FVC ratio not less than 65 percent;

20 (C) evidence of 5 or more weighted years
21 of substantial occupational exposure to asbes-
22 tos; and

23 (D) supporting medical documentation—

1 (i) establishing asbestos exposure as a
2 contributing factor in causing the pul-
3 monary condition in question; and

4 (ii) excluding other more likely causes
5 of that pulmonary condition.

6 (6) MALIGNANT LEVEL VI.—

7 (A) IN GENERAL.—To receive Level VI
8 compensation a claimant shall provide—

9 (i) a diagnosis of a primary colorectal,
10 laryngeal, esophageal, pharyngeal, or stom-
11 ach cancer on the basis of findings by a
12 board certified pathologist;

13 (ii) evidence of a bilateral asbestos-re-
14 lated nonmalignant disease;

15 (iii) evidence of 15 or more weighted
16 years of substantial occupational exposure
17 to asbestos; and

18 (iv) supporting medical documentation
19 establishing asbestos exposure as a contrib-
20 uting factor in causing the cancer in ques-
21 tion.

22 (B) REFERRAL TO PHYSICIANS PANEL.—

23 All claims filed with respect to Level VI under
24 this paragraph shall be referred to a Physicians
25 Panel for a determination that it is more prob-

1 able than not that asbestos exposure was a sub-
2 stantial contributing factor in causing the other
3 cancer in question. If the claimant meets the
4 requirements of subparagraph (A), there shall
5 be a presumption of eligibility for the scheduled
6 value of compensation unless there is evidence
7 determined by the Physicians Panel that rebuts
8 that presumption.

9 (C) REQUEST FOR REFERRAL TO PHYSI-
10 CIANS PANEL.—A claimant filing a claim with
11 respect to Level VI under this paragraph may
12 request that the claim be referred to a Physi-
13 cians Panel for a determination on amount of
14 award. In making its determination under this
15 subparagraph, the Physicians Panel shall con-
16 sider the intensity and duration of exposure,
17 smoking history, and the quality of evidence re-
18 lating to exposure and smoking. Claimants shall
19 bear the burden of producing meaningful and
20 credible evidence of their smoking history as
21 part of their claim submission.

22 (7) MALIGNANT LEVEL VII.—

23 (A) IN GENERAL.—To receive Level VII
24 compensation a claimant shall provide—

1 (i) a diagnosis of a primary lung can-
2 cer disease on the basis of findings by a
3 board certified pathologist;

4 (ii) evidence of 15 or more weighted
5 years of substantial occupational exposure
6 to asbestos; and

7 (iii) supporting medical documenta-
8 tion establishing asbestos exposure as a
9 contributing factor in causing the lung
10 cancer in question.

11 (B) PHYSICIANS PANEL.—All claims filed
12 relating to Level VII under this paragraph shall
13 be referred to a Physicians Panel for a deter-
14 mination on the amount of award. In making
15 its determination under this subparagraph, the
16 Physicians Panel shall consider the intensity
17 and duration of exposure, smoking history, and
18 the quality of evidence relating to exposure and
19 smoking. Claimants shall bear the burden of
20 producing meaningful and credible evidence of
21 their smoking history as part of their claim
22 submission.

23 (8) MALIGNANT LEVEL VIII.—

24 (A) IN GENERAL.—To receive Level VIII
25 compensation, a claimant shall provide—

1 (i) a diagnosis of a primary lung can-
2 cer disease on the basis of findings by a
3 board certified pathologist;

4 (ii) evidence of bilateral pleural
5 plaques or bilateral pleural thickening or
6 bilateral pleural calcification;

7 (iii) evidence of 12 or more weighted
8 years of substantial occupational exposure
9 to asbestos; and

10 (iv) supporting medical documentation
11 establishing asbestos exposure as a contrib-
12 uting factor in causing the lung cancer in
13 question.

14 (B) PHYSICIANS PANEL.—A claimant filing
15 a claim relating to Level VIII under this para-
16 graph may request that the claim be referred to
17 a Physicians Panel for a determination on
18 amount of award. In making its determination
19 under this subparagraph, the Physicians Panel
20 shall consider the intensity and duration of ex-
21 posure, smoking history, and the quality of evi-
22 dence relating to exposure and smoking. Claim-
23 ants shall bear the burden of producing mean-
24 ingful and credible evidence of their smoking
25 history as part of their claim submission.

1 (9) MALIGNANT LEVEL IX.—

2 (A) IN GENERAL.—To receive Level IX
3 compensation, a claimant shall provide—

4 (i) a diagnosis of a primary lung can-
5 cer disease on the basis of findings by a
6 board certified pathologist;

7 (ii)(I) evidence of—

8 (aa) asbestosis based on a chest
9 x-ray of at least 1/0 on the ILO scale
10 and showing small irregular opacities
11 of shape or size either ss, st, or tt and
12 present in both lower lung zones; and

13 (bb) 10 or more weighted years
14 of substantial occupational exposure
15 to asbestos;

16 (II) evidence of—

17 (aa) asbestosis based on a chest
18 x-ray of at least 1/1 on the ILO scale
19 and showing small irregular opacities
20 of shape or size either ss, st, or tt and
21 present in both lower lung zones; and

22 (bb) 8 or more weighted years of
23 substantial occupational exposure to
24 asbestos; or

1 (III) asbestosis determined by pathol-
2 ogy and 10 or more weighted years of sub-
3 stantial occupational exposure to asbestos;
4 and

5 (iii) supporting medical documenta-
6 tion establishing asbestos exposure as a
7 contributing factor in causing the lung
8 cancer in question.

9 (B) PHYSICIANS PANEL.—A claimant filing
10 a claim with respect to Level IX under this
11 paragraph may request that the claim be re-
12 ferred to a Physicians Panel for a determina-
13 tion on amount of award. In making its deter-
14 mination under this subparagraph, the Physi-
15 cians Panel shall consider the intensity and du-
16 ration of exposure, smoking history, and the
17 quality of evidence relating to exposure and
18 smoking. Claimants shall bear the burden of
19 producing meaningful and credible evidence of
20 their smoking history as part of their claim
21 submission.

22 (10) MALIGNANT LEVEL X.—To receive Level
23 X compensation, a claimant shall provide—

1 (A) a diagnosis of malignant mesothelioma
2 disease on the basis of findings by a board cer-
3 tified pathologist; and

4 (B) credible evidence of identifiable expo-
5 sure to asbestos resulting from—

6 (i) occupational exposure to asbestos;

7 (ii) exposure to asbestos fibers
8 brought into the home of the claimant by
9 a worker occupationally exposed to asbes-
10 tos;

11 (iii) exposure to asbestos fibers result-
12 ing from living or working in the proxi-
13 mate vicinity of a factory, shipyard, build-
14 ing demolition site, or other operation that
15 regularly released asbestos fibers into the
16 air due to operations involving asbestos at
17 that site; or

18 (iv) other identifiable exposure to as-
19 bestos fibers, in which case the claim shall
20 be reviewed by a Physicians Panel under
21 section 121(f) for a determination of eligi-
22 bility.

23 (e) INSTITUTE OF MEDICINE STUDY.—

24 (1) IN GENERAL.—Not later than 2 years after
25 date of enactment of this Act, the Institute of Medi-

1 cine of the National Academy of Sciences shall com-
2 plete a study of the causal link between asbestos ex-
3 posure and other cancers, including colorectal, laryn-
4 geal, esophageal, pharyngeal, and stomach cancers,
5 except for mesothelioma and lung cancers. The In-
6 stitute of Medicine shall issue a report on its find-
7 ings on causation, which shall be transmitted to
8 Congress, the Administrator, the Advisory Com-
9 mittee on Asbestos Disease Compensation or the
10 Medical Advisory Committee, and the Physicians
11 Panels. The Administrator and the Physicians Pan-
12 els may consider the results of the report for pur-
13 poses of determining whether asbestos exposure is a
14 substantial contributing factor under section
15 121(d)(6)(B).

16 (2) SUBSEQUENT STUDIES.—If the Adminis-
17 trator has evidence that there have been advance-
18 ments in science that would require additional study,
19 the Administrator may request that the Institute of
20 Medicine conduct a subsequent study to determine if
21 asbestos exposure is a cause of other cancers.

22 (f) EXCEPTIONAL MEDICAL CLAIMS.—

23 (1) IN GENERAL.—A claimant who does not
24 meet the medical criteria requirements under this

1 section may apply for designation of the claim as an
2 exceptional medical claim.

3 (2) APPLICATION.—When submitting an appli-
4 cation for review of an exceptional medical claim, the
5 claimant shall—

6 (A) state that the claim does not meet the
7 medical criteria requirements under this sec-
8 tion; or

9 (B) seek designation as an exceptional
10 medical claim within 60 days after a determina-
11 tion that the claim is ineligible solely for failure
12 to meet the medical criteria requirements under
13 subsection (d).

14 (3) REPORT OF PHYSICIAN.—

15 (A) IN GENERAL.—Any claimant applying
16 for designation of a claim as an exceptional
17 medical claim shall support an application filed
18 under paragraph (1) with a report from a phy-
19 sician meeting the requirements of this section.

20 (B) CONTENTS.—A report filed under sub-
21 paragraph (A) shall include—

22 (i) a complete review of the claimant's
23 medical history and current condition;

24 (ii) such additional material by way of
25 analysis and documentation as shall be

1 prescribed by rule of the Administrator;
2 and

3 (iii) a detailed explanation as to why
4 the claim meets the requirements of para-
5 graph (4)(B).

6 (4) REVIEW.—

7 (A) IN GENERAL.—The Administrator
8 shall refer all applications and supporting docu-
9 mentation submitted under paragraph (2) to a
10 Physicians Panel for review for eligibility as an
11 exceptional medical claim.

12 (B) STANDARD.—A claim shall be des-
13 ignated as an exceptional medical claim if the
14 claimant, for reasons beyond the control of the
15 claimant, cannot satisfy the requirements under
16 this section, but is able, through comparably re-
17 liable evidence that meets the standards under
18 this section, to show that the claimant has an
19 asbestos-related condition that is substantially
20 comparable to that of a medical condition that
21 would satisfy the requirements of a category
22 under this section.

23 (C) ADDITIONAL INFORMATION.—A Physi-
24 cians Panel may request additional reasonable
25 testing to support the claimant's application.

1 (D) CT SCAN.—A claimant may submit a
2 CT Scan in addition to an x-ray.

3 (5) APPROVAL.—

4 (A) IN GENERAL.—If the Physicians Panel
5 determines that the medical evidence is suffi-
6 cient to show a comparable asbestos-related
7 condition, it shall issue a certificate of medical
8 eligibility designating the category of asbestos-
9 related injury under this section for which the
10 claimant may be eligible to seek compensation.

11 (B) REFERRAL.—Upon the issuance of a
12 certificate under subparagraph (A), the Physi-
13 cians Panel shall submit the claim to the Ad-
14 ministrator, who shall proceed to determine
15 whether the claimant meets the requirements
16 for compensation under this Act.

17 (6) RESUBMISSION.—Any claimant whose appli-
18 cation for designation as an exceptional medical
19 claim is rejected may resubmit an application if new
20 evidence becomes available. The application shall
21 identify any prior applications and state the new evi-
22 dence that forms the basis of the resubmission.

23 (7) RULES.—The Administrator shall promul-
24 gate rules governing the procedures for seeking des-
25 ignation of a claim as an exceptional medical claim.

1 (8) LIBBY, MONTANA.—All claims filed by
 2 Libby, Montana claimants shall be designated as ex-
 3 ceptional medical claims and referred to a Physi-
 4 cians Panel for review. In reviewing the medical evi-
 5 dence submitted by a Libby, Montana claimant in
 6 support of that claim, and before making an eligi-
 7 bility determination for a Libby, Montana claimant,
 8 the Physicians Panel shall review the current med-
 9 ical and scientific literature relating to the study, di-
 10 agnosis, and treatment of asbestos-related diseases
 11 resulting from exposure to asbestos and other fibers
 12 found in and around Libby, Montana, including pub-
 13 lic health assessments prepared by the Agency for
 14 Toxic Substances and Disease Registry for the
 15 Libby Asbestos Site. The Physicians Panel shall
 16 take into consideration the unique and serious na-
 17 ture of asbestos exposure in Libby, Montana, includ-
 18 ing the nature of the pleural disease related to as-
 19 bestos exposure in Libby, when making a determina-
 20 tion of eligibility and designating the disease cat-
 21 egory.

22 **Subtitle D—Awards**

23 **SEC. 131. AMOUNT.**

24 (a) IN GENERAL.—An asbestos claimant who meets
 25 the requirements of section 111 shall be entitled to an

1 award in an amount determined by reference to the benefit
 2 table contained in subsection (b).

3 (b) BENEFIT TABLE.—

4 (1) IN GENERAL.—An asbestos claimant with
 5 an eligible disease or condition established in accord-
 6 ance with section 121, shall be eligible for an award
 7 according to the following schedule:

Level	Scheduled Condi- tion or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	\$20,000
III	Asbestosis/Pleural Disease B	\$85,000
IV	Severe Asbestosis	\$400,000
V	Disabling Asbestosis	\$850,000
VI	Other Cancer	\$150,000
VII	Lung Cancer One	individual evaluation; smokers receive between \$25,000–\$75,000; ex-smokers receive be- tween \$75,000– \$225,000; non-smokers receive be- tween \$225,000– \$600,000
VIII	Lung Cancer With Pleural Disease	smokers receive between \$150,000–\$250,000; ex-smokers receive be- tween \$400,000– \$600,000; non-smokers receive be- tween \$600,000– \$1,000,000
IX	Lung Cancer With Asbestosis	smokers receive between \$450,000–\$550,000; ex-smokers receive be- tween \$650,000– \$950,000; non-smokers receive be- tween \$800,000– \$1,000,000
X	Mesothelioma	\$1,000,000

1 (2) DEFINITIONS.—In this section—

2 (A) the term “nonsmoker” means a claim-
3 ant who never smoked; and

4 (B) the term “ex-smoker” means a claim-
5 ant who has not smoked during any portion of
6 the 12-year period preceding the diagnosis of
7 lung cancer.

8 (3) VALUES WITHIN LEVELS RELATING TO
9 LUNG CANCER.—

10 (A) IN GENERAL.—In setting values for
11 levels relating to lung cancer, the Administrator
12 shall develop a matrix of classes for each of
13 Levels VII, VIII, and IX based on—

14 (i) the smoking history of the claim-
15 ant, including whether the claimant cur-
16 rently or in the past smoked tobacco prod-
17 ucts, the duration of smoking, pack years,
18 and whether the claimant has quit smoking
19 and for how long;

20 (ii) the age of the claimant at diag-
21 nosis with claim values increased propor-
22 tionately for claimants who are younger
23 than the average life span and reduced for
24 those who are older; and

1 (iii) the level and duration of asbestos
2 exposure with those receiving the highest
3 total dose (level x duration) receiving
4 greater values.

5 (B) DETERMINATION OF EXPOSURE.—Lev-
6 els of exposure shall be based on research in the
7 fields of epidemiology and industrial hygiene.

8 (4) MEDICAL MONITORING.—An asbestos claim-
9 ant with asymptomatic exposure, based on the cri-
10 teria under section 121(d)(1), shall only be eligible
11 for medical monitoring reimbursement as provided
12 under section 132.

13 (5) COST-OF-LIVING ADJUSTMENT.—

14 (A) IN GENERAL.—Beginning January 1,
15 2006, award amounts under paragraph (1)
16 shall be annually increased by an amount equal
17 to such dollar amount multiplied by the cost-of-
18 living adjustment, rounded to the nearest
19 \$1,000 increment.

20 (B) CALCULATION OF COST-OF-LIVING AD-
21 JUSTMENT.—For the purposes of subparagraph
22 (A), the cost-of-living adjustment for any cal-
23 endar year shall be the percentage, if any, by
24 which the consumer price index for the suc-

ceeding calendar year exceeds the consumer price index for calendar year 2004.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term “consumer price index” means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence

1 that the claimant has discovered facts that would other-
2 wise commence the period applicable for purposes of the
3 statute of limitations under section 113(b).

4 (b) COSTS.—Reimbursable medical monitoring costs
5 shall include the costs of a claimant not covered by health
6 insurance for an examination by the claimant’s physician,
7 x-ray tests, and pulmonary function tests every 3 years.

8 (c) REGULATIONS.—The Administrator shall promul-
9 gate regulations that establish—

10 (1) the reasonable costs for medical monitoring
11 that is reimbursable; and

12 (2) the procedures applicable to asbestos claim-
13 ants.

14 **SEC. 133. PAYMENT.**

15 (a) STRUCTURED PAYMENTS.—

16 (1) IN GENERAL.—An asbestos claimant who is
17 entitled to an award should receive the amount of
18 the award through structured payments from the
19 Fund, made over a period of 3 years, and in no
20 event more than 4 years after the date of final adju-
21 dication of the claim.

22 (2) PAYMENT PERIOD AND AMOUNT.—There
23 shall be a presumption that any award paid under
24 this subsection shall provide for payment of—

1 (A) 40 percent of the total amount in year

2 1;

3 (B) 30 percent of the total amount in year

4 2; and

5 (C) 30 percent of the total amount in year

6 3.

7 (3) EXTENSION OF PAYMENT PERIOD.—

8 (A) IN GENERAL.—The Administrator
 9 shall develop guidelines to provide for the pay-
 10 ment period of an award under subsection (a)
 11 to be extended to a 4-year period if such action
 12 is warranted in order to preserve the overall sol-
 13 vency of the Fund. Such guidelines shall include
 14 reference to the number of claims made to the
 15 Fund and the awards made and scheduled to be
 16 paid from the Fund as provided under section
 17 405.

18 (B) LIMITATIONS.—In no event shall less
 19 than 50 percent of an award be paid in the first
 20 2 years of the payment period under this sub-
 21 section.

22 (4) ACCELERATED PAYMENTS.—The Adminis-
 23 trator shall develop guidelines to provide for acceler-
 24 ated payments to asbestos claimants who are meso-
 25 thelioma victims and who are alive on the date on

1 which the Administrator receives notice of the eligi-
2 bility of the claimant. Such payments shall be cred-
3 ited against the first regular payment under the
4 structured payment plan for the claimant.

5 (5) EXPEDITED PAYMENTS.—The Adminis-
6 trator shall develop guidelines to provide for expe-
7 dited payments to asbestos claimants in cases of exi-
8 gent circumstances or extreme hardship caused by
9 asbestos-related injury.

10 (6) ANNUITY.—An asbestos claimant may elect
11 to receive any payments to which they are entitled
12 under this title in the form of an annuity.

13 (b) LIMITATION ON TRANSFERABILITY.—A claim
14 filed under this Act shall not be assignable or otherwise
15 transferable under this Act.

16 (c) CREDITORS.—An award under this title shall be
17 exempt from all claims of creditors and from levy, execu-
18 tion, and attachment or other remedy for recovery or col-
19 lection of a debt, and such exemption may not be waived.

20 (d) MEDICARE AS SECONDARY PAYER.—No award
21 under this title shall be deemed a payment for purposes
22 of section 1862 of the Social Security Act (42 U.S.C.
23 1395y).

24 (e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S
25 BANKRUPTCY CASE.—If an asbestos claimant files a peti-

tion for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation.

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

**TITLE II—ASBESTOS INJURY
CLAIMS RESOLUTION FUND
Subtitle A—Asbestos Defendants
Funding Allocation**

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

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

(A) means a defendant participant that is an ultimate parent and any person whose entire

1 beneficial interest is directly or indirectly owned
2 by that ultimate parent on the date of enact-
3 ment of this Act; and

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

7 (2) CLASS ACTION TRUST.—The term “class ac-
8 tion trust” means a trust or similar entity estab-
9 lished to hold assets for the payment of asbestos
10 claims asserted against a debtor or participating de-
11 fendant, under a settlement that—

12 (A) is a settlement of class action claims
13 under rule 23 of the Federal Rules of Civil Pro-
14 cedure; and

15 (B) has been approved by a final judgment
16 of a United States district court before the date
17 of enactment of this Act.

18 (3) DEBTOR.—The term “debtor”—

19 (A) means—

20 (i) a person that is subject to a case
21 pending under a chapter of title 11, United
22 States Code, on the date of enactment of
23 this Act or at any time during the 1-year
24 period immediately preceding that date, ir-

1 respective of whether the debtor’s case
2 under that title has been dismissed; and

3 (ii) all of the direct or indirect major-
4 ity-owned subsidiaries of a person de-
5 scribed under clause (i), regardless of
6 whether any such majority-owned sub-
7 sidiary has a case pending under title 11,
8 United States Code; and

9 (B) shall not include an entity—

10 (i) subject to chapter 7 of title 11,
11 United States Code, if a final decree clos-
12 ing the estate shall have been entered be-
13 fore the date of enactment of this Act; or

14 (ii) subject to chapter 11 of title 11,
15 United States Code, if a plan of reorga-
16 nization for such entity shall have been
17 confirmed by a duly entered order or judg-
18 ment of a court that is no longer subject
19 to any appeal or judicial review, and the
20 substantial consummation, as such term is
21 defined in section 1101(2) of title 11,
22 United States Code, of such plan of reor-
23 ganization has occurred.

24 (4) INDEMNIFIABLE COST.—The term
25 “indemnifiable cost” means a cost, expense, debt,

1 judgment, or settlement incurred with respect to an
2 asbestos claim that, at any time before December
3 31, 2002, was or could have been subject to indem-
4 nification, contribution, surety, or guaranty.

5 (5) INDEMNITEE.—The term “indemnitee”
6 means a person against whom any asbestos claim
7 has been asserted before December 31, 2002, who
8 has received from any other person, or on whose be-
9 half a sum has been paid by such other person to
10 any third person, in settlement, judgment, defense,
11 or indemnity in connection with an alleged duty with
12 respect to the defense or indemnification of such
13 person concerning that asbestos claim, other than
14 under a policy of insurance or reinsurance.

15 (6) INDEMNITOR.—The term “indemnitor”
16 means a person who has paid under a written agree-
17 ment at any time before December 31, 2002, a sum
18 in settlement, judgment, defense, or indemnity to or
19 on behalf of any person defending against an asbes-
20 tos claim, in connection with an alleged duty with
21 respect to the defense or indemnification of such
22 person concerning that asbestos claim, except that
23 payments by an insurer or reinsurer under a con-
24 tract of insurance or reinsurance shall not make the

1 insurer or reinsurer an indemnitor for purposes of
2 this subtitle.

3 (7) PRIOR ASBESTOS EXPENDITURES.—The
4 term “prior asbestos expenditures”—

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

10 (B) includes payments made by insurance
11 carriers to or for the benefit of such person or
12 on such person’s behalf with respect to such as-
13 bestos claims, except as provided in section
14 204(g);

15 (C) shall not include any payment made by
16 a person in connection with or as a result of
17 changes in insurance reserves required by con-
18 tract or any activity or dispute related to insur-
19 ance coverage matters for asbestos-related li-
20 abilities; and

21 (D) shall not include any payment made by
22 or on behalf of persons who are or were com-
23 mon carriers by railroad for asbestos claims
24 brought under the Act of April 22, 1908 (45
25 U.S.C. 51 et seq.), commonly known as the

1 Federal Employers' Liability Act, as a result of
 2 operations as a common carrier by railroad, in-
 3 cluding settlement, judgment, defense, or indem-
 4 nity costs associated with these claims.

5 (8) TRUST.—The term “trust” means any
 6 trust, as described in sections 524(g)(2)(B)(i) or
 7 524(h) of title 11, United States Code, or estab-
 8 lished in conjunction with an order issued under sec-
 9 tion 105 of title 11, United States Code, established
 10 or formed under the terms of a chapter 11 plan of
 11 reorganization, which in whole or in part provides
 12 compensation for asbestos claims.

13 (9) ULTIMATE PARENT.—The term “ultimate
 14 parent” means a person—

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

18 (B) whose entire beneficial interest was not
 19 owned, on December 31, 2002, directly or indi-
 20 rectly, by any other single person (other than a
 21 natural person).

22 **SEC. 202. AUTHORITY AND TIERS.**

23 (a) LIABILITY FOR PAYMENTS TO THE FUND.—

24 (1) IN GENERAL.—Defendant participants shall
 25 be liable for payments to the Fund in accordance

1 with this section based on tiers and subtiers as-
2 signed to defendant participants.

3 (2) AGGREGATE PAYMENT OBLIGATIONS
4 LEVEL.—Subject only to section 204(m), and not-
5 withstanding any other provision of this Act, the
6 total payments required of all defendant participants
7 over the life of the Fund shall not exceed
8 \$57,500,000,000. The Administrator shall have the
9 authority to allocate the payments required of the
10 defendant participants among the tiers as provided
11 in this title.

12 (3) ABILITY TO ENTER REORGANIZATION.—
13 Notwithstanding any other provision of this Act, all
14 debtors that, together with all of their direct or indi-
15 rect majority-owned subsidiaries, have prior asbestos
16 expenditures less than \$1,000,000 may proceed with
17 the filing, solicitation, and confirmation of a plan of
18 reorganization that does not comply with the re-
19 quirements of this Act, including a trust and chan-
20 neling injunction. Any asbestos claim made in con-
21 junction with a plan of reorganization allowable
22 under the preceding sentence shall be subject to sec-
23 tion 403(d) of this Act.

24 (b) TIER I.—Tier I shall include all debtors that, to-
25 gether with all of their direct or indirect majority-owned

1 subsidiaries, have prior asbestos expenditures greater than
2 \$1,000,000.

3 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN
4 BANKRUPTCY.—

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

8 (A) filed a petition for relief under chapter
9 11, of title 11, United States Code, before Jan-
10 uary 1, 2003;

11 (B) has not confirmed a plan of reorga-
12 nization as of the date of enactment of this Act;
13 and

14 (C) the bankruptcy court presiding over
15 the business entity’s case determines, after no-
16 tice and a hearing upon motion filed by the en-
17 tity within 30 days of the effective date of this
18 Act, which motion shall be supported by—

19 (i) an affidavit or declaration of the
20 Chief Executive Officer, Chief Financial
21 Officer, or Chief Legal Officer of the busi-
22 ness entity; and

23 (ii) copies of the entity’s public state-
24 ments and securities filings made in con-
25 nection with the entity’s filing for chapter

1 11 protection that asbestos liability was
2 not the sole or precipitating cause of the
3 entity's chapter 11 filing. Notice of such
4 motion shall be as directed by the bank-
5 ruptcy court and the hearing shall be lim-
6 ited to consideration of the question of
7 whether or not asbestos liability was the
8 sole or precipitating cause of the entity's
9 chapter 11 filing. The bankruptcy court
10 shall hold a hearing and make its deter-
11 mination with respect to the motion within
12 60 days after the date the motion is filed.
13 In making its determination, the bank-
14 ruptcy court shall take into account the af-
15 fidavits, public statements, and securities
16 filings, and other information, if any, sub-
17 mitted by the entity and all other facts and
18 circumstances presented by an objecting
19 party. Any review of this determination
20 must be an expedited appeal and limited to
21 whether the decision was against the
22 weight of the evidence.

23 (2) PROCEEDING WITH REORGANIZATION

24 PLAN.—A bankrupt business entity may proceed
25 with the filing, solicitation, and confirmation of a

1 plan of reorganization that does not comply with the
2 requirements of this Act, including a trust and chan-
3 neling injunction described in section 524(g) of title
4 11, United States Code, notwithstanding any other
5 provisions of this Act, if—

6 (A) on request of a party in interest or on
7 a motion of the court, and after a notice and
8 a hearing, the bankruptcy court presiding over
9 the chapter 11 case of the bankrupt business
10 entity determines that—

11 (i) confirmation is necessary to permit
12 the reorganization of that entity and as-
13 sure that all creditors and that entity are
14 treated fairly and equitably; and

15 (ii) confirmation is clearly favored by
16 the balance of the equities; and

17 (B) an order confirming the plan of reor-
18 ganization is entered by the bankruptcy court
19 within 9 months after the date of enactment of
20 this Act or such longer period of time approved
21 by the bankruptcy court for cause shown.

22 (3) APPLICABILITY.—If the bankruptcy court
23 does not make the required determination, or if an
24 order confirming the plan is not entered within 9
25 months after the effective date of this Act or such

1 longer period of time approved by the bankruptcy
2 court for cause shown, the provisions of this Act
3 shall apply to the bankrupt business entity notwith-
4 standing the certification. Any timely appeal under
5 title 11, United States Code, from a confirmation
6 order entered during the applicable time period shall
7 automatically extend the time during which this Act
8 is inapplicable to the bankrupt business entity, until
9 the appeal is fully and finally resolved.

10 (4) OFFSETS.—

11 (A) PAYMENTS BY INSURERS.—To the ex-
12 tent that a bankrupt business entity or debtor
13 successfully confirms a plan of reorganization,
14 including a trust, and channeling injunction
15 that involves payments by insurers who are oth-
16 erwise subject to this Act as described in sec-
17 tion 524(g) of title 11, United States Code, an
18 insurer who makes payments to the trust, shall
19 obtain a dollar for dollar reduction in the
20 amount otherwise payable by that insurer under
21 this Act to the Fund.

22 (B) CONTRIBUTIONS TO FUND.—Any cash
23 payments by a bankrupt business entity, if any,
24 to a trust described in section 524(g) of title

1 11, United States Code, may be counted as a
2 contribution to the Fund.

3 (d) TIERS II THROUGH VI.—Except as provided in
4 subsection (b) of this section and section 204, persons or
5 affiliated groups are included in Tier II, III, IV, V, or
6 VI according to the prior asbestos expenditures paid by
7 such persons or affiliated groups as follows:

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

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

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

13 (4) Tier V: \$5,000,000 or greater, but less than
14 \$10,000,000.

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

17 (e) TIER PLACEMENT AND COSTS.—

18 (1) PERMANENT TIER PLACEMENT.—After a
19 defendant participant or affiliated group is assigned
20 to a tier and subtier under section 204(i)(6), the
21 participant or affiliated group shall remain in that
22 tier and subtier throughout the life of the Fund, re-
23 gardless of subsequent events, including—

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

- 1 (B) a discharge of debt in bankruptcy;
2 (C) the confirmation of a plan of reorga-
3 nization; or
4 (D) the sale or transfer of assets to any
5 other person or affiliated group,
6 unless the Administrator finds that the information
7 submitted by the participant or affiliated group to
8 support its inclusion in that tier was inaccurate.

9 (2) COSTS.—Payments to the Fund by all per-
10 sons that are the subject of a case under a chapter
11 of title 11, United States Code, after the date of en-
12 actment of this Act—

13 (A) shall constitute costs and expenses of
14 administration of the case under section 503 of
15 title 11, United States Code, and shall be pay-
16 able in accordance with the payment provisions
17 under this subtitle notwithstanding the pend-
18 ency of the case under that title 11;

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

22 (C) shall not be impaired or discharged in
23 any current or future case under title 11,
24 United States Code.

25 (f) SUPERSEDING PROVISIONS.—

1 (1) IN GENERAL.—All of the following shall be
2 superseded in their entirety by this Act:

3 (A) The treatment of any asbestos claim in
4 any plan of reorganization with respect to any
5 debtor included in Tier I.

6 (B) Any asbestos claim against any debtor
7 included in Tier I.

8 (C) Any agreement, understanding, or un-
9 dertaking by any such debtor or any third party
10 with respect to the treatment of any asbestos
11 claim filed in a debtor's bankruptcy case or
12 with respect to a debtor before the date of en-
13 actment of this Act, whenever such debtor's
14 case is either still pending, if such case is pend-
15 ing under a chapter other than chapter 11 of
16 title 11, United States Code, or subject to con-
17 firmation or substantial consummation of a
18 plan of reorganization under chapter 11 of title
19 11, United States Code.

20 (2) PRIOR AGREEMENTS OF NO EFFECT.—Any
21 plan of reorganization, agreement, understanding, or
22 undertaking by any debtor or any third party under
23 paragraph (1) of this subsection, to the extent it re-
24 lates to any asbestos claim, shall be of no force or

1 effect, and no person shall have any right or claim
2 with respect to any of the foregoing.

3 **SEC. 203. SUBTIERS.**

4 (a) IN GENERAL.—

5 (1) SUBTIER LIABILITY.—Except as otherwise
6 provided under subsections (b), (d), and (l) of sec-
7 tion 204, persons or affiliated groups shall be in-
8 cluded within Tiers I through VII and shall pay
9 amounts to the Fund in accordance with this sec-
10 tion.

11 (2) REVENUES.—

12 (A) IN GENERAL.—For purposes of this
13 section, revenues shall be determined in accord-
14 ance with generally accepted accounting prin-
15 ciples, consistently applied, using the amount
16 reported as revenues in the annual report filed
17 with the Securities and Exchange Commission
18 in accordance with the Securities Exchange Act
19 of 1934 (15 U.S.C. 78a et seq.) for the most
20 recent fiscal year ending on or before December
21 31, 2002. If the defendant participant or affili-
22 ated group does not file reports with the Securi-
23 ties and Exchange Commission, revenues shall
24 be the amount that the defendant participant or
25 affiliated group would have reported as reve-

1 nues under the rules of the Securities and Ex-
2 change Commission in the event that it had
3 been required to file.

4 (B) INSURANCE PREMIUMS.—Any portion
5 of revenues of a defendant participant that is
6 derived from insurance premiums shall not be
7 used to calculate the payment obligation of that
8 defendant participant under this subtitle.

9 (C) 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 included in 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. If a debtor or affiliated group includes a
18 person in respect of whose liabilities for asbes-
19 tos claims a class action trust has been estab-
20 lished, there shall be excluded from the 2002
21 revenues of such debtor or affiliated group—

22 (i) all revenues of the person in re-
23 spect of whose liabilities for asbestos
24 claims the class action trust was estab-
25 lished; and

1 (ii) all revenues of the debtor and af-
 2 filiated group attributable to the historical
 3 business operations or assets of such per-
 4 son, regardless of whether such business
 5 operations or assets were owned or con-
 6 ducted during the year 2002 by such per-
 7 son or by any other person included within
 8 such debtor and affiliated group.

9 (b) TIER I SUBTIERS.—

10 (1) IN GENERAL.—Each debtor in Tier I shall
 11 be included in subtiers and shall pay amounts to the
 12 Fund as provided under this section.

13 (2) SUBTIER 1.—

14 (A) IN GENERAL.—All persons that are
 15 debtors with prior asbestos expenditures of
 16 \$1,000,000 or greater, shall be included in
 17 Subtier 1.

18 (B) PAYMENT.—Each debtor included in
 19 Subtier 1 shall pay on an annual basis 1.5184
 20 percent of the debtor's 2002 revenues.

21 (C) OTHER ASSETS.—The Administrator,
 22 at the sole discretion of the Administrator, may
 23 allow a Subtier 1 debtor to satisfy its funding
 24 obligation under this paragraph with assets
 25 other than cash if the Administrator determines

1 that requiring an all-cash payment of the debt-
2 or's funding obligation would render the debtor's
3 reorganization infeasible.

4 (D) LIABILITY.—

5 (i) IN GENERAL.—If a person who is
6 subject to a case pending under a chapter
7 of title 11, United States Code, as defined
8 in section 201(3)(A)(i), does not pay when
9 due any payment obligation for the debtor,
10 the Administrator shall have the right to
11 seek payment of all or any portion of the
12 entire amount due (as well as any other
13 amount for which the debtor may be liable
14 under sections 223 and 224) from any of
15 the direct or indirect majority-owned sub-
16 sidiaries under section 201(3)(A)(ii).

17 (ii) CAUSE OF ACTION.—Notwith-
18 standing section 221(e), this Act shall not
19 preclude actions among persons within a
20 debtor under section 201(3)(A) (i) and (ii)
21 with respect to the payment obligations
22 under this Act.

23 (3) SUBTIER 2.—

24 (A) IN GENERAL.—Notwithstanding para-
25 graph (2), all persons that are debtors that

1 have no material continuing business operations
2 but hold cash or other assets that have been al-
3 located or earmarked for the settlement of as-
4 bestos claims shall be included in Subtier 2.

5 (B) ASSIGNMENT OF ASSETS.—Not later
6 than 90 days after the date of enactment of
7 this Act, each person included in Subtier 2 shall
8 assign all of its assets to the Fund.

9 (4) SUBTIER 3.—

10 (A) IN GENERAL.—Notwithstanding para-
11 graph (2), all persons that are debtors other
12 than those included in Subtier 2, which have no
13 material continuing business operations and no
14 cash or other assets allocated or earmarked for
15 the settlement of any asbestos claim, shall be
16 included in Subtier 3.

17 (B) ASSIGNMENT OF UNENCUMBERED AS-
18 SETS.—Not later than 90 days after the date of
19 enactment of this Act, each person included in
20 Subtier 3 shall contribute an amount equal to
21 50 percent of its total unencumbered assets.

22 (C) CALCULATION OF UNENCUMBERED AS-
23 SETS.—Unencumbered assets shall be cal-
24 culated as the Subtier 3 person's total assets,
25 excluding insurance-related assets, less—

- 1 (i) all allowable administrative ex-
- 2 penses;
- 3 (ii) allowable priority claims under
- 4 section 507 of title 11, United States
- 5 Code; and
- 6 (iii) allowable secured claims.

7 (5) CLASS ACTION TRUST.—The assets of any
 8 class action trust that has been established in re-
 9 spect of the liabilities for asbestos claims of any per-
 10 son included within a debtor and affiliated group
 11 that has been included in Tier I (exclusive of any as-
 12 sets needed to pay previously incurred expenses and
 13 asbestos claims reduced to a final order or judgment
 14 within the meaning of section 403(d)(1) before the
 15 date of enactment of this Act) shall be transferred
 16 to the Fund not later than 6 months after the date
 17 of enactment of this Act.

18 (c) TIER II SUBTIERS.—

19 (1) IN GENERAL.—Each person or affiliated
 20 group in Tier II shall be included in 1 of the 5
 21 subtiers of Tier II, based on the person's or affili-
 22 ated group's revenues. Such subtiers shall each con-
 23 tain as close to an equal number of total persons
 24 and affiliated groups as possible, with—

1 (A) those persons or affiliated groups with
 2 the highest revenues included in Subtier 1;

3 (B) those persons or affiliated groups with
 4 the next highest revenues included in Subtier 2;

5 (C) those persons or affiliated groups with
 6 the lowest revenues included in Subtier 5;

7 (D) those persons or affiliated groups with
 8 the next lowest revenues included in Subtier 4;
 9 and

10 (E) those persons or affiliated groups re-
 11 maining included in Subtier 3.

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

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

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

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

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

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

20 (d) TIER III SUBTIERS.—

21 (1) IN GENERAL.—Each person or affiliated
 22 group in Tier III shall be included in 1 of the 5
 23 subtiers of Tier III, based on the person's or affili-
 24 ated group's revenues. Such subtiers shall each con-

tain as close to an equal number of total persons
and affiliated groups as possible, with—

(A) those persons or affiliated groups with
the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with
the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with
the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with
the next lowest revenues included in Subtier 4;

and

(E) those persons or affiliated groups re-
maining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated
group within each subtier shall pay, on an annual
basis, the following:

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

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

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

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

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

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated
group in Tier IV shall be included in 1 of the 4
subtiers of Tier IV, based on the person's or affi-

1 ated group's revenues. Such subtiers shall each con-
 2 tain as close to an equal number of total persons
 3 and affiliated groups as possible, with those persons
 4 or affiliated groups with the highest revenues in
 5 Subtier 1, those with the lowest revenues in Subtier
 6 4. Those persons or affiliated groups with the high-
 7 est revenues among those remaining will be included
 8 in Subtier 2 and the rest in Subtier 3.

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

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

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

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

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

16 (f) TIER V SUBTIERS.—

17 (1) IN GENERAL.—Each person or affiliated
 18 group in Tier V shall be included in 1 of the 3
 19 subtiers of Tier V, based on the person's or affili-
 20 ated group's revenues. Such subtiers shall each con-
 21 tain as close to an equal number of total persons
 22 and affiliated groups as possible, with those persons
 23 or affiliated groups with the highest revenues in
 24 Subtier 1, those with the lowest revenues in Subtier
 25 3, and those remaining in Subtier 2.

1 (2) PAYMENT.—Each person or affiliated group
2 within each subtier shall pay, on an annual basis,
3 the following:

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

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

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

7 (g) TIER VI SUBTIERS.—

8 (1) IN GENERAL.—Each person or affiliated
9 group in Tier VI shall be included in 1 of the 3
10 subtiers of Tier VI, based on the person's or affili-
11 ated group's revenues. Such subtiers shall each con-
12 tain as close to an equal number of total persons
13 and affiliated groups as possible, with those persons
14 or affiliated groups with the highest revenues in
15 Subtier 1, those with the lowest revenues in Subtier
16 3, and those remaining in Subtier 2.

17 (2) PAYMENT.—Each person or affiliated group
18 within each subtier shall pay, on an annual basis,
19 the following:

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

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

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

23 (h) TIER VII.—

24 (1) IN GENERAL.—Notwithstanding prior as-
25 bestos expenditures that might qualify a person or

1 affiliated group to be included in Tiers II, III, IV,
2 V, or VI, a person or affiliated group shall also be
3 included in Tier VII, if the person or affiliated
4 group—

5 (A) is or has at any time been subject to
6 asbestos claims brought under the Federal Em-
7 ployers' Liability Act (45 U.S.C. 51 et seq.) as
8 a result of operations as a common carrier by
9 railroad; and

10 (B) has paid (including any payments
11 made by others on behalf of such person or af-
12 filiated group) not less than \$5,000,000 in set-
13 tlement, judgment, defense, or indemnity costs
14 relating to such claims.

15 (2) ADDITIONAL AMOUNT.—The payment re-
16 quirement for persons or affiliated groups included
17 in Tier VII shall be in addition to any payment re-
18 quirement applicable to such person or affiliated
19 group under Tiers II through VI.

20 (3) SUBTIER 1.—Each person or affiliated
21 group in Tier VII with revenues of \$5,000,000,000
22 or more is included in Subtier 1 and shall make an-
23 nual payments of \$10,000,000 to the Fund.

24 (4) SUBTIER 2.—Each person or affiliated
25 group in Tier VII with revenues of less than

1 \$5,000,000,000, but not less than \$3,000,000,000 is
 2 included in Subtier 2 and shall make annual pay-
 3 ments of \$5,000,000 to the Fund.

4 (5) SUBTIER 3.—Each person or affiliated
 5 group in Tier VII with revenues of less than
 6 \$3,000,000,000, but not less than \$500,000,000 is
 7 included in Subtier 3 and shall make annual pay-
 8 ments of \$500,000 to the Fund.

9 (6) JOINT VENTURE REVENUES AND LIABIL-
 10 ITY.—

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

18 (B) LIABILITY.—For purposes of this sub-
 19 section, the liability under the Act of April 22,
 20 1908 (45 U.S.C. 51 et seq.), commonly known
 21 as the Federal Employers' Liability Act, shall
 22 be attributed to the parent owners of the joint
 23 venture on a pro rata basis, reflecting their rel-
 24 ative share of ownership. The joint venture

1 shall not be responsible for a payment amount
2 under this provision.

3 **SEC. 204. ASSESSMENT ADMINISTRATION.**

4 (a) IN GENERAL.—Subject to subsection (m), each
5 defendant participant or affiliated group shall pay to the
6 Fund in the amounts provided under this subtitle as ap-
7 propriate for its tier and subtier each year until the earlier
8 to occur of the following:

9 (1) The participant or affiliated group has sat-
10 isfied its obligations under this subtitle during the
11 first 23 annual payment cycles of the operation of
12 the Fund.

13 (2) The amount received by the Fund from de-
14 fendant participants, excluding any amounts rebated
15 to defendant participants under subsection (d),
16 equals the maximum aggregate payment obligation
17 of section 202(a)(2).

18 (b) SMALL BUSINESS EXEMPTION.—Notwith-
19 standing any other provision of this subtitle, a person or
20 affiliated group that is a small business concern (as de-
21 fined under section 3 of the Small Business Act (15
22 U.S.C. 632)), on December 31, 2002, is exempt from any
23 payment requirement under this subtitle and shall not be
24 included in the subtier allocations under section 203.

1 (c) PROCEDURES.—The Administrator shall pre-
2 scribe procedures on how amounts payable under this sub-
3 title are to be paid, including, to the extent the Adminis-
4 trator determines appropriate, procedures relating to pay-
5 ment in installments.

6 (d) ADJUSTMENTS.—

7 (1) IN GENERAL.—Under expedited procedures
8 established by the Administrator, a defendant partic-
9 ipant may seek adjustment of the amount of its pay-
10 ment obligation based on severe financial hardship
11 or demonstrated inequity. The Administrator may
12 determine whether to grant an adjustment and the
13 size of any such adjustment, in accordance with this
14 subsection. A defendant participant has a right to
15 obtain a rehearing of the Administrator’s determina-
16 tion under this subsection under the procedures pre-
17 scribed in subsection (i)(10). The Administrator may
18 adjust a defendant participant’s payment obligations
19 under this subsection, either by forgiving the rel-
20 evant portion of the otherwise applicable payment
21 obligation or by providing relevant rebates from the
22 defendant hardship and inequity adjustment account
23 created under subsection (j) after payment of the
24 otherwise applicable payment obligation, at the dis-
25 cretion of the Administrator.

1 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

2 (A) IN GENERAL.—A defendant partici-
3 pant may apply for an adjustment based on fi-
4 nancial hardship at any time during the period
5 in which a payment obligation to the Fund re-
6 mains outstanding and may qualify for such ad-
7 justment by demonstrating that the amount of
8 its payment obligation under the statutory allo-
9 cation would constitute a severe financial hard-
10 ship.

11 (B) TERM.—Subject to the annual avail-
12 ability of funds in the defendant hardship and
13 inequity adjustment account established under
14 subsection (j), a financial hardship adjustment
15 under this subsection shall have a term of 3
16 years.

17 (C) RENEWAL.—After an initial hardship
18 adjustment is granted under this paragraph, a
19 defendant participant may renew its hardship
20 adjustment by demonstrating that it remains
21 justified.

22 (D) REINSTATEMENT.—Following the ex-
23 piration of the hardship adjustment period pro-
24 vided for under this section and during the
25 funding period prescribed under subsection (a)

1 or (m), the Administrator shall annually deter-
 2 mine whether there has been a material change
 3 in the financial condition of the defendant par-
 4 ticipant such that the Administrator may, con-
 5 sistent with the policies and legislative intent
 6 underlying this Act, reinstate under terms and
 7 conditions established by the Administrator any
 8 part or all of the defendant participant's pay-
 9 ment obligation under the statutory allocation
 10 that was not paid during the hardship adjust-
 11 ment term.

12 (3) INEQUITY ADJUSTMENTS.—

13 (A) IN GENERAL.—A defendant partici-
 14 pant—

15 (i) may qualify for an adjustment
 16 based on inequity by demonstrating that
 17 the amount of its payment obligation
 18 under the statutory allocation is exception-
 19 ally inequitable—

20 (I) when measured against the
 21 amount of the likely cost to the de-
 22 fendant participant net of insurance
 23 of its future liability in the tort sys-
 24 tem in the absence of the Fund; or

1 (II) when compared to the me-
2 dian payment rate for all defendant
3 participants in the same tier; or

4 (III) when measured against the
5 percentage of the prior asbestos ex-
6 penditures of the defendant that were
7 incurred with respect to claims that
8 neither resulted in an adverse judg-
9 ment against the defendant, nor were
10 the subject of a settlement that re-
11 quired a payment to a plaintiff by or
12 on behalf of that defendant; and

13 (ii) shall qualify for a two-tier main
14 tier and a two-tier subtier adjustment re-
15 ducing the defendant participant's pay-
16 ment obligation based on inequity by dem-
17 onstrating that not less than 95 percent of
18 such person's prior asbestos expenditures
19 arose from claims related to the manufac-
20 ture and sale of railroad locomotives and
21 related products, so long as such person's
22 manufacture and sale of railroad loco-
23 motives and related products is temporally
24 and causally remote. For purposes of this
25 clause, a person's manufacture and sale of

1 railroad locomotives and related products
2 shall be deemed to be temporally and caus-
3 ally remote if the asbestos claims histori-
4 cally and generally filed against such per-
5 son relate to the manufacture and sale of
6 railroad locomotives and related products
7 by an entity dissolved more than 25 years
8 before the date of enactment of this Act.

9 (B) PAYMENT RATE.—For purposes of
10 subparagraph (A), the payment rate of a de-
11 fendant participant is the payment amount of
12 the defendant participant as a percentage of
13 such defendant participant’s gross revenues for
14 the year ending December 31, 2002.

15 (C) TERM.—Subject to the annual avail-
16 ability of funds in the defendant hardship and
17 inequity adjustment account established under
18 subsection (j), an inequity adjustment under
19 this subsection shall have a term of 3 years.

20 (D) RENEWAL.—A defendant participant
21 may renew an inequity adjustment every 3
22 years by demonstrating that the adjustment re-
23 mains justified.

24 (E) REINSTATEMENT.—

1 (i) IN GENERAL.—Following the ter-
2 mination of an inequity adjustment under
3 subparagraph (A), and during the funding
4 period prescribed under subsection (a) or
5 (m), the Administrator shall annually de-
6 termine whether there has been a material
7 change in conditions which would support
8 a finding that the amount of the defendant
9 participant’s payment under the statutory
10 allocation was not inequitable. Based on
11 this determination, the Administrator may,
12 consistent with the policies and legislative
13 intent underlying this Act, reinstate any or
14 all of the payment obligations of the de-
15 fendant participant as if the inequity ad-
16 justment had not been granted for that 3-
17 year period.

18 (ii) TERMS AND CONDITIONS.—In the
19 event of a reinstatement under clause (i),
20 the Administrator may require the defend-
21 ant participant to pay any part or all of
22 amounts not paid due to the inequity ad-
23 justment on such terms and conditions as
24 established by the Administrator.

1 (4) LIMITATION ON ADJUSTMENTS.—The ag-
2 gregate total of financial hardship adjustments
3 under paragraph (2) and inequity adjustments under
4 paragraph (3) in effect in any given year shall not
5 exceed \$250,000,000, except to the extent additional
6 monies are available for such adjustments as a re-
7 sult of carryover of prior years' funds under sub-
8 section (j)(3) or as a result of monies being made
9 available in that year under subsection (k)(1)(A).

10 (5) ADVISORY PANELS.—

11 (A) APPOINTMENT.—The Administrator
12 shall appoint a Financial Hardship Adjustment
13 Panel and an Inequity Adjustment Panel to ad-
14 vise the Administrator in carrying out this sub-
15 section.

16 (B) MEMBERSHIP.—The membership of
17 the panels appointed under subparagraph (A)
18 may overlap.

19 (C) COORDINATION.—The panels ap-
20 pointed under subparagraph (A) shall coordi-
21 nate their deliberations and advice.

22 (e) LIMITATION ON LIABILITY.—The liability of each
23 defendant participant to pay to the Fund shall be limited
24 to the payment obligations under this Act, and, except as
25 provided in subsection (f) and section 203(b)(2)(D), no

1 defendant participant shall have any liability for the pay-
2 ment obligations of any other defendant participant.

3 (f) CONSOLIDATION OF PAYMENTS.—

4 (1) IN GENERAL.—For purposes of determining
5 the payment levels of defendant participants, any af-
6 filiated group including 1 or more defendant partici-
7 pants may irrevocably elect, as part of the submis-
8 sions to be made under paragraphs (1) and (3) of
9 subsection (i), to report on a consolidated basis all
10 of the information necessary to determine the pay-
11 ment level under this subtitle and pay to the Fund
12 on a consolidated basis.

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

15 (A) for purposes of this Act other than
16 this subsection, the affiliated group shall be
17 treated as if it were a single participant, includ-
18 ing with respect to the assessment of a single
19 annual payment under this subtitle for the en-
20 tire affiliated group;

21 (B) the ultimate parent of the affiliated
22 group shall prepare and submit each submission
23 to be made under subsection (i) on behalf of the
24 entire affiliated group and shall be solely liable,
25 as between the Administrator and the affiliated

1 group only, for the payment of the annual
2 amount due from the affiliated group under this
3 subtitle, except that, if the ultimate parent does
4 not pay when due any payment obligation for
5 the affiliated group, the Administrator shall
6 have the right to seek payment of all or any
7 portion of the entire amount due (as well as
8 any other amount for which the affiliated group
9 may be liable under sections 223 and 224) from
10 any member of the affiliated group;

11 (C) all members of the affiliated group
12 shall be identified in the submission under sub-
13 section (i) and shall certify compliance with this
14 subsection and the Administrator's regulations
15 implementing this subsection; and

16 (D) the obligations under this subtitle shall
17 not change even if, after the date of enactment
18 of this Act, the beneficial ownership interest be-
19 tween any members of the affiliated group shall
20 change.

21 (3) CAUSE OF ACTION.—Notwithstanding sec-
22 tion 221(e), this Act shall not preclude actions
23 among persons within an affiliated group with re-
24 spect to the payment obligations under this Act.

1 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
2 TURES.—

3 (1) IN GENERAL.—For purposes of determining
4 a defendant participant's prior asbestos expendi-
5 tures, the Administrator shall prescribe such rules
6 as may be necessary or appropriate to assure that
7 payments by indemnitors before December 31, 2002,
8 shall be counted as part of the indemnitor's prior as-
9 bestos expenditures, rather than the indemnitee's
10 prior asbestos expenditures, in accordance with this
11 subsection.

12 (2) INDEMNIFIABLE COSTS.—If an indemnitor
13 has paid or reimbursed to an indemnitee any
14 indemnifiable cost or otherwise made a payment on
15 behalf of or for the benefit of an indemnitee to a
16 third party for an indemnifiable cost before Decem-
17 ber 31, 2002, the amount of such indemnifiable cost
18 shall be solely for the account of the indemnitor for
19 purposes under this Act.

20 (3) INSURANCE PAYMENTS.—When computing
21 the prior asbestos expenditures with respect to an
22 asbestos claim, any amount paid or reimbursed by
23 insurance shall be solely for the account of the
24 indemnitor, even if the indemnitor would have no di-
25 rect right to the benefit of the insurance, if—

1 (A) such insurance has been paid or reim-
2 bursed to the indemnitor or the indemnitee, or
3 paid on behalf of or for the benefit of the
4 indemnitee; and

5 (B) the indemnitor has either, with respect
6 to such asbestos claim or any similar asbestos
7 claim, paid or reimbursed to its indemnitee any
8 indemnifiable cost or paid to any third party on
9 behalf of or for the benefit of the indemnitee
10 any indemnifiable cost.

11 (h) MINIMUM ANNUAL PAYMENTS.—

12 (1) IN GENERAL.—Except as provided under
13 subsection (m), the aggregate annual payments of
14 defendant participants to the Fund shall be at least
15 \$2,500,000,000 for each calendar year in the first
16 23 years of the Fund, or until such shorter time as
17 the condition set forth in subsection (a)(2) of this
18 section is attained.

19 (2) GUARANTEED PAYMENT ACCOUNT.—To the
20 extent payments in accordance with sections 202
21 and 203 (as modified by subsections (b), (d), (f) and
22 (g) of this section) fail in any year to raise at least
23 \$2,500,000,000 net of any adjustments under sub-
24 section (d), the balance needed to meet this required
25 minimum aggregate annual payment shall be ob-

1 tained from the defendant guaranteed payment ac-
 2 count established under subsection (k).

3 (3) GUARANTEED PAYMENT SURCHARGE.—To
 4 the extent the procedure set forth in paragraph (2)
 5 is insufficient to satisfy the required minimum ag-
 6 gregate annual payment net of any adjustments
 7 under subsection (d), the Administrator may assess
 8 a guaranteed payment surcharge under subsection
 9 (l).

10 (i) PROCEDURES FOR MAKING PAYMENTS.—

11 (1) INITIAL YEAR: TIERS II–VI.—

12 (A) IN GENERAL.—Not later than 180
 13 days after enactment of this Act, each defend-
 14 ant participant that is included in Tiers II, III,
 15 IV, V, or VI shall file with the Administrator—

16 (i) a statement of whether the defend-
 17 ant participant irrevocably elects to report
 18 on a consolidated basis under subsection
 19 (f);

20 (ii) a good faith estimate of its prior
 21 asbestos expenditures;

22 (iii) a statement of its 2002 revenues,
 23 determined in accordance with section
 24 203(a)(2); and

1 (iv) payment in the amount specified
2 in section 203 for the lowest subtier of the
3 tier within which the defendant participant
4 falls, except that if the defendant partici-
5 pant, or the affiliated group including the
6 defendant participant, had 2002 revenues
7 exceeding \$3,000,000,000, it or its affili-
8 ated group shall pay the amount specified
9 for Subtier 3 of Tiers II, III, or IV or
10 Subtier 2 of Tiers V or VI, depending on
11 the applicable Tier.

12 (B) RELIEF.—The Administrator shall es-
13 tablish procedures to grant a defendant partici-
14 pant relief from its initial payment obligation
15 where the participant shows that it is likely to
16 qualify for a financial hardship adjustment, and
17 that failure to provide interim relief would
18 cause severe irreparable harm. The Administra-
19 tor’s refusal to grant such relief is subject to
20 immediate judicial review under section 303.

21 (2) INITIAL YEAR: TIER I.—Not later than 90
22 days after enactment of this Act, each debtor shall
23 file with the Administrator—

24 (A) a statement identifying the bankruptcy
25 case(s) associated with the debtor;

1 (B) a statement whether its prior asbestos
2 expenditures exceed \$1,000,000;

3 (C) a statement whether it has material
4 continuing business operations and, if not,
5 whether it holds cash or other assets that have
6 been allocated or earmarked for asbestos settle-
7 ments;

8 (D) in the case of debtors falling within
9 Subtier 1 of Tier I, a statement of the debtor's
10 2002 revenues, determined in accordance with
11 section 203(a)(2), and a payment under section
12 203(b)(2)(B);

13 (E) in the case of debtors falling within
14 Subtier 2 of Tier I, an assignment of its assets
15 under section 203(b)(3)(B); and

16 (F) in the case of debtors falling within
17 Subtier 3 of Tier I, a payment under section
18 203(b)(4)(B), and a statement of how such
19 payment was calculated.

20 (3) INITIAL YEAR: TIER VII.—Not later than 90
21 days after enactment of this Act, each defendant
22 participant in Tier VII shall file with the Adminis-
23 trator—

1 (A) a good faith estimate of all payments
2 of the type described in section 203(h)(1) (as
3 modified by section 203(h)(6));

4 (B) a statement of revenues calculated in
5 accordance with sections 203(a)(2) and 203(h);
6 and

7 (C) payment in the amount specified in
8 section 203(h).

9 (4) NOTICE TO PARTICIPANTS.—Not later than
10 240 days after enactment of this Act, the Adminis-
11 trator shall—

12 (A) directly notify all reasonably identifi-
13 able defendant participants of the requirement
14 to submit information necessary to calculate the
15 amount of any required payment to the Fund;
16 and

17 (B) publish in the Federal Register a no-
18 tice setting forth the criteria in this Act, and as
19 prescribed by the Administrator in accordance
20 with this Act, for paying under this subtitle as
21 a defendant participant and requiring any per-
22 son who may be a defendant participant to sub-
23 mit such information.

24 (5) RESPONSE REQUIRED.—

1 (A) IN GENERAL.—Any person who re-
2 ceives notice under paragraph (4)(A), and any
3 other person meeting the criteria specified in
4 the notice published under paragraph (4)(B),
5 shall provide the Administrator with an address
6 to send any notice from the Administrator in
7 accordance with this Act and all the informa-
8 tion required by the Administrator in accord-
9 ance with this subsection no later than the ear-
10 lier of—

11 (i) 30 days after the receipt of direct
12 notice; or

13 (ii) 30 days after the publication of
14 notice in the Federal Register.

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

22 (C) CONSENT TO AUDIT AUTHORITY.—The
23 response submitted under subparagraph (A)
24 shall include, on behalf of the defendant partici-
25 pant or affiliated group, a consent to the Ad-

1 administrator's audit authority under section
2 221(d).

3 (6) NOTICE OF INITIAL DETERMINATION.—

4 (A) IN GENERAL.—Not later than 60 days
5 after receiving a response under paragraph (5),
6 the Administrator shall send the person a notice
7 of initial determination identifying the tier and
8 subtier, if any, into which the person falls and
9 the annual payment obligation, if any, to the
10 Fund, which determination shall be based on
11 the information received from the person under
12 this subsection and any other pertinent infor-
13 mation available to the Administrator and iden-
14 tified to the defendant participant.

15 (B) NO RESPONSE; INCOMPLETE RE-
16 SPONSE.—If no response in accordance with
17 paragraph (5) is received from a defendant par-
18 ticipant, or if the response is incomplete, the
19 initial determination shall be based on the best
20 information available to the Administrator.

21 (C) PAYMENTS.—Within 30 days of receiv-
22 ing a notice of initial determination requiring
23 payment, the defendant participant shall pay
24 the Administrator the amount required by the
25 notice, after deducting any previous payment

made by the participant under this subsection.

If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

1 (8) NEW INFORMATION.—

2 (A) EXISTING PARTICIPANT.—The Admin-
3 istrator shall adopt procedures for requiring ad-
4 ditional payment, or refunding amounts already
5 paid, based on new information received.

6 (B) ADDITIONAL PARTICIPANT.—If the
7 Administrator, at any time, receives information
8 that an additional person may qualify as a de-
9 fendant participant, the Administrator shall re-
10 quire such person to submit information nec-
11 essary to determine whether that person is re-
12 quired to make payments, and in what amount,
13 under this subtitle and shall make any deter-
14 mination or take any other act consistent with
15 this Act based on such information or any other
16 information available to the Administrator with
17 respect to such person.

18 (9) SUBPOENAS.—The Administrator may re-
19 quest the Attorney General to subpoena persons to
20 compel testimony, records, and other information
21 relevant to its responsibilities under this section. The
22 Attorney General may enforce such subpoena in ap-
23 propriate proceedings in the United States district
24 court for the district in which the person to whom

1 the subpoena was addressed resides, was served, or
2 transacts business.

3 (10) REHEARING.—A defendant participant has
4 a right to obtain rehearing of the Administrator's
5 determination under this subsection of the applicable
6 tier or subtier and of the Administrator's determina-
7 tion under subsection (d) of a financial hardship or
8 inequity adjustment, if the request for rehearing is
9 filed within 30 days after the defendant participant's
10 receipt of notice from the Administrator of the de-
11 termination. A defendant participant may not file an
12 action under section 303 unless the defendant par-
13 ticipant requests a rehearing under this paragraph.

14 (j) DEFENDANT HARDSHIP AND INEQUITY ADJUST-
15 MENT ACCOUNT.—

16 (1) IN GENERAL.—To the extent the total pay-
17 ments by defendant participants in any given year
18 exceed the minimum aggregate annual payments
19 under subsection (h) of this section, excess monies
20 up to a maximum of \$250,000,000 in any such year
21 shall be placed in a defendant hardship and inequity
22 adjustment account established within the Fund by
23 the Administrator.

24 (2) USE OF ACCOUNT MONIES.—Monies from
25 the defendant hardship and inequity adjustment ac-

1 count shall be preserved and administered like the
 2 remainder of the Fund, but shall be reserved and
 3 may be used only—

4 (A) to make up for any relief granted to a
 5 defendant participant for severe financial hard-
 6 ship or demonstrated inequity under subsection
 7 (d) of this section or to reimburse any defend-
 8 ant participant granted such relief after its pay-
 9 ment of the amount otherwise due; and

10 (B) if the condition set forth in subsection
 11 (a)(2) of this section is met, for any purpose
 12 that the Fund may serve under this Act, unless
 13 the Administrator shall have published a final
 14 certification requiring a contingent call under
 15 subsection (m)(3)(D).

16 (3) CARRYOVER OF UNUSED FUNDS.—To the
 17 extent the Administrator does not, in any given year,
 18 use all of the funds allocated to the account under
 19 paragraph (1) for adjustments granted under sub-
 20 section (d), remaining funds in the account shall be
 21 carried forward for use by the Administrator for ad-
 22 justments in subsequent years.

23 (k) DEFENDANT GUARANTEED PAYMENT AC-
 24 COUNT.—

1 (1) IN GENERAL.—Subject to subsections (h)
 2 and (j), in the event there are excess monies paid by
 3 defendant participants in any given year, such mon-
 4 ies—

5 (A) may be used to provide additional ad-
 6 justments under subsection (d), up to a max-
 7 imum aggregate of \$50,000,000 in such year;
 8 and

9 (B) to the extent not used under subpara-
 10 graph (A), shall be placed in a defendant guar-
 11 anteed payment account established within the
 12 Fund by the Administrator.

13 (2) USE OF ACCOUNT MONIES.—Monies from
 14 the defendant guaranteed payment account shall be
 15 preserved and administered like the remainder of the
 16 Fund, but shall be reserved and may be used only—

17 (A) to ensure the minimum aggregate an-
 18 nual payment set forth in subsection (h) net of
 19 any adjustments under subsection (d) is
 20 reached each year; and

21 (B) if the condition set forth in subsection
 22 (a)(2) of this section is met, for any purpose
 23 that the Fund may serve under this Act, unless
 24 the Administrator shall have published a final

1 certification requiring a contingent call under
2 subsection (m)(3)(D).

3 (l) GUARANTEED PAYMENT SURCHARGE.—

4 (1) IN GENERAL.—To the extent there are in-
5 sufficient monies in the defendant guaranteed pay-
6 ment account established in subsection (k) to attain
7 the minimum aggregate annual payment net of any
8 adjustments under subsection (d) in any given year,
9 the Administrator may impose on each defendant
10 participant a surcharge as necessary to raise the bal-
11 ance required to attain the minimum aggregate an-
12 nual payment net of any adjustments under sub-
13 section (d), as provided in this subsection. Any such
14 surcharge shall be imposed on a pro rata basis, in
15 accordance with each defendant participant's relative
16 annual liability under sections 202 and 203 (as
17 modified by subsections (b), (d), (f), and (g) of this
18 section).

19 (2) CERTIFICATION.—

20 (A) IN GENERAL.—Before imposing a
21 guaranteed payment surcharge under this sub-
22 section, the Administrator shall certify that he
23 or she has used all reasonable efforts to collect
24 mandatory payments for all defendant partici-

1 pants, including by using the authority in sub-
 2 section (i)(9) of this section and section 223.

3 (B) NOTICE AND COMMENT.—Before mak-
 4 ing a final certification under subparagraph
 5 (C), the Administrator shall publish a notice in
 6 the Federal Register of a proposed certification
 7 and provide in such notice for a public comment
 8 period of 30 days.

9 (C) FINAL CERTIFICATION.—

10 (i) IN GENERAL.—The Administrator
 11 shall publish a notice of the final certifi-
 12 cation in the Federal Register after consid-
 13 eration of all comments submitted under
 14 subparagraph (B).

15 (ii) WRITTEN NOTICE.—Not later
 16 than 30 days after publishing any final
 17 certification under clause (i), the Adminis-
 18 trator shall provide each defendant partici-
 19 pant with written notice of that defendant
 20 participant's payment, including the
 21 amount of any surcharge.

22 (m) CONTINGENT CALL FOR MANDATORY ADDI-
 23 TIONAL PAYMENTS.—

24 (1) IN GENERAL.—Notwithstanding section
 25 202(a)(2) and subsection (a) of this section, the Ad-

1 administrator may require additional payments to the
 2 Fund by defendant participants, subsequent to the
 3 payment by defendant participants of the maximum
 4 aggregate payment obligation in section 202(a)(2),
 5 as provided in this subsection.

6 (2) CONTINGENT CALL PAYMENTS.—If the Ad-
 7 ministrator has certified or certifies the necessity of
 8 additional payments as provided in paragraph (3),
 9 the Administrator may require the defendant partici-
 10 pants to pay in accordance with paragraph (5) up to
 11 an aggregate maximum of \$10,000,000,000 of addi-
 12 tional payments subsequent to the payment by de-
 13 fendant participants of the maximum aggregate pay-
 14 ment obligation in section 202(a)(2).

15 (3) CONTINGENT CALL CERTIFICATION.—

16 (A) IN GENERAL.—Before invoking the au-
 17 thority to require additional mandatory pay-
 18 ments under this subsection, the Administrator
 19 shall certify, after consultation with appropriate
 20 experts, that the entirety of the contingent call
 21 amount invoked is necessary to meet the
 22 Fund’s obligations.

23 (B) INITIAL NOTICE.—Before making any
 24 certification under subparagraph (A), the Ad-
 25 ministrator shall publish a notice in the Federal

1 Register of the proposed certification, including
2 a description and explanation of the Adminis-
3 trator's analysis supporting the certification of
4 the Administrator.

5 (C) COMMENTS FROM DEFENDANT PAR-
6 TICIPANTS.—Not later than 60 days after the
7 publication of the notice under subparagraph
8 (B), a defendant participant may provide the
9 Administrator with additional information to
10 support a determination that all or some of the
11 additional payments from defendant partici-
12 pants set forth in the notice are or are not re-
13 quired.

14 (D) FINAL CERTIFICATION.—

15 (i) IN GENERAL.—The Administrator
16 shall publish a final notice in the Federal
17 Register after consideration of all com-
18 ments submitted under subparagraph (C).

19 (ii) WRITTEN NOTICE.—If the Admin-
20 istrator certifies the need for the contin-
21 gent call for additional payments, the Ad-
22 ministrator shall provide each defendant
23 participant with written notice of that de-
24 fendant participant's schedule of payments
25 under this subsection.

1 (4) BORROWING CAPACITY.—To the extent pro-
2 vided in section 221(b)(3), the Administrator may
3 borrow against the mandatory additional payments
4 required under this subsection at any time after
5 issuing the final certification under paragraph (3).

6 (5) ALLOCATION.—Any additional payments to
7 the Fund by defendant participants under this sub-
8 section shall be allocated among them in proportion
9 to the amounts provided under sections 202 and 203
10 (as modified by subsections (b), (d), (f), and (g) of
11 this section). If the Administrator determines that
12 the full amount of funding that would otherwise be
13 generated in any year by the funding provisions of
14 sections 202, 203, and 204 is not required for pur-
15 poses of this subsection, the Administrator shall re-
16 duce the amounts paid by all defendant participants
17 on the same basis.

18 (6) ENFORCEMENT.—The additional payments
19 required under this subsection may be enforced in
20 the same manner and to the same extent as the en-
21 forcement of payments under section 223.

1 **Subtitle B—Asbestos Insurers**
2 **Commission**

3 **SEC. 210. DEFINITION.**

4 In this subtitle, the term “captive insurance com-
5 pany” means a company—

6 (1) whose entire beneficial interest is owned on
7 the date of enactment of this Act, directly or indi-
8 rectly, by a defendant participant or by the ultimate
9 parent or the affiliated group of a defendant partici-
10 pant;

11 (2) whose primary commercial business during
12 the period from calendar years 1940 through 1986
13 was to provide insurance to its ultimate parent or
14 affiliated group, or any portion of the affiliated
15 group or a combination thereof; and

16 (3) that was incorporated or operating no later
17 than December 31, 2002.

18 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-**
19 **MISSION.**

20 (a) ESTABLISHMENT.—There is established the As-
21 bestos Insurers Commission (referred to in this subtitle
22 as the “Commission”) to carry out the duties described
23 in section 212.

24 (b) MEMBERSHIP.—

1 (1) APPOINTMENT.—The Commission shall be
2 composed of 5 members who shall be appointed by
3 the President, by and with the advice and consent
4 of the Senate.

5 (2) QUALIFICATIONS.—

6 (A) EXPERTISE.—Members of the Com-
7 mission shall have sufficient expertise to fulfill
8 their responsibilities under this subtitle.

9 (B) CONFLICT OF INTEREST.—

10 (i) IN GENERAL.—No member of the
11 Commission appointed under paragraph
12 (1) may be an employee or immediate fam-
13 ily member of an employee of an insurer
14 participant. No member of the Commission
15 may be a former employee or shareholder
16 of any insurer participant, unless that is
17 fully disclosed.

18 (ii) DEFINITION.—In clause (i), the
19 term “shareholder” shall not include a
20 broadly based mutual fund that may, from
21 time-to-time include the stocks of insurer
22 participants as a portion of its overall
23 holdings.

24 (C) FEDERAL EMPLOYMENT.—A member
25 of the Commission may not be an officer or em-

1 ployee of the Federal Government, except by
2 reason of membership on the Commission.

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

5 (4) VACANCIES.—Any vacancy in the Commis-
6 sion shall be filled in the same manner as the origi-
7 nal appointment.

8 (5) CHAIRMAN.—The President shall select a
9 Chairman from among its members.

10 (c) MEETINGS.—

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

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

18 (3) QUORUM.—No business may be conducted
19 or hearings held without the participation of a ma-
20 jority of the members of the Commission.

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

22 (a) DETERMINATION OF INSURER PAYMENT OBLIGA-
23 TIONS.—

24 (1) IN GENERAL.—

1 (A) DEFINITIONS.—For the purposes of
2 this Act, the terms “insurer” and “insurer par-
3 ticipant” shall, unless stated otherwise, include
4 direct insurers and reinsurers, as well as any
5 run-off entity established, in whole or in part,
6 to review and pay asbestos claims.

7 (B) PROCEDURES FOR DETERMINING IN-
8 SURER PAYMENTS.—The Commission shall de-
9 termine the amount that each insurer partici-
10 pant shall be required to pay into the Fund
11 under the procedures described in this section.
12 The Commission shall make this determination
13 by first promulgating a rule establishing a
14 methodology for allocation of payments among
15 insurer participants and then applying such
16 methodology to determine the individual pay-
17 ment for each insurer participant. The method-
18 ology may include 1 or more allocation formulas
19 to be applied to all insurer participants or
20 groups of similarly situated participants. The
21 Commission’s rule shall include a methodology
22 for adjusting payments by insurer participants
23 to make up, during any applicable payment
24 year, any amount by which aggregate insurer
25 payments fall below the level required in para-

graph (3)(C). Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission’s and Administrator’s authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer

1 participant not licensed or domiciled in the
2 United States shall, upon the first payment to
3 the Fund, submit a written consent to the Com-
4 mission's and Administrator's authority under
5 this Act, and to the jurisdiction of the courts of
6 the United States for purposes of enforcing this
7 Act, in a form determined by the Adminis-
8 trator. Any insurer participant refusing to pro-
9 vide a written consent shall be subject to fines
10 and penalties as provided in section 223.

11 (2) AMOUNT OF PAYMENTS.—

12 (A) AGGREGATE PAYMENT OBLIGATION.—

13 The total payment required of all insurer par-
14 ticipants over the life of the Fund shall be
15 equal to \$46,025,000,000.

16 (B) ACCOUNTING STANDARDS.—In deter-
17 mining the payment obligations of participants
18 that are not licensed or domiciled in the United
19 States or that are runoff entities, the Commis-
20 sion shall use accounting standards required for
21 United States licensed direct insurers.

22 (C) CAPTIVE INSURANCE COMPANIES.—No
23 payment to the Fund shall be required from a
24 captive insurance company, unless and only to
25 the extent a captive insurance company, on the

1 date of enactment of this Act, has liability, di-
2 rectly or indirectly, for any asbestos claim of a
3 person or persons other than and unaffiliated
4 with its ultimate parent or affiliated group or
5 pool in which the ultimate parent participates
6 or participated, or unaffiliated with a person
7 that was its ultimate parent or a member of its
8 affiliated group or pool at the time the relevant
9 insurance or reinsurance was issued by the cap-
10 tive insurance company.

11 (D) SEVERAL LIABILITY.—Unless other-
12 wise provided under this Act, each insurer par-
13 ticipant's obligation to make payments to the
14 Fund is several. Unless otherwise provided
15 under this Act, there is no joint liability and the
16 future insolvency by any insurer participant
17 shall not affect the payment required of any
18 other insurer participant.

19 (3) PAYMENT CRITERIA.—

20 (A) INCLUSION IN INSURER PARTICIPANT
21 CATEGORY.—Insurers that have paid, or been
22 assessed by a legal judgment or settlement, at
23 least \$1,000,000 in defense and indemnity costs
24 before the date of enactment of this Act in re-
25 sponse to claims for compensation for asbestos

1 injuries arising from a policy of liability insur-
 2 ance or contract of liability reinsurance or
 3 retrocessional reinsurance shall be insurer par-
 4 ticipants in the Fund. Other insurers shall be
 5 exempt from mandatory payments.

6 (B) INSURER PARTICIPANT ALLOCATION
 7 METHODOLOGY.—

8 (i) IN GENERAL.—The Commission
 9 shall establish the payment obligations of
 10 individual insurer participants to reflect,
 11 on an equitable basis, the relative tort sys-
 12 tem liability of the participating insurers in
 13 the absence of this Act, considering and
 14 weighting, as appropriate (but exclusive of
 15 workers' compensation), such factors as—

16 (I) historic premium for lines of
 17 insurance associated with asbestos ex-
 18 posure over relevant periods of time;

19 (II) recent loss experience for as-
 20 bestos liability;

21 (III) amounts reserved for asbes-
 22 tos liability;

23 (IV) the likely cost to each in-
 24 surer participant of its future liabil-

ities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—

The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer partici-

pants over the life of the Fund shall be as follows:

(i) For year 1, \$2,700,000,000.

(ii) For year 2, \$7,500,000,000.

(iii) For year 3, \$2,175,000,000.

(iv) For years 4 through 17, \$1,625,000,000 annually.

(v) For years 18 through 21, \$1,350,000,000 annually.

(vi) For years 22 through 26, \$1,080,000,000 annually.

(vii) For year 27, \$100,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyds syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff

entity for severe financial hardship or exceptional circumstances.

(ii) INCLUDED RUNOFF ENTITIES.—

Subject to clause (i), a runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

1 (iii) EXCEPTIONAL CIRCUMSTANCE
 2 ADJUSTMENT.—An insurer participant
 3 may qualify for an adjustment based on
 4 exceptional circumstances by dem-
 5 onstrating—

6 (I) that the amount of its pay-
 7 ments under the Commission’s alloca-
 8 tion methodology is exceptionally in-
 9 equitable when measured against the
 10 amount of the likely cost to the par-
 11 ticipant of its future liability in the
 12 tort system in the absence of the
 13 Fund;

14 (II) an offset credit as described
 15 in subsection (b)(4) (A) and (C); or

16 (III) other exceptional cir-
 17 cumstances.

18 The Commission may determine whether
 19 to grant an adjustment and the size of any
 20 such adjustment, but adjustments shall not
 21 reduce the aggregate payment obligations
 22 of insurer participants specified in para-
 23 graph (2)(A) and (3)(C).

24 (iv) TIME PERIOD OF ADJUSTMENT.—
 25 Except for adjustments for offset credits,

1 adjustments granted under this subsection
 2 shall have a term not to exceed 3 years. An
 3 insurer participant may renew its adjust-
 4 ment by demonstrating to the Adminis-
 5 trator that it remains justified.

6 (b) PROCEDURE FOR NOTIFYING INSURER PARTICI-
 7 PANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

8 (1) NOTICE TO PARTICIPANTS.—Not later than
 9 30 days after promulgation of the final rule estab-
 10 lishing an allocation methodology under subsection
 11 (a)(1), the Commission shall—

12 (A) directly notify all reasonably identifi-
 13 able insurer participants of the requirement to
 14 submit information necessary to calculate the
 15 amount of any required payment to the Fund
 16 under the allocation methodology; and

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

21 (2) RESPONSE REQUIRED BY INDIVIDUAL IN-
 22 SURER PARTICIPANTS.—

23 (A) IN GENERAL.—Any person who re-
 24 ceives notice under paragraph (1)(A), and any
 25 other person meeting the criteria specified in

1 the notice published under paragraph (1)(B),
 2 shall respond by providing the Commission with
 3 all the information requested in the notice under
 4 a schedule or by a date established by the Com-
 5 mission.

6 (B) CERTIFICATION.—The response sub-
 7 mitted under subparagraph (A) shall be signed
 8 by a responsible corporate officer, general part-
 9 ner, proprietor, or individual of similar author-
 10 ity, who shall certify under penalty of law the
 11 completeness and accuracy of the information
 12 submitted.

13 (3) NOTICE TO INSURER PARTICIPANTS OF INI-
 14 TIAL PAYMENT DETERMINATION.—

15 (A) IN GENERAL.—Within 120 days after
 16 receipt of the information required by para-
 17 graph (2), the Commission shall send each in-
 18 surer participant a notice of initial determina-
 19 tion requiring payments to the Fund, which
 20 shall be based on the information received from
 21 the participant in response to the Commission's
 22 request for information. An insurer partici-
 23 pant's payments shall be payable over the
 24 schedule established in subsection (a)(3)(C), in
 25 annual amounts proportionate to the aggregate

1 annual amount of payments for all insurer par-
2 ticipants for the applicable year.

3 (B) NO RESPONSE; INCOMPLETE RE-
4 SPONSE.—If no response is received from an in-
5 surer participant, or if the response is incom-
6 plete, the initial determination requiring a pay-
7 ment from the insurer participant shall be
8 based on the best information available to the
9 Commission.

10 (4) COMMISSION REVIEW, REVISION AND FINAL-
11 IZATION OF INITIAL PAYMENT DETERMINATIONS.—

12 (A) COMMENTS FROM INSURER PARTICI-
13 PANTS.—Not later than 30 days after receiving
14 a notice of initial determination from the Com-
15 mission, an insurer participant may provide the
16 Commission with additional information to sup-
17 port limited adjustments to the required pay-
18 ments to reflect severe financial hardship or ex-
19 ceptional circumstances, including the provision
20 of an offset credit for an insurer participant for
21 the amount of any asbestos-related payments it
22 made or was legally obligated to make, includ-
23 ing payments released from an escrow, as the
24 result of a bankruptcy judicially confirmed after

1 May 22, 2003, but before the date of enactment
2 of this Act.

3 (B) ADDITIONAL PARTICIPANTS.—If, be-
4 fore the final determination of the Commission,
5 the Commission receives information that an
6 additional person may qualify as an insurer
7 participant, the Commission shall require such
8 person to submit information necessary to de-
9 termine whether payments from that person
10 should be required, in accordance with the re-
11 quirements of this subsection.

12 (C) REVISION PROCEDURES.—The Com-
13 mission shall adopt procedures for revising ini-
14 tial payments based on information received
15 under subparagraphs (A) and (B), including a
16 provision requiring an offset credit for an in-
17 surer participant for the amount of any asbes-
18 tos-related payments it made or was legally ob-
19 ligated to make, including payments released
20 from an escrow, as the result of a bankruptcy
21 confirmed after May 22, 2003, but before the
22 date of enactment of this Act.

23 (5) EXAMINATIONS AND SUBPOENAS.—

24 (A) EXAMINATIONS.—The Commission
25 may conduct examinations of the books and

1 records of insurer participants to determine the
2 completeness and accuracy of information sub-
3 mitted, or required to be submitted, to the
4 Commission for purposes of determining partic-
5 ipant payments.

6 (B) SUBPOENAS.—The Commission may
7 request the Attorney General to subpoena per-
8 sons to compel testimony, records, and other in-
9 formation relevant to its responsibilities under
10 this section. The Attorney General may enforce
11 such subpoena in appropriate proceedings in
12 the United States district court for the district
13 in which the person to whom the subpoena was
14 addressed resides, was served, or transacts
15 business.

16 (6) ESCROW PAYMENTS.—Without regard to an
17 insurer participant's payment obligation under this
18 section, any escrow or similar account established
19 before the enactment of this Act by an insurer par-
20 ticipant in connection with an asbestos trust fund
21 that has not been judicially confirmed by final order
22 by the date of enactment of this Act shall be the
23 property of the insurer participant and returned to
24 that insurer participant.

1 (7) NOTICE TO INSURER PARTICIPANTS OF
 2 FINAL PAYMENT DETERMINATIONS.—Not later than
 3 60 days after the notice of initial determination is
 4 sent to the insurer participants, the Commission
 5 shall send each insurer participant a notice of final
 6 determination.

7 (c) INSURER PARTICIPANTS VOLUNTARY ALLOCA-
 8 TION AGREEMENT.—

9 (1) IN GENERAL.—Not later than 30 days after
 10 the Commission proposes its rule establishing an al-
 11 location methodology under subsection (a)(1), direct
 12 insurer participants licensed or domiciled in the
 13 United States, other direct insurer participants, re-
 14 insurer participants licensed or domiciled in the
 15 United States, or other reinsurer participants, may
 16 submit an allocation agreement, approved by all of
 17 the participants in the applicable group, to—

18 (A) the Commission;

19 (B) the Committee on the Judiciary of the
 20 Senate; and

21 (C) the Committee on the Judiciary of the
 22 House of Representatives.

23 (2) ALLOCATION AGREEMENT.—To the extent
 24 the participants in any such applicable group volun-
 25 tarily agree upon an allocation arrangement, any

1 such allocation agreement shall only govern the allo-
2 cation of payments within that group and shall not
3 determine the aggregate amount due from that
4 group.

5 (3) CERTIFICATION.—The Commission shall de-
6 termine whether an allocation agreement submitted
7 under subparagraph (A) meets the requirements of
8 this subtitle and, if so, shall certify the agreement
9 as establishing the allocation methodology governing
10 the individual payment obligations of the partici-
11 pants who are parties to the agreement. The author-
12 ity of the Commission under this subtitle shall, with
13 respect to participants who are parties to a certified
14 allocation agreement, terminate on the day after the
15 Commission certifies such agreement. Under sub-
16 section (f), the Administrator shall assume responsi-
17 bility, if necessary, for calculating the individual
18 payment obligations of participants who are parties
19 to the certified agreement.

20 (d) COMMISSION REPORT.—

21 (1) RECIPIENTS.—Until the work of the Com-
22 mission has been completed and the Commission ter-
23 minated, the Commission shall submit an annual re-
24 port, containing the information described under
25 paragraph (2), to—

1 (A) the Committee on the Judiciary of the
2 Senate;

3 (B) the Committee on the Judiciary of the
4 House of Representatives; and

5 (C) the Administrator.

6 (2) CONTENTS.—The report under paragraph
7 (1) shall state the amount that each insurer partici-
8 pant is required to pay to the Fund, including the
9 payment schedule for such payments.

10 (e) INTERIM PAYMENTS.—

11 (1) AUTHORITY OF ADMINISTRATOR.—During
12 the period between the date of enactment of this Act
13 and the date when the Commission issues its final
14 determinations of payments, the Administrator shall
15 have the authority to require insurer participants to
16 make interim payments to the Fund to assure ade-
17 quate funding by insurer participants during such
18 period.

19 (2) AMOUNT OF INTERIM PAYMENTS.—During
20 any applicable year, the Administrator may require
21 insurer participants to make aggregate interim pay-
22 ments not to exceed the annual aggregate amount
23 specified in subsection (a)(3)(C).

24 (3) ALLOCATION OF PAYMENTS.—Interim pay-
25 ments shall be allocated among individual insurer

1 participants on an equitable basis as determined by
2 the Administrator. All payments required under this
3 subparagraph shall be credited against the partici-
4 pant's ultimate payment obligation to the Fund es-
5 tablished by the Commission. If an interim payment
6 exceeds the ultimate payment, the Fund shall pay
7 interest on the amount of the overpayment at a rate
8 determined by the Administrator. If the ultimate
9 payment exceeds the interim payment, the partici-
10 pant shall pay interest on the amount of the under-
11 payment at the same rate. Any participant may seek
12 an exemption from or reduction in any payment re-
13 quired under this subsection under the financial
14 hardship and exceptional circumstance standards es-
15 tablished in subsection (a)(3)(D).

16 (4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish
17 an interim payment obligation shall be considered
18 final agency action and reviewable under section
19 303, except that the reviewing court may not stay an
20 interim payment during the pendency of the appeal.

22 (f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—
23

24 (1) IN GENERAL.—Upon termination of the
25 Commission under section 215, the Administrator

1 shall assume all the responsibilities and authority of
2 the Commission, except that the Administrator shall
3 not have the power to modify the allocation method-
4 ology established by the Commission or by certified
5 agreement or to promulgate a rule establishing any
6 such methodology.

7 (2) FINANCIAL HARDSHIP AND EXCEPTIONAL
8 CIRCUMSTANCE ADJUSTMENTS.—Upon termination
9 of the Commission under section 215, the Adminis-
10 trator shall have the authority, upon application by
11 any insurer participant, to make adjustments to an-
12 nual payments upon the same grounds as provided
13 in subsection (a)(3)(D). Adjustments granted under
14 this subsection shall have a term not to exceed 3
15 years. An insurer participant may renew its adjust-
16 ment by demonstrating that it remains justified.
17 Upon the grant of any adjustment, the Adminis-
18 trator shall increase the payments required of all
19 other insurer participants so that there is no reduc-
20 tion in the aggregate payment required of all insurer
21 participants for the applicable years. The increase in
22 an insurer participant's required payment shall be in
23 proportion to such participant's share of the aggre-
24 gate payment obligation of all insurer participants.

1 (3) FINANCIAL SECURITY REQUIREMENTS.—

2 Whenever an insurer participant's A.M. Best's
3 claims payment rating or Standard and Poor's fi-
4 nancial strength rating falls below A–, and until
5 such time as either the insurer participant's A.M.
6 Best's Rating or Standard and Poor's rating is
7 equal to or greater than A–, the Administrator
8 shall have the authority to require that the partici-
9 pating insurer either—

10 (A) pay the present value of its remaining
11 Fund payments at a discount rate determined
12 by the Administrator; or

13 (B) provide an evergreen letter of credit or
14 financial guarantee for future payments issued
15 by an institution with an A.M. Best's claims
16 payment rating or Standard & Poor's financial
17 strength rating of at least A+.

18 (g) JUDICIAL REVIEW.—The Commission's rule es-
19 tablishing an allocation methodology, its final determina-
20 tions of payment obligations and other final action shall
21 be judicially reviewable as provided in title III.

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

23 (a) RULEMAKING.—The Commission shall promul-
24 gate such rules and regulations as necessary to implement
25 its authority under this Act, including regulations gov-

1 ernaling an allocation methodology. Such rules and regula-
2 tions shall be promulgated after providing interested par-
3 ties with the opportunity for notice and comment.

4 (b) HEARINGS.—The Commission may hold such
5 hearings, sit and act at such times and places, take such
6 testimony, and receive such evidence as the Commission
7 considers advisable to carry out this Act. The Commission
8 shall also hold a hearing on any proposed regulation estab-
9 lishing an allocation methodology, before the Commis-
10 sion’s adoption of a final regulation.

11 (c) INFORMATION FROM FEDERAL AGENCIES.—The
12 Commission may secure directly from any Federal depart-
13 ment or agency such information as the Commission con-
14 siders necessary to carry out this Act. Upon request of
15 the Chairman of the Commission, the head of such depart-
16 ment or agency shall furnish such information to the Com-
17 mission.

18 (d) POSTAL SERVICES.—The Commission may use
19 the United States mails in the same manner and under
20 the same conditions as other departments and agencies of
21 the Federal Government.

22 (e) GIFTS.—The Commission may not accept, use, or
23 dispose of gifts or donations of services or property.

24 (f) EXPERT ADVICE.—In carrying out its responsibil-
25 ities, the Commission may enter into such contracts and

1 agreements as the Commission determines necessary to
2 obtain expert advice and analysis.

3 **SEC. 214. PERSONNEL MATTERS.**

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

11 (b) TRAVEL EXPENSES.—The members of the Com-
12 mission shall be allowed travel expenses, including per
13 diem in lieu of subsistence, at rates authorized for employ-
14 ees of agencies under subchapter I of chapter 57 of title
15 5, United States Code, while away from their homes or
16 regular places of business in the performance of services
17 for the Commission.

18 (c) STAFF.—

19 (1) IN GENERAL.—The Chairman of the Com-
20 mission may, without regard to the civil service laws
21 and regulations, appoint and terminate an executive
22 director and such other additional personnel as may
23 be necessary to enable the Commission to perform
24 its duties. The employment of an executive director
25 shall be subject to confirmation by the Commission.

1 (2) COMPENSATION.—The Chairman of the
2 Commission may fix the compensation of the execu-
3 tive director and other personnel without regard to
4 chapter 51 and subchapter III of chapter 53 of title
5 5, United States Code, relating to classification of
6 positions and General Schedule pay rates, except
7 that the rate of pay for the executive director and
8 other personnel may not exceed the rate payable for
9 level V of the Executive Schedule under section 5316
10 of such title.

11 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
12 Federal Government employee may be detailed to the
13 Commission without reimbursement, and such detail shall
14 be without interruption or loss of civil service status or
15 privilege.

16 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
17 TENT SERVICES.—The Chairman of the Commission may
18 procure temporary and intermittent services under section
19 3109(b) of title 5, United States Code, at rates for individ-
20 uals which do not exceed the daily equivalent of the annual
21 rate of basic pay prescribed for level V of the Executive
22 Schedule under section 5316 of such title.

1 **SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMIS-**
 2 **SION.**

3 The Commission shall terminate 90 days after the
 4 last date on which the Commission makes a final deter-
 5 mination of contribution under section 212(b) or 90 days
 6 after the last appeal of any final action by the Commission
 7 is exhausted, whichever occurs later.

8 **SEC. 216. EXPENSES AND COSTS OF COMMISSION.**

9 All expenses of the Commission shall be paid from
 10 the Fund.

11 **Subtitle C—Asbestos Injury Claims**
 12 **Resolution Fund**

13 **SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS**
 14 **RESOLUTION FUND.**

15 (a) ESTABLISHMENT.—There is established in the
 16 Office of Asbestos Disease Compensation the Asbestos In-
 17 jury Claims Resolution Fund, which shall be available to
 18 pay—

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

21 (2) claims for reimbursement for medical moni-
 22 toring determined under title I;

23 (3) principal and interest on borrowings under
 24 subsection (b); and

25 (4) administrative expenses to carry out the
 26 provisions of this Act.

1 (b) BORROWING AUTHORITY.—

2 (1) IN GENERAL.—The Administrator is au-
3 thorized to borrow from time-to-time amounts as set
4 forth in this subsection, for purposes of enhancing li-
5 quidity available to the Fund for carrying out the
6 obligations of the Fund under this Act. The Admin-
7 istrator may authorize borrowing in such form, over
8 such term, with such necessary disclosure to its
9 lenders as will most efficiently enhance the Fund’s
10 liquidity.

11 (2) FEDERAL FINANCING BANK.—In addition to
12 the general authority in paragraph (1), the Adminis-
13 trator may borrow from the Federal Financing Bank
14 in accordance with section 6 of the Federal Financ-
15 ing Bank Act of 1973 (12 U.S.C. 2285) as needed
16 for performance of the Administrator’s duties under
17 this Act for the first 2 years.

18 (3) BORROWING CAPACITY.—The maximum
19 amount that may be borrowed under this subsection
20 at any given time is the amount that, taking into ac-
21 count all payment obligations related to all previous
22 amounts borrowed in accordance with this sub-
23 section and all committed obligations of the Fund at
24 the time of borrowing, can be repaid in full (with in-
25 terest) in a timely fashion from—

1 (A) the available assets of the Fund as of
2 the time of borrowing; and

3 (B) all amounts expected to be paid by
4 participants (including any contingent call man-
5 datory additional payments under section
6 204(m)) during the subsequent 7 years.

7 (4) REPAYMENT OBLIGATIONS.—Repayment of
8 monies borrowed by the Administrator under this
9 subsection is limited solely to amounts available in
10 the Asbestos Injury Claims Resolution Fund estab-
11 lished under this section.

12 (c) LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-
13 JURY CLAIMANTS.—

14 (1) IN GENERAL.—Within the Fund, the Ad-
15 ministrator shall establish the following accounts:

16 (A) A Mesothelioma Account, which shall
17 be used solely to make payments to claimants
18 eligible for an award under the criteria of Level
19 X.

20 (B) A Lung Cancer Account, which shall
21 be used solely to make payments to claimants
22 eligible for an award under the criteria of Level
23 IX.

24 (C) A Severe Asbestosis Account, which
25 shall be used solely to make payments to claim-

1 ants eligible for an award under the criteria of
2 Level V.

3 (D) A Moderate Asbestosis Account, which
4 shall be used solely to make payments to claim-
5 ants eligible for an award under the criteria of
6 Level IV.

7 (2) ALLOCATION.—The Administrator shall al-
8 locate to each of the 4 accounts established under
9 paragraph (1) a portion of payments made to the
10 Fund adequate to compensate all anticipated claim-
11 ants for each account. Within 60 days after the date
12 of enactment of this Act, and periodically during the
13 life of the Fund, the Administrator shall determine
14 an appropriate amount to allocate to each account
15 after consulting appropriate epidemiological and sta-
16 tistical studies.

17 (d) AUDIT AUTHORITY.—

18 (1) IN GENERAL.—For the purpose of
19 ascertaining the correctness of any information pro-
20 vided or payments made to the Fund, or deter-
21 mining whether a person who has not made a pay-
22 ment to the Fund was required to do so, or deter-
23 mining the liability of any person for a payment to
24 the Fund, or collecting any such liability, or inquir-
25 ing into any offense connected with the administra-

1 tion or enforcement of this title, the Administrator
2 is authorized—

3 (A) to examine any books, papers, records
4 or other data which may be relevant or material
5 to such inquiry;

6 (B) to summon the person liable for a pay-
7 ment under this title, or officer or employee of
8 such person, or any person having possession,
9 custody, or care of books of account containing
10 entries relating to the business of the person
11 liable or any other person the Administrator
12 may deem proper, to appear before the Admin-
13 istrator at a time and place named in the sum-
14 mons and to produce such books, papers,
15 records, or other data, and to give such testi-
16 mony, under oath, as may be relevant or mate-
17 rial to such inquiry; and

18 (C) to take such testimony of the person
19 concerned, under oath, as may be relevant or
20 material to such inquiry.

21 (2) FALSE, FRAUDULENT, OR FICTITIOUS
22 STATEMENTS OR PRACTICES.—If the Administrator
23 determines that materially false, fraudulent, or ficti-
24 tious statements or practices have been submitted or
25 engaged in by persons submitting information to the

1 Administrator or to the Asbestos Insurers Commis-
 2 sion or any other person who provides evidence in
 3 support of such submissions for purposes of deter-
 4 mining payment obligations under this Act, the Ad-
 5 ministrator may impose a civil penalty not to exceed
 6 \$10,000 on any person found to have submitted or
 7 engaged in a materially false, fraudulent, or ficti-
 8 tious statement or practice under this Act. The Ad-
 9 ministrator shall promulgate appropriate regulations
 10 to implement this paragraph.

11 (e) NO PRIVATE RIGHT OF ACTION.—Except as pro-
 12 vided in sections 203(b)(2)(D)(ii) and 204(f)(3), there
 13 shall be no private right of action under any Federal or
 14 State law against any participant based on a claim of com-
 15 pliance or noncompliance with this Act or the involvement
 16 of any participant in the enactment of this Act.

17 **SEC. 222. MANAGEMENT OF THE FUND.**

18 (a) IN GENERAL.—Amounts in the Fund shall be
 19 held for the exclusive purpose of providing benefits to as-
 20 bestos claimants and their beneficiaries, including those
 21 provided in subsection (c), and to otherwise defray the rea-
 22 sonable expenses of administering the Fund.

23 (b) INVESTMENTS.—

24 (1) IN GENERAL.—Amounts in the Fund shall
 25 be administered and invested with the care, skill,

1 prudence, and diligence, under the circumstances
2 prevailing at the time of such investment, that a
3 prudent person acting in a like capacity and manner
4 would use.

5 (2) STRATEGY.—The Administrator shall invest
6 amounts in the Fund in a manner that enables the
7 Fund to make current and future distributions to or
8 for the benefit of asbestos claimants. In pursuing an
9 investment strategy under this subparagraph, the
10 Administrator shall consider, to the extent relevant
11 to an investment decision or action—

12 (A) the size of the Fund;

13 (B) the nature and estimated duration of
14 the Fund;

15 (C) the liquidity and distribution require-
16 ments of the Fund;

17 (D) general economic conditions at the
18 time of the investment;

19 (E) the possible effect of inflation or defla-
20 tion on Fund assets;

21 (F) the role that each investment or course
22 of action plays with respect to the overall assets
23 of the Fund;

24 (G) the expected amount to be earned (in-
25 cluding both income and appreciation of cap-

1 ital) through investment of amounts in the
2 Fund; and

3 (H) the needs of asbestos claimants for
4 current and future distributions authorized
5 under this Act.

6 (c) MESOTHELIOMA RESEARCH AND TREATMENT
7 CENTERS.—

8 (1) IN GENERAL.—The Administrator shall pro-
9 vide \$1,000,000 from the Fund for each of fiscal
10 years 2004 through 2008 for each of up to 10 meso-
11 thelioma disease research and treatment centers.

12 (2) REQUIREMENTS.—The Centers shall—

13 (A) be chosen by the Director of the Na-
14 tional Institutes of Health;

15 (B) be chosen through competitive peer re-
16 view;

17 (C) be geographically distributed through-
18 out the United States with special consideration
19 given to areas of high incidence of mesothe-
20 lioma disease;

21 (D) be closely associated with Department
22 of Veterans Affairs medical centers to provide
23 research benefits and care to veterans, who
24 have suffered excessively from mesothelioma;

1 (E) be engaged in research to provide
2 mechanisms for detection and prevention of
3 mesothelioma, particularly in the areas of pain
4 management and cures;

5 (F) be engaged in public education about
6 mesothelioma and prevention, screening, and
7 treatment;

8 (G) be participants in the National Meso-
9 thelioma Registry; and

10 (H) be coordinated in their research and
11 treatment efforts with other Centers and insti-
12 tutions involved in exemplary mesothelioma re-
13 search.

14 **SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.**

15 (a) DEFAULT.—If any participant fails to make any
16 payment in the amount of and according to the schedule
17 under this Act or as prescribed by the Administrator, after
18 demand and 30 days opportunity to cure the default, there
19 shall be a lien in favor of the United States for the amount
20 of the delinquent payment (including interest) upon all
21 property and rights to property, whether real or personal,
22 belonging to such participant.

23 (b) BANKRUPTCY.—In the case of a bankruptcy or
24 insolvency proceeding, the lien imposed under subsection
25 (a) shall be treated in the same manner as a lien for taxes

1 due and owing to the United States for purposes of the
2 provisions of title 11, United States Code, or section
3 3713(a) of title 31, United States Code. The United
4 States Bankruptcy Court shall have jurisdiction over any
5 issue or controversy regarding lien priority and lien perfec-
6 tion arising in a bankruptcy case due to a lien imposed
7 under subsection (a).

8 (c) CIVIL ACTION.—

9 (1) IN GENERAL.—In any case in which there
10 has been a refusal or failure to pay any liability im-
11 posed under this Act, the Administrator may bring
12 a civil action in the United States District Court for
13 the District of Columbia, or any other appropriate
14 lawsuit or proceeding outside of the United States—

15 (A) to enforce the liability and any lien of
16 the United States imposed under this section;

17 (B) to subject any property of the partici-
18 pant, including any property in which the par-
19 ticipant has any right, title, or interest, to the
20 payment of such liability; or

21 (C) for temporary, preliminary, or perma-
22 nent relief.

23 (2) ADDITIONAL PENALTIES.—In any action
24 under paragraph (1) in which the refusal or failure

1 to pay was willful, the Administrator may seek re-
2 covery—

3 (A) of punitive damages;

4 (B) of the costs of any civil action under
5 this subsection, including reasonable fees in-
6 curred for collection, expert witnesses, and at-
7 torney's fees; and

8 (C) in addition to any other penalty, of a
9 fine equal to the total amount of the liability
10 that has not been collected.

11 (d) ENFORCEMENT AUTHORITY AS TO INSURER PAR-
12 TICIPANTS.—

13 (1) IN GENERAL.—In addition to or in lieu of
14 the enforcement remedies described in subsection
15 (c), the Administrator may seek to recover amounts
16 in satisfaction of a payment not timely paid by an
17 insurer participant under the procedures under this
18 subsection.

19 (2) SUBROGATION.—To the extent required to
20 establish personal jurisdiction over nonpaying in-
21 surer participants, the Administrator shall be
22 deemed to be subrogated to the contractual rights of
23 participants to seek recovery from nonpaying insur-
24 ing participants that are domiciled outside the
25 United States under the policies of liability insur-

1 ance or contracts of liability reinsurance or
2 retrocessional reinsurance applicable to asbestos
3 claims, and the Administrator may bring an action
4 or an arbitration against the nonpaying insurer par-
5 ticipants under the provisions of such policies and
6 contracts, provided that—

7 (A) any amounts collected under this sub-
8 section shall not increase the amount of deemed
9 erosion allocated to any policy or contract under
10 section 404, or otherwise reduce coverage avail-
11 able to a participant; and

12 (B) subrogation under this subsection shall
13 have no effect on the validity of the insurance
14 policies or reinsurance, and any contrary State
15 law is expressly preempted.

16 (3) RECOVERABILITY OF CONTRIBUTION.—For
17 purposes of this subsection—

18 (A) all contributions to the Fund required
19 of a participant shall be deemed to be sums le-
20 gally required to be paid for bodily injury re-
21 sulting from exposure to asbestos;

22 (B) all contributions to the Fund required
23 of any participant shall be deemed to be a sin-
24 gle loss arising from a single occurrence under

1 each contract to which the Administrator is
2 subrogated; and

3 (C) with respect to reinsurance contracts,
4 all contributions to the Fund required of a par-
5 ticipant shall be deemed to be payments to a
6 single claimant for a single loss.

7 (4) NO CREDIT OR OFFSET.—In any action
8 brought under this subsection, the nonpaying insurer
9 or reinsurer shall be entitled to no credit or offset
10 for amounts collectible or potentially collectible from
11 any participant nor shall such defaulting participant
12 have any right to collect any sums payable under
13 this section from any participant.

14 (5) COOPERATION.—Insureds and cedents shall
15 cooperate with the Administrator's reasonable re-
16 quests for assistance in any such proceeding. The
17 positions taken or statements made by the Adminis-
18 trator in any such proceeding shall not be binding
19 on or attributed to the insureds or cedents in any
20 other proceeding. The outcome of such a proceeding
21 shall not have a preclusive effect on the insureds or
22 cedents in any other proceeding and shall not be ad-
23 missible against any subrogee under this section.
24 The Administrator shall have the authority to settle

1 or compromise any claims against a nonpaying in-
2 surer participant under this subsection.

3 (e) BAR ON UNITED STATES BUSINESS.—If any di-
4 rect insurer or reinsurer refuses to furnish any informa-
5 tion requested by or to pay any contribution required by
6 this Act, then, in addition to any other penalties imposed
7 by this Act, the Administrator may issue an order barring
8 such entity and its affiliates from insuring risks located
9 within the United States or otherwise doing business with-
10 in the United States. Insurer participants or their affili-
11 ates seeking to obtain a license from any State to write
12 any type of insurance shall be barred from obtaining any
13 such license until payment of all contributions required as
14 of the date of license application.

15 (f) CREDIT FOR REINSURANCE.—If the Adminis-
16 trator determines that an insurer participant that is a re-
17 insurer is in default in paying any required contribution
18 or otherwise not in compliance with this Act, the Adminis-
19 trator may issue an order barring any direct insurer par-
20 ticipant from receiving credit for reinsurance purchased
21 from the defaulting reinsurer. Any State law governing
22 credit for reinsurance to the contrary is preempted.

23 (g) DEFENSE LIMITATION.—In any proceeding under
24 this section, the participant shall be barred from bringing
25 any challenge to any determination of the Administrator

1 or the Asbestos Insurers Commission regarding its liability
 2 under this Act, or to the constitutionality of this Act or
 3 any provision thereof, if such challenge could have been
 4 made during the review provided under section 204(i)(10),
 5 or in a judicial review proceeding under section 303.

6 (h) DEPOSIT OF FUNDS.—

7 (1) IN GENERAL.—Any funds collected under
 8 subsection (c)(2) (A) or (C) shall be—

9 (A) deposited in the Fund; and

10 (B) used only to pay—

11 (i) claims for awards for an eligible
 12 disease or condition determined under title
 13 I; or

14 (ii) claims for reimbursement for med-
 15 ical monitoring determined under title I.

16 (2) NO EFFECT ON OTHER LIABILITIES.—The
 17 imposition of a fine under subsection (c)(2)(C) shall
 18 have no effect on—

19 (A) the assessment of contributions under
 20 subtitles A and B; or

21 (B) any other provision of this Act.

22 (i) PROPERTY OF THE ESTATE.—Section 541(b) of
 23 title 11, United States Code, is amended—

24 (1) in paragraph (4)(B)(ii), by striking “or” at
 25 the end;

1 (2) in paragraph (5), by striking “prohibition.”
 2 and inserting “prohibition; or”; and

3 (3) by inserting after paragraph (5) and before
 4 the last undesignated sentence the following:

5 “(6) the value of any pending claim against or
 6 the amount of an award granted from the Asbestos
 7 Injury Claims Resolution Fund established under
 8 the Fairness in Asbestos Injury Resolution Act of
 9 2004.”.

10 **SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.**

11 If any amount of payment obligation under this title
 12 is not paid on or before the last date prescribed for pay-
 13 ment, the liable party shall pay interest on such amount
 14 at the Federal short-term rate determined under section
 15 6621(b) of the Internal Revenue Code of 1986, plus 5 per-
 16 centage points, for the period from such last date to the
 17 date paid.

18 **TITLE III—JUDICIAL REVIEW**

19 **SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

20 (a) **EXCLUSIVE JURISDICTION.**—The United States
 21 Court of Appeals for the District of Columbia Circuit shall
 22 have exclusive jurisdiction over any action to review rules
 23 or regulations promulgated by the Administrator or the
 24 Asbestos Insurers Commission under this Act.

1 (b) PERIOD FOR FILING PETITION.—A petition for
2 review under this section shall be filed not later than 60
3 days after the date notice of such promulgation appears
4 in the Federal Register.

5 **SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

6 (a) IN GENERAL.—Any claimant adversely affected
7 or aggrieved by a final decision of the Administrator
8 awarding or denying compensation under title I may peti-
9 tion for judicial review of such decision. Any petition for
10 review under this section shall be filed within 90 days of
11 the issuance of a final decision of the Administrator.

12 (b) EXCLUSIVE JURISDICTION.—A petition for review
13 may only be filed in the United States Court of Appeals
14 for the circuit in which the claimant resides at the time
15 of the issuance of the final order.

16 (c) STANDARD OF REVIEW.—The court shall uphold
17 the decision of the Administrator unless the court deter-
18 mines, upon review of the record as a whole, that the deci-
19 sion is not supported by substantial evidence, is contrary
20 to law, or is not in accordance with procedure required
21 by law.

22 **SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESS-**
23 **MENTS.**

24 (a) EXCLUSIVE JURISDICTION.—The United States
25 Court of Appeals for the District of Columbia Circuit shall

1 have exclusive jurisdiction over any action to review a final
2 determination by the Administrator or the Asbestos Insur-
3 ers Commission regarding the liability of any person to
4 make a payment to the Fund, including a notice of appli-
5 cable subtier assignment under section 204(i), a notice of
6 financial hardship or inequity determination under section
7 204(d), and a notice of insurer participant obligation
8 under section 212(b).

9 (b) PERIOD FOR FILING ACTION.—A petition for re-
10 view under subsection (a) shall be filed not later than 60
11 days after a final determination by the Administrator or
12 the Commission giving rise to the action. Any defendant
13 participant who receives a notice of its applicable subtier
14 under section 204(i) or a notice of financial hardship or
15 inequity determination under section 204(d) shall com-
16 mence any action within 30 days after a decision on re-
17 hearing under section 204(i)(10), and any insurer partici-
18 pant who receives a notice of a payment obligation under
19 section 212(b) shall commence any action within 30 days
20 after receiving such notice.

21 **SEC. 304. OTHER JUDICIAL CHALLENGES.**

22 (a) EXCLUSIVE JURISDICTION.—The United States
23 District Court for the District of Columbia shall have ex-
24 clusive jurisdiction over any action for declaratory or in-
25 junctive relieve challenging any provision of this Act. An

1 action under this section shall be filed not later than 60
 2 days after the date of enactment of this Act or 60 days
 3 after the final action by the Administrator or the Commis-
 4 sion giving rise to the action, whichever is later.

5 (b) DIRECT APPEAL.—A final decision in the action
 6 shall be reviewable on appeal directly to the Supreme
 7 Court of the United States. Such appeal shall be taken
 8 by the filing of a notice of appeal within 30 days, and
 9 the filing of a jurisdictional statement within 60 days, of
 10 the entry of the final decision.

11 (c) EXPEDITED PROCEDURES.—It shall be the duty
 12 of the United States District Court for the District of Co-
 13 lumbia and the Supreme Court of the United States to
 14 advance on the docket and to expedite to the greatest pos-
 15 sible extent the disposition of the action and appeal.

16 **SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL RE-**
 17 **VIEW.**

18 (a) NO STAYS.—No court may issue a stay of pay-
 19 ment by any party into the Fund pending its final judg-
 20 ment.

21 (b) EXCLUSIVITY OF REVIEW.—An action of the Ad-
 22 ministrator or the Asbestos Insurers Commission for
 23 which review could have been obtained under section 301,
 24 302, or 303 shall not be subject to judicial review in any
 25 other proceeding.

1 (c) CONSTITUTIONAL REVIEW.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law, any interlocutory or final judgment,
4 decree, or order of a Federal court holding this Act,
5 or any provision or application thereof, unconstitu-
6 tional shall be reviewable as a matter of right by di-
7 rect appeal to the Supreme Court.

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

11 **TITLE IV—MISCELLANEOUS** 12 **PROVISIONS**

13 **SEC. 401. FALSE INFORMATION.**

14 (a) IN GENERAL.—Chapter 63 of title 18, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

17 **“§ 1348. Fraud and false statements in connection**
18 **with participation in Asbestos Injury**
19 **Claims Resolution Fund**

20 **“(a) FRAUD RELATING TO ASBESTOS INJURY**
21 **CLAIMS RESOLUTION FUND.—**Whoever knowingly and
22 willfully executes, or attempts to execute, a scheme or arti-
23 fice to defraud the Office of Asbestos Disease Compensa-
24 tion or the Asbestos Insurers Commission under title II
25 of the Fairness in Asbestos Injury Resolution Act of 2004

1 shall be fined under this title or imprisoned not more than
 2 20 years, or both.

3 “(b) FALSE STATEMENT RELATING TO ASBESTOS
 4 INJURY CLAIMS RESOLUTION FUND.—Whoever, in any
 5 matter involving the Office of Asbestos Disease Compensa-
 6 tion or the Asbestos Insurers Commission, knowingly and
 7 willfully—

8 “(1) falsifies, conceals, or covers up by any
 9 trick, scheme, or device a material fact;

10 “(2) makes any materially false, fictitious, or
 11 fraudulent statements or representations; or

12 “(3) makes or uses any false writing or docu-
 13 ment knowing the same to contain any materially
 14 false, fictitious, or fraudulent statement or entry, in
 15 connection with the award of a claim or the deter-
 16 mination of a participant’s payment obligation under
 17 title I or II of the Fairness in Asbestos Injury Reso-
 18 lution Act of 2004 shall be fined under this title or
 19 imprisoned not more than 10 years, or both.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 21 The table of sections for chapter 63 of title 18, United
 22 States Code, is amended by adding at the end the fol-
 23 lowing:

“1348. Fraud and false statements in connection with participation in Asbestos
 Injury Claims Resolution Fund.”.

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 2004, 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 CONTRACT.—Sec-
17 tion 365 of title 11, United States Code, is amended by
18 adding at the end the following:

19 “(p) 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 2004), 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 2004) 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 title II of the Fairness in Asbestos Injury Resolu-
16 tion Act of 2004.”.

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 2004) of
24 the debtor’s payment obligations assessed against the par-
25 ticipant under 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 2004); 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 2004; 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 2004 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 In-
2 jury Resolution Act of 2004 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 established under the Fair-
23 ness in Asbestos Injury Resolution Act of 2004 if
24 the trust qualifies as a ‘trust’ under section 201 of
25 that Act.

1 “(2) TRANSFER OF TRUST ASSETS.—

2 “(A) IN GENERAL.—

3 “(i) Except as provided under sub-
4 paragraphs (B), (C), and (E), the assets in
5 any trust established to provide compensa-
6 tion for asbestos claims (as defined in sec-
7 tion 3 of the Fairness in Asbestos Injury
8 Resolution Act of 2004) shall be trans-
9 ferred to the Fund not later than 6
10 months after the date of enactment of the
11 Fairness in Asbestos Injury Resolution Act
12 of 2004 or 30 days following funding of a
13 trust established under a reorganization
14 plan subject to section 202(c) of that Act.
15 Except as provided under subparagraph
16 (B), the Administrator of the Fund shall
17 accept such assets and utilize them for any
18 purposes of the Fund under section 221 of
19 such Act, including the payment of claims
20 for awards under such Act to beneficiaries
21 of the trust from which the assets were
22 transferred.

23 “(ii) Notwithstanding any other provi-
24 sion of Federal or State law, no liability of
25 any kind may be imposed on a trustee of

1 a trust for transferring assets to the Fund
2 in accordance with clause (i).

3 “(B) AUTHORITY TO REFUSE ASSETS.—
4 The Administrator of the Fund may refuse to
5 accept any asset that the Administrator deter-
6 mines may create liability for the Fund in ex-
7 cess of the value of the asset.

8 “(C) ALLOCATION OF TRUST ASSETS.—If
9 a trust under subparagraph (A) has bene-
10 ficiaries with claims that are not asbestos
11 claims, the assets transferred to the Fund
12 under subparagraph (A) shall not include assets
13 allocable to such beneficiaries. The trustees of
14 any such trust shall determine the amount of
15 such trust assets to be reserved for the con-
16 tinuing operation of the trust in processing and
17 paying claims that are not asbestos claims. The
18 trustees shall demonstrate to the satisfaction of
19 the Administrator, or by clear and convincing
20 evidence in a proceeding brought before the
21 United States District Court for the District of
22 Columbia in accordance with paragraph (4),
23 that the amount reserved is properly allocable
24 to claims other than asbestos claims.

1 “(D) SALE OF FUND ASSETS.—The invest-
2 ment requirements under section 222 of the
3 Fairness in Asbestos Injury Resolution Act of
4 2004 shall not be construed to require the Ad-
5 ministrator of the Fund to sell assets trans-
6 ferred to the Fund under subparagraph (A).

7 “(E) LIQUIDATED CLAIMS.—Except as
8 specifically provided in this subparagraph, all
9 asbestos claims against a trust are superseded
10 and preempted as of the date of enactment of
11 the Fairness in Asbestos Injury Resolution Act
12 of 2004, and a trust shall not make any pay-
13 ment relating to asbestos claims after that date.
14 If, in the ordinary course and the normal and
15 usual administration of the trust consistent
16 with past practices, a trust had before the date
17 of enactment of the Fairness in Asbestos Injury
18 Resolution Act of 2004, made all determina-
19 tions necessary to entitle an individual claimant
20 to a noncontingent cash payment from the
21 trust, the trust shall (i) make any lump-sum
22 cash payment due to that claimant, and (ii)
23 make or provide for all remaining noncontin-
24 gent payments on any award being paid or
25 scheduled to be paid on an installment basis, in

1 each case only to the same extent that the trust
2 would have made such cash payments in the or-
3 dinary course and consistent with past practices
4 before enactment of that Act. A trust shall not
5 make any payment in respect of any alleged
6 contingent right to recover any greater amount
7 than the trust had already paid, or had com-
8 pleted all determinations necessary to pay, to a
9 claimant in cash in accordance with its ordinary
10 distribution procedures in effect as of June 1,
11 2003.

12 “(3) INJUNCTION.—Any injunction issued as
13 part of the formation of a trust described in para-
14 graph (1) shall remain in full force and effect. No
15 court, Federal or State, may enjoin the transfer of
16 assets by a trust to the Fund in accordance with
17 this subsection pending resolution of any litigation
18 challenging such transfer or the validity of this sub-
19 section or of any provision of the Fairness in Asbes-
20 tos Injury Resolution Act of 2004, and an interlocu-
21 tory order denying such relief shall not be subject to
22 immediate appeal under section 1291(a) of title 28.
23 Notwithstanding any other provision of law, once
24 such a transfer has been made, the assets of the
25 Fund shall be available to satisfy any final judgment

1 entered in such an action and no longer subject to
2 any appeal or review, (i) declaring that the transfer
3 effected a taking of a right or property for which an
4 individual is constitutionally entitled to just com-
5 pensation, or (ii) requiring the transfer back to a
6 trust of any or all assets transferred by that trust
7 to the Fund.

8 “(4) JURISDICTION.—Solely for purposes of im-
9 plementing this subsection, personal jurisdiction over
10 every covered trust, the trustees thereof, and any
11 other necessary party, and exclusive subject matter
12 jurisdiction over every question arising out of or re-
13 lated to this subsection, shall be vested in the United
14 States District Court for the District of Columbia.
15 Notwithstanding any other provision of law, includ-
16 ing section 1127 of this title, that court may make
17 any order necessary and appropriate to facilitate
18 prompt compliance with this subsection, including
19 assuming jurisdiction over and modifying, to the ex-
20 tent necessary, any applicable confirmation order or
21 other order with continuing and prospective applica-
22 tion to a covered trust. The court may also resolve
23 any related challenge to the constitutionality of this
24 subsection or of its application to any trust, trustee,
25 or individual claimant. The Administrator of the

1 Fund may bring an action seeking such an order or
2 modification, under the standards of rule 60(b) of
3 the Federal Rules of Civil Procedure or otherwise,
4 and shall be entitled to intervene as of right in any
5 action brought by any other party seeking interpre-
6 tation, application, or invalidation of this subsection.
7 Any order denying relief that would facilitate prompt
8 compliance with the transfer provisions of this sub-
9 section shall be subject to immediate appeal under
10 section 1291(a) of title 28.”.

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

14 “(h) Notwithstanding the rights and powers of a
15 trustee under sections 544, 545, 547, 548, 549, and 550
16 of this title, if a debtor is a participant (as that term is
17 defined in section 3 of the Fairness in Asbestos Injury
18 Resolution Act of 2004), the trustee may not avoid a
19 transfer made by the debtor under its payment obligations
20 under section 202 or 203 of that Act.”.

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

24 “(14) If the debtor is a participant (as that
25 term is defined in section 3 of the Fairness in As-

1 bestos Injury Resolution Act of 2004), the plan pro-
2 vides for the continuation after its effective date of
3 payment of all payment obligations under title II of
4 that Act.”.

5 (i) EFFECT ON INSURANCE RECEIVERSHIP PRO-
6 CEEDINGS.—

7 (1) LIEN.—In an insurance receivership pro-
8 ceeding involving a direct insurer, reinsurer or run-
9 off participant, there shall be a lien in favor of the
10 Fund for the amount of any assessment and any
11 such lien shall be given priority over all other claims
12 against the participant in receivership, except for the
13 expenses of administration of the receivership. Any
14 State law that provides for priorities inconsistent
15 with this provision is preempted by this Act.

16 (2) PAYMENT OF ASSESSMENT.—Payment of
17 any assessment required by this Act shall not be
18 subject to any automatic or judicially entered stay in
19 any insurance receivership proceeding. This Act shall
20 preempt any State law requiring that payments by
21 a direct insurer, reinsurer or runoff participant in
22 an insurance receivership proceeding be approved by
23 a court, receiver or other person. Payments of as-
24 sessments by any direct insurer or reinsurer partici-
25 pant under this Act shall not be subject to the avoid-

1 ance powers of a receiver or a court in or relating
2 to an insurance receivership proceeding.

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, including any claim described in subsection (d)(2).

8 (b) SUPERSEDING PROVISIONS.—

9 (1) IN GENERAL.—Any agreement, under-
10 standing, or undertaking by any person or affiliated
11 group with respect to the treatment of any asbestos
12 claim that requires future performance by any party,
13 insurer of such party, settlement administrator, or
14 escrow agent shall be superseded in its entirety by
15 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, including any claim described in subsection
24 (d)(2), under any Federal or State law.

25 (d) BAR ON ASBESTOS CLAIMS.—

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

9 (2) CERTAIN SPECIFIED CLAIMS.—

10 (A) IN GENERAL.—Subject to section 404
11 (d) and (e)(3) of this Act, no claim may be
12 brought or pursued in any Federal or State
13 court or insurance receivership proceeding—

14 (i) relating to any default, confessed
15 or stipulated judgment on an asbestos
16 claim if the judgment debtor expressly
17 agreed, in writing or otherwise, not to con-
18 test the entry of judgment against it and
19 the plaintiff expressly agreed, in writing or
20 otherwise, to seek satisfaction of the judg-
21 ment only against insurers or in bank-
22 ruptcy;

23 (ii) relating to the defense, investiga-
24 tion, handling, litigation, settlement or
25 payment of any asbestos claim by any par-

1 participant, including claims for bad faith or
 2 unfair or deceptive claims handling or
 3 breach of any duties of good faith; or

4 (iii) arising out of or relating to the
 5 asbestos-related injury of any individual
 6 and—

7 (I) asserting any conspiracy, con-
 8 cert of action, aiding or abetting, act,
 9 conduct, statement, misstatement, un-
 10 dertaking, publication, omission, or
 11 failure to detect, speak, disclose, pub-
 12 lish or warn relating to the presence
 13 or health effects of asbestos or the
 14 use, sale, distribution, manufacture,
 15 production, development, inspection,
 16 advertising, marketing or installation
 17 of asbestos; or

18 (II) asserting any conspiracy,
 19 act, conduct, statement, omission or
 20 failure to detect, disclose or warn re-
 21 lating to the presence or health effects
 22 of asbestos or the use, sale, distribu-
 23 tion, manufacture, production, devel-
 24 opment, inspection, advertising, mar-
 25 keting or installation of asbestos, as-

1 serted as or in a direct action against
2 an insurer or reinsurer based upon
3 any theory, statutory, contract, tort or
4 otherwise; or

5 (iv) by any third party, and premised
6 on any theory, allegation or cause of ac-
7 tion, for reimbursement of health care
8 costs allegedly associated with the use of
9 or exposure to asbestos, whether such
10 claim is asserted directly, indirectly or de-
11 rivatively.

12 (B) EXCEPTIONS.—Subparagraph (A) (ii)
13 and (iii) shall not apply to claims against par-
14 ticipants by persons—

15 (i) with whom the participant is in
16 privity of contract;

17 (ii) who have received an assignment
18 of insurance rights not otherwise voided by
19 this Act; or

20 (iii) who are beneficiaries covered by
21 the express terms of a contract with that
22 participant.

23 (3) PREEMPTION.—Any action asserting an as-
24 bestos claim, including a claim described in sub-
25 section (d)(2), in any Federal or State court, except

1 actions for which an order or judgment has been
2 duly entered by a court that is no longer subject to
3 any appeal or judicial review before the date of en-
4 actment of this Act, is preempted by this Act.

5 (4) DISMISSAL.—No judgment other than a
6 judgment of dismissal may be entered in any such
7 action, including an action pending on appeal, or on
8 petition or motion for discretionary review, on or
9 after the date of enactment of this Act. A court may
10 dismiss any such action on its motion. If the court
11 denies the motion to dismiss, it shall stay further
12 proceedings until final disposition of any appeal
13 taken under this Act.

14 (5) REMOVAL.—

15 (A) IN GENERAL.—If an action in any
16 State court under paragraph (3) is not dis-
17 missed, or if an order entered after the date of
18 enactment of this Act purporting to enter judg-
19 ment or deny review is not rescinded and re-
20 placed with an order of dismissal within 30
21 days after the filing of a motion by any party
22 to the action advising the court of the provi-
23 sions of this Act, any party may remove the
24 case to the district court of the United States
25 for the district in which such action is pending.

1 (B) TIME LIMITS.—For actions originally
2 filed after the date of enactment of this Act, the
3 notice of removal shall be filed within the time
4 limits specified in section 1441(b) of title 28,
5 United States Code.

6 (C) PROCEDURES.—The procedures for re-
7 moval and proceedings after removal shall be in
8 accordance with sections 1446 through 1450 of
9 title 28, United States Code, except as may be
10 necessary to accommodate removal of any ac-
11 tions pending (including on appeal) on the date
12 of enactment of this Act.

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

15 (i) determining whether removal was
16 proper; and

17 (ii) determining whether the claim
18 presented is an asbestos claim as defined
19 by this Act.

20 (6) CREDITS.—If, notwithstanding the express
21 intent of Congress stated in this section, any court
22 finally determines for any reason that an asbestos
23 claim including a claim described under paragraph
24 (2) for which, before the date of enactment of this
25 Act, there had been no order or judgment duly en-

1 tered by a court no longer subject to any appeal or
2 review, is not subject to the exclusive remedy or pre-
3 emption provisions of this section, then any partici-
4 pant required to satisfy a final judgment executed
5 with respect to any such claim may elect to receive
6 a credit against any assessment owed to the Fund
7 equal to the amount of the payment made with re-
8 spect to such executed judgment. The Administrator
9 shall require participants seeking credit under this
10 section to demonstrate that the participant timely
11 pursued all available remedies, including remedies
12 available under this section to obtain dismissal of
13 the claim, and that the participant notified the Ad-
14 ministrator at least 20 days before the expiration of
15 any period within which to appeal the denial of a
16 motion to dismiss based on this section. The Admin-
17 istrator may require such participant to furnish such
18 further information as is necessary and appropriate
19 to establish eligibility for and the amount of the
20 credits. The Administrator may intervene in any ac-
21 tion in which a credit may be due under this section.

22 **SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CON-**
23 **TRACTS.**

24 (a) EROSION OF INSURANCE COVERAGE LIMITS.—

1 (1) DEFINITIONS.—In this section, the fol-
 2 lowing definitions shall apply:

3 (A) DEEMED EROSION AMOUNT.—The
 4 term “deemed erosion amount” means the
 5 amount of erosion deemed to occur at enact-
 6 ment under paragraph (2).

7 (B) EARLY SUNSET.—The term “early
 8 sunset” means an event causing termination of
 9 the program under section 405(f) which relieves
 10 the insurer participants of paying some portion
 11 of the aggregate payment level of
 12 \$46,025,000,000 required in section
 13 212(a)(2)(A).

14 (C) EARNED EROSION AMOUNT.—The
 15 term “earned erosion amount” means, in the
 16 event of any early sunset under section 405(f),
 17 the percentage, as set forth in the following
 18 schedule, depending on the year in which the
 19 defendant participants’ funding obligations end,
 20 of those amounts which, at the time of the early
 21 sunset, a defendant participant has paid to the
 22 fund and remains obligated to pay into the
 23 fund.

**Year After Enactment In Which
 Defendant Participant’s
 Funding Obligation Ends:**

**Applicable
 Percentage:**

10 70.78

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
11	68.75
12	67.06
13	65.63
14	64.40
15	63.33
16	62.40
17	61.58
18	60.39
19	59.33
20	58.38
21	57.51
22	56.36
23	55.31
24	56.71
25	58.11
26	59.51

1 (D) REMAINING AGGREGATE PRODUCTS

2 LIMITS.—The term “remaining aggregate prod-
3 ucts limits” means aggregate limits that apply
4 to insurance coverage granted under the “prod-
5 ucts hazard”, “completed operations hazard”,
6 or “Products—Completed Operations Liability”
7 in any comprehensive general liability policy
8 issued between calendar years 1940 and 1986
9 to cover injury which occurs in any State, as re-
10 duced by—

11 (i) any existing impairment of such
12 aggregate limits as of the date of enact-
13 ment of this Act; and

14 (ii) the resolution of claims for reim-
15 bursement or coverage of liability or paid
16 or incurred loss for which notice was pro-

1 vided to the insurer before the date of en-
2 actment of this Act.

3 (E) SCHEDULED PAYMENT AMOUNTS.—

4 The term “scheduled payment amounts” means
5 the future payment obligation to the Fund
6 under this Act from a defendant participant in
7 the amount established under sections 203 and
8 204.

9 (F) UNEARNED EROSION AMOUNT.—The

10 term “unearned erosion amount” means, in the
11 event of any early sunset under section 405(f),
12 the difference between the deemed erosion
13 amount and the earned erosion amount.

14 (2) QUANTUM AND TIMING OF EROSION.—

15 (A) EROSION UPON ENACTMENT.—The

16 collective payment obligations to the Fund of
17 the insurer and reinsurer participants as as-
18 sessed by the Administrator shall be deemed as
19 of the date of enactment of this Act to erode re-
20 maining aggregate products limits available to a
21 defendant participant only in an amount of
22 59.64 percent of each defendant participant’s
23 scheduled payment amount.

24 (B) NO EROSION UPON CONTINGENT

25 CALL.—Any contingent payment required by

1 the Administrator of any defendant participant
2 shall not be deemed to erode remaining aggre-
3 gate product limits.

4 (C) NO ASSERTION OF CLAIM.—No insurer
5 or reinsurer may assert any claim against a de-
6 fendant participant or captive insurer for insur-
7 ance, reinsurance, payment of a deductible, or
8 retrospective premium adjustment arising out
9 of that insurer or reinsurer's payments to the
10 Fund or the erosion deemed to occur under this
11 section.

12 (D) POLICIES WITHOUT CERTAIN LIMITS
13 OR WITH EXCLUSION.—Other than under sub-
14 paragraph (F), nothing in this section shall re-
15 quire or permit the erosion of any insurance
16 policy or limit that does not contain an aggre-
17 gate products limit, or that contains an asbes-
18 tos exclusion.

19 (E) TREATMENT OF CONSOLIDATION
20 ELECTION.—If an affiliated group elects con-
21 solidation as provided in section 204(f), the
22 total erosion of limits for the affiliated group
23 under paragraph (2)(A) shall not exceed 59.64
24 percent of the scheduled payment amount of
25 the single payment obligation for the entire af-

1 affiliated group. The total erosion of limits for
2 any individual defendant participant in the af-
3 filiated group shall not exceed its individual
4 share of 59.64 percent of the affiliated group's
5 scheduled payment amount, as measured by the
6 individual defendant participant's percentage
7 share of the affiliated group's prior asbestos ex-
8 penditures.

9 (F) RULE OF CONSTRUCTION.—Notwith-
10 standing any other provision of this section,
11 nothing in this Act shall be deemed to erode re-
12 maining aggregate products limits of a defend-
13 ant participant that can demonstrate by a pre-
14 ponderance of the evidence that 75 percent of
15 its prior asbestos expenditures were made in de-
16 fense or satisfaction of asbestos claims alleging
17 bodily injury arising exclusively from the expo-
18 sure to asbestos at premises owned, rented, or
19 controlled by the defendant participant (a
20 “premises defendant”). In calculating such per-
21 centage, where expenditures were made in de-
22 fense or satisfaction of asbestos claims alleging
23 bodily injury due to exposure to the defendant
24 participant's products and to asbestos at prem-
25 ises owned, rented or controlled by the defend-

1 ant participant, half of such expenditures shall
2 be deemed to be for such premises exposures.
3 In the event that a defendant participant estab-
4 lishes itself as a premises defendant, 75 percent
5 of the payments by such defendant participant
6 shall erode coverage limits, if any, applicable to
7 premises liabilities under applicable law.

8 (3) METHOD OF EROSION.—

9 (A) ALLOCATION.—The amount of erosion
10 allocated to each defendant participant shall be
11 allocated among periods in which policies with
12 remaining aggregate product limits are avail-
13 able to that defendant participant pro rata by
14 policy period, in ascending order by attachment
15 point.

16 (B) OTHER EROSION METHODS.—

17 (i) IN GENERAL.—Notwithstanding
18 subparagraph (A), the method of erosion
19 of any remaining aggregate products limits
20 which are subject to—

21 (I) a coverage-in-place or settle-
22 ment agreement between a defendant
23 participant and 1 or more insurance
24 participants as of the date of enact-
25 ment; or

1 (II) a final and nonappealable
 2 judgment as of the date of enactment
 3 or resulting from a claim for coverage
 4 or reimbursement pending as of such
 5 date, shall be as specified in such
 6 agreement or judgment with regard to
 7 erosion applicable to such insurance
 8 participants' policies.

9 (ii) REMAINING LIMITS.—To the ex-
 10 tent that a final nonappealable judgment
 11 or settlement agreement to which an in-
 12 surer participant and a defendant partici-
 13 pant are parties in effect as of the date of
 14 enactment of this Act extinguished a de-
 15 fendant participant's right to seek coverage
 16 for asbestos claims under an insurer par-
 17 ticipant's policies, any remaining limits in
 18 such policies shall not be considered to be
 19 remaining aggregate products limits under
 20 subsection (a)(1)(A).

21 (4) RESTORATION OF AGGREGATE PRODUCT
 22 LIMITS UPON EARLY SUNSET.—

23 (A) RESTORATION.—In the event of an
 24 early sunset, any unearned erosion amount will
 25 be deemed restored as aggregate products limits

1 available to a defendant participant as of the
2 date of enactment.

3 (B) METHOD OF RESTORATION.—The un-
4 earned erosion amount will be deemed restored
5 to each defendant participant’s policies in such
6 a manner that the last limits that were deemed
7 eroded at enactment under this subsection are
8 deemed to be the first limits restored upon
9 early sunset.

10 (C) TOLLING OF COVERAGE CLAIMS.—In
11 the event of an early sunset, the applicable stat-
12 ute of limitations and contractual provisions for
13 the filing of claims under any insurance policy
14 with restored aggregate product limits shall be
15 deemed tolled after the date of enactment
16 through the date 6 months after the date of
17 early sunset.

18 (5) PAYMENTS BY DEFENDANT PARTICIPANT.—

19 Payments made by a defendant participant shall be
20 deemed to erode, exhaust or otherwise satisfy appli-
21 cable self-insured retentions, deductibles, retrospec-
22 tively rated premiums, and limits issued by non-
23 participating insolvent or captive insurance compa-
24 nies. Reduction of remaining aggregate limits under
25 this subsection shall not limit the right of a defend-

1 ant participant to collect from any insurer not a par-
2 ticipant.

3 (6) EFFECT ON OTHER INSURANCE CLAIMS.—

4 Other than as specified in this subsection, this Act
5 does not alter, change, modify, or affect insurance
6 for claims other than asbestos claims.

7 (b) DISPUTE RESOLUTION PROCEDURE.—

8 (1) ARBITRATION.—The parties to a dispute re-
9 garding the erosion of insurance coverage limits
10 under this section may agree in writing to settle
11 such dispute by arbitration. Any such provision or
12 agreement shall be valid, irrevocable, and enforce-
13 able, except for any grounds that exist at law or in
14 equity for revocation of a contract.

15 (2) TITLE 9, UNITED STATES CODE.—Arbitra-
16 tion of such disputes, awards by arbitrators, and
17 confirmation of awards shall be governed by title 9,
18 United States Code, to the extent such title is not
19 inconsistent with this section. In any such arbitra-
20 tion proceeding, the erosion principles provided for
21 under this section shall be binding on the arbitrator,
22 unless the parties agree to the contrary.

23 (3) FINAL AND BINDING AWARD.—An award by
24 an arbitrator shall be final and binding between the
25 parties to the arbitration, but shall have no force or

1 effect on any other person. The parties to an arbi-
2 tration may agree that in the event a policy which
3 is the subject matter of an award is subsequently de-
4 termined to be eroded in a manner different from
5 the manner determined by the arbitration in a judg-
6 ment rendered by a court of competent jurisdiction
7 from which no appeal can or has been taken, such
8 arbitration award may be modified by any court of
9 competent jurisdiction upon application by any party
10 to the arbitration. Any such modification shall gov-
11 ern the rights and obligations between such parties
12 after the date of such modification.

13 (c) EFFECT ON NONPARTICIPANTS.—

14 (1) IN GENERAL.—No insurance company or
15 reinsurance company that is not a participant, other
16 than a captive insurer, shall be entitled to claim that
17 payments to the Fund erode, exhaust, or otherwise
18 limit the nonparticipant's insurance or reinsurance
19 obligations.

20 (2) OTHER CLAIMS.—Nothing in this Act shall
21 preclude a participant from pursuing any claim for
22 insurance or reinsurance from any person that is not
23 a participant other than a captive insurer.

24 (d) FINITE RISK POLICIES NOT AFFECTED.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of this Act, this Act shall not alter, affect
3 or impair any rights or obligations of—

4 (A) any party to an insurance contract
5 that expressly provides coverage for govern-
6 mental charges or assessments imposed to re-
7 place insurance or reinsurance liabilities in ef-
8 fect on the date of enactment of this Act; or

9 (B) subject to paragraph (2), any person
10 with respect to any insurance or reinsurance
11 purchased by a participant after December 31,
12 1996, that expressly (but not necessarily exclu-
13 sively) provides coverage for asbestos liabilities,
14 including those policies commonly referred to as
15 “finite risk” policies.

16 (2) LIMITATION.—No person may assert that
17 any amounts paid to the Fund in accordance with
18 this Act are covered by any policy described under
19 paragraph (1)(B) purchased by a defendant partici-
20 pant, unless such policy specifically provides cov-
21 erage for required payments to a Federal trust fund
22 established by a Federal statute to resolve asbestos
23 injury claims.

24 (e) EFFECT ON CERTAIN INSURANCE AND REINSUR-
25 ANCE CLAIMS.—

1 (1) NO COVERAGE FOR FUND ASSESSMENTS.—

2 No participant or captive insurer may pursue an in-
3 surance or reinsurance claim against another partici-
4 pant or captive insurer for payments to the Fund re-
5 quired under this Act, except under a contract spe-
6 cifically providing insurance or reinsurance for re-
7 quired payments to a Federal trust fund established
8 by a Federal statute to resolve asbestos injury
9 claims or, where applicable, under finite risk policies
10 under subsection (d).

11 (2) CERTAIN INSURANCE ASSIGNMENTS VOID-
12 ED.—Any assignment of any rights to insurance cov-
13 erage for asbestos claims to any person who has as-
14 serted an asbestos claim before the effective date, or
15 to any trust, person or other entity not part of an
16 affiliated group as defined in section 201(1) of this
17 Act established or appointed for the purpose of pay-
18 ing asbestos claims which were asserted before the
19 effective date, or by any Tier I defendant partici-
20 pant, before any sunset of this Act, shall be null and
21 void. This subsection shall not void or affect in any
22 way any assignments of rights to insurance coverage
23 other than to asbestos claimants or to trusts, per-
24 sons, or other entities not part of an affiliated group
25 as defined in section 201(1) of this Act established

1 or appointed for the purpose of paying asbestos
2 claims, or by Tier I defendant participants.

3 (3) INSURANCE CLAIMS PRESERVED.—Notwith-
4 standing any other provision of this Act, this Act
5 shall not alter, affect or impair any rights or obliga-
6 tions of any person with respect to any insurance or
7 reinsurance for amounts that any person pays, has
8 paid or becomes legally obligated to pay in respect
9 of asbestos or other claims, except to the extent
10 that—

11 (A) such person pays or becomes legally
12 obligated to pay claims that are superseded by
13 section 403 of this Act;

14 (B) any such rights or obligations of such
15 person with respect to insurance or reinsurance
16 are prohibited by subsection (e) (1) or (2) of
17 this section; or

18 (C) the limits of insurance otherwise avail-
19 able to such participant in respect of asbestos
20 claims are deemed to be eroded under sub-
21 section (a) of this section.

22 **SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.**

23 (a) IN GENERAL.—The Administrator shall submit
24 an annual report to the Committee on the Judiciary of
25 the Senate and the Committee on the Judiciary of the

1 House of Representatives on the operation of the Asbestos
2 Injury Claims Resolution Fund within 6 months after the
3 close of each fiscal year.

4 (b) CONTENTS OF REPORT.—The annual report sub-
5 mitted under this subsection shall include—

6 (1) a summary of the claims made during the
7 most recent fiscal year, including—

8 (A) the number of claims made to the Of-
9 fice and a description of the types of medical
10 diagnoses and asbestos exposure underlying
11 those claims; and

12 (B) the number of claims denied by the
13 Office and a description of the types of medical
14 diagnoses and asbestos exposures underlying
15 those claims, and a general description of the
16 reasons for their denial;

17 (2) a summary of the eligibility determinations
18 made by the Office under section 114;

19 (3) a summary of the awards made from the
20 Fund, including the amount of the awards;

21 (4) an analysis of the financial condition of the
22 Fund, including an estimation of the Fund's ability
23 to pay claims for the subsequent 5 years in full as
24 and when required, an evaluation of the Fund's abil-
25 ity to retire its existing debt and assume additional

1 debt, and an evaluation of the Fund's ability to sat-
2 isfy other obligations under the program;

3 (5) a statement of the percentage of asbestos
4 claimants who filed claims during the prior calendar
5 year and were determined to be eligible to receive
6 compensation under this Act, who have received the
7 compensation to which they are entitled according to
8 section 133 for each level;

9 (6) the identity of all participants and a sum-
10 mary of the funding allocations of each participant,
11 including the amounts of all payments to the Fund;

12 (7) a summary of all financial hardship or in-
13 equity adjustments applied for during the fiscal
14 year, and a summary of the adjustments that were
15 made during the fiscal year;

16 (8) a summary of the investments made under
17 section 222(b);

18 (9) a summary of all referrals made to law en-
19 forcement authorities under section 408 and of any
20 legal actions brought or penalties imposed under sec-
21 tion 223;

22 (10) an estimate of the number and types of
23 claims, the amount of awards, and the participant
24 payment obligations for the next fiscal year;

1 (11) any recommendations from the Advisory
2 Committee on Asbestos Disease Compensation and
3 the Medical Advisory Committee of the Fund to im-
4 prove the diagnostic, exposure, and medical criteria
5 so as to pay only those claimants whose injuries are
6 caused by exposure to asbestos;

7 (12) a summary of the results of audits con-
8 ducted under section 115; and

9 (13) a summary of prosecutions under section
10 1348 of title 18, United States Code (as added by
11 this Act).

12 (c) CLAIMS ANALYSIS.—If the Administrator con-
13 cludes, on the basis of the annual report submitted under
14 this section, that the Fund is compensating claims for in-
15 juries that are not caused by exposure to asbestos and
16 compensating such claims may, currently or in the future,
17 undermine the Fund’s ability to compensate persons with
18 injuries that are caused by exposure to asbestos, he or she
19 must include in the report an analysis of the reasons for
20 the situation, a description of the range of reasonable al-
21 ternatives for responding to the situation, and a rec-
22 ommendation as to which alternative best serves the inter-
23 est of claimants and the public. The report may include
24 a description of changes in the diagnostic, exposure or
25 medical criteria of section 121 that the Administrator be-

1 lieves may be necessary to protect the Fund from compen-
2 sating claims not caused by exposure to asbestos.

3 (d) SHORTFALL ANALYSIS.—

4 (1) IN GENERAL.—If the Administrator con-
5 cludes, on the basis of the information contained in
6 the annual report submitted under this section, that
7 the Fund may not be able to pay claims as they be-
8 come due at any time within the next 5 years, the
9 Administrator must include in the report an analysis
10 of the reasons for the situation, an estimation of
11 when the Fund will no longer be able to pay claims
12 as they become due, a description of the range of
13 reasonable alternatives for responding to the situa-
14 tion, and a recommendation as to which alternative
15 best serves the interest of claimants and the public.
16 The report may include a description of changes in
17 the diagnostic, exposure or medical criteria of sec-
18 tion 121 that the Administrator believes may be nec-
19 essary to protect the Fund. The range of alter-
20 natives may include—

21 (A) triggering the termination of this Act
22 under subsection (f) at any time after 7 years
23 following the date of enactment of this Act, and

24 (B) reform of the program set forth in ti-
25 tles I and II of this Act (including changes in

1 the diagnostic, exposure or medical criteria,
2 changes in the enforcement or application of
3 those criteria, changes in the timing of pay-
4 ments, or changes in award values).

5 (2) CONSIDERATIONS.—In formulating rec-
6 ommendations, the Administrator shall take into ac-
7 count the reasons for any shortfall, actual or pro-
8 jected, which may include—

9 (A) financial factors (such as inadequate
10 return on investments);

11 (B) the operation of the Fund generally
12 (including the operation of the diagnostic, expo-
13 sure and medical criteria, potential problems of
14 fraud, the adequacy of the criteria to rule out
15 idiopathic mesothelioma, and inadequate flexi-
16 bility to extend the timing of payments);

17 (C) the actual incidence of diseases such as
18 mesothelioma;

19 (D) compensation of diseases with alter-
20 native causes; and

21 (E) any other factor that the Adminis-
22 trator considers relevant.

23 (3) RECOMMENDATION OF TERMINATION.—Any
24 recommendation of termination should include a
25 plan for winding up the affairs of the Fund (and the

1 program generally) within a defined period, includ-
2 ing paying in full all claims resolved at the time the
3 report is prepared.

4 (4) RESOLVED CLAIMS.—For purposes of this
5 section, a claim shall be deemed resolved when the
6 Administrator has determined the amount of the
7 award due the claimant, and either the claimant has
8 waived judicial review or the time for judicial review
9 has expired.

10 (e) RECOMMENDATIONS OF ADMINISTRATOR AND
11 COMMISSION.—

12 (1) IN GENERAL.—If the Administrator rec-
13 ommends changes to this Act under subsection (c),
14 the recommendations and accompanying analysis
15 shall be referred to a special commission consisting
16 of the Attorney General, the Secretary of Labor, the
17 Secretary of Health and Human Services, the Sec-
18 retary of the Treasury, and the Secretary of Com-
19 merce. The Commission shall hold public hearings
20 on the Administrator's alternatives and rec-
21 ommendations and then make its own recommenda-
22 tions for reform of the program set forth in titles I
23 and II of this Act. Within 180 days after receiving
24 the Administrator's recommendations, the Commis-
25 sion shall transmit its own recommendations to the

1 Congress in the same manner as set forth in sub-
2 section (a).

3 (2) REFERRAL.—If the Administrator rec-
4 ommends changes to, or termination of, this Act
5 under subsection (d), the recommendations and ac-
6 companying analysis shall be referred to the Com-
7 mission. The Commission shall hold public hearings
8 on the Administrator’s alternatives and rec-
9 ommendations and then make its own recommenda-
10 tions for reform of the program set forth in titles I
11 and II of this Act. Within 180 days after receiving
12 the Administrator’s recommendations, the Commis-
13 sion shall transmit its own recommendations to the
14 Congress in the same manner as set forth in sub-
15 section (a).

16 (f) SUNSET OF ACT.—

17 (1) IN GENERAL.—At any time after 7 years
18 following the date on which the Administrator begins
19 processing claims, if the Administrator determines
20 that, if any additional claims are resolved, the Fund
21 will not have sufficient resources when needed to pay
22 100 percent of all resolved claims while also making
23 its debt repayment obligations and meeting its other
24 obligations under this Act, the provisions of this Act
25 set forth in paragraph (3) shall terminate and be of

1 no further effect 180 days after the Administrator's
2 determination as to all asbestos claims that have not
3 been resolved by the Fund as of the date of the de-
4 termination, unless Congress passes legislation con-
5 tinuing the Fund.

6 (2) RESOLVED CLAIMS.—In the event of sunset,
7 all resolved claims shall be paid in full by the Fund.

8 (3) TERMINATED PROVISIONS.—Subject to
9 paragraph (4), the provisions of this Act subject to
10 termination under paragraph (1) are titles I (except
11 subtitle A) and II and sections 403 and 404(e)(2).

12 (4) CONTINUED FUNDING.—If provisions of
13 this Act terminate under paragraph (1), participants
14 will still be required to make payments as provided
15 under subtitles A and B of title II. If the full
16 amount of payments required by title II is not nec-
17 essary for the Fund to pay claims that have been re-
18 solved as of the date of termination, pay the Fund's
19 debt, and support the Fund's continued operation as
20 needed to pay such claims and debt, the Adminis-
21 trator may reduce such payments. Any such reduc-
22 tions shall be allocated among participants in ap-
23 proximately the same proportion as the liability
24 under subtitles A and B of title II.

25 (5) DEFINITIONS.—In this subsection—

1 (A) the term “sunset claims” means claims
2 as to which this Act has terminated; and

3 (B) the term “sunset claimants” means
4 persons asserting such claims.

5 (6) SUNSET CLAIMS.—If this Act terminates in
6 accordance with paragraph (1), then the applicable
7 statute of limitations for the filing of sunset claims
8 under subsection (g) shall be deemed tolled for any
9 past or pending sunset claimants while they were
10 pursuing claims filed under this Act. For those
11 claimants who decide to pursue a sunset claim in ac-
12 cordance with subsection (g), the applicable statute
13 of limitations shall apply, except that claimants who
14 filed a claim against the Fund under this Act before
15 the date of termination shall have 2 years after the
16 date of termination to file a sunset claim in accord-
17 ance with subsection (g), whichever is longer.

18 (g) NATURE OF CLAIM AFTER SUNSET.—

19 (1) IN GENERAL.—On and after the date of ter-
20 mination under subsection (f), any individual injured
21 as a result of exposure to asbestos, who has not pre-
22 viously had a claim resolved by the Fund, may in a
23 civil action obtain relief in damages subject to the
24 terms and conditions under this subsection and
25 paragraph (6) of subsection (f), except—

1 (A) an individual who received an award
2 for a nonmalignant disease (Levels I through
3 V) from the Fund may assert a claim for a ma-
4 lignant disease under this subsection, unless the
5 malignancy was diagnosed or the claimant had
6 discovered facts that would have led a reason-
7 able person to obtain such a diagnosis before
8 the date on which the nonmalignant claim was
9 settled; and

10 (B) an individual who received an award
11 for a nonmalignant or malignant disease (ex-
12 cept mesothelioma) (Levels I through IX) from
13 the Fund may assert a claim for mesothelioma
14 under this subsection, unless the mesothelioma
15 was diagnosed or the claimant had discovered
16 facts that would have led a reasonable person to
17 obtain such a diagnosis before the date on
18 which the nonmalignant or other malignant
19 claim was settled.

20 (2) EXCLUSIVE JURISDICTION.—The United
21 States district courts shall have exclusive jurisdiction
22 of all actions under paragraph (1), to the exclusion
23 of State courts and any other forum. As of the effec-
24 tive date of a termination of this Act under sub-
25 section (f), an action under paragraph (1) shall be

1 the exclusive remedy for any asbestos claim that
2 might otherwise exist under Federal, State or other
3 law, regardless of whether such claim arose before or
4 after the effective date of this Act or of the termi-
5 nation of this Act, except that claims against the
6 Fund that have been resolved before the date of the
7 termination determination under subsection (f) may
8 be paid by the Fund.

9 (3) VENUE.—Actions under paragraph (1) shall
10 be brought only in the United States district court
11 for the judicial district where the claimant resides or
12 the exposure is alleged to have occurred.

13 (4) APPLICABLE LAW.—An action under para-
14 graph (1) shall be governed by Federal common law,
15 except that where national uniformity is not required
16 the court must utilize otherwise applicable State law,
17 including State statutes, to provide the appropriate
18 rule of Federal common law.

19 **SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABIL-**
20 **ITY OF THE UNITED STATES GOVERNMENT.**

21 (a) CAUSES OF ACTIONS.—Except as otherwise spe-
22 cifically provided in this Act, nothing in this Act may be
23 construed as creating a cause of action against the United
24 States Government, any entity established under this Act,

1 or any officer or employee of the United States Govern-
2 ment or such entity.

3 (b) FUNDING LIABILITY.—Nothing in this Act may
4 be construed to—

5 (1) create any obligation of funding from the
6 United States Government, other than the funding
7 for personnel and support as provided under this
8 Act; or

9 (2) obligate the United States Government to
10 pay any award or part of an award, if amounts in
11 the Fund are inadequate.

12 **SEC. 407. RULES OF CONSTRUCTION.**

13 (a) LIBBY, MONTANA CLAIMANTS.—Nothing in this
14 Act shall preclude the formation of a fund for the payment
15 of eligible medical expenses related to treating asbestos-
16 related disease for current and former residents of Libby,
17 Montana.

18 (b) HEALTH CARE FROM PROVIDER OF CHOICE.—
19 Nothing in this Act shall be construed to preclude any eli-
20 gible claimant from receiving health care from the pro-
21 vider of their choice.

1 **SEC. 408. VIOLATIONS OF ENVIRONMENTAL AND OCCUPA-**
2 **TIONAL HEALTH AND SAFETY REQUIRE-**
3 **MENTS.**

4 (a) ASBESTOS IN COMMERCE.—If the Administrator
5 receives information concerning conduct occurring after
6 the date of enactment of this Act that may have been a
7 violation of standards issued by the Environmental Protec-
8 tion Agency under the Toxic Substances Control Act (15
9 U.S.C. 2601 et seq.), relating to the manufacture, impor-
10 tation, processing, disposal and distribution in commerce
11 of asbestos-containing products, the Administrator shall
12 refer the matter in writing within 30 days after receiving
13 that information to the Administrator of the Environ-
14 mental Protection Agency and the United States Attorney
15 for possible civil or criminal penalties, including those
16 under section 17 of the Toxic Substances Control Act (15
17 U.S.C. 2616), and to the appropriate State authority with
18 jurisdiction to investigate asbestos matters.

19 (b) ASBESTOS AS AIR POLLUTANT.—If the Adminis-
20 trator receives information concerning conduct occurring
21 after the date of enactment of this Act that may have been
22 a violation of standards issued by the Environmental Pro-
23 tection Agency under the Clean Air Act (42 U.S.C. 7401
24 et seq.), relating to asbestos as a hazardous air pollutant,
25 the Administrator shall refer the matter in writing within
26 30 days after receiving that information to the Adminis-

1 trator of the Environmental Protection Agency and the
2 United States Attorney for possible criminal and civil pen-
3 alties, including those under section 113 of the Clean Air
4 Act (42 U.S.C. 7413), and to the appropriate State au-
5 thority with jurisdiction to investigate asbestos matters.

6 (c) OCCUPATIONAL EXPOSURE.—If the Adminis-
7 trator receives information concerning conduct occurring
8 after the date of enactment of this Act that may have been
9 a violation of standards issued by the Occupational Safety
10 and Health Administration under the Occupational Safety
11 and Health Act of 1970 (29 U.S.C. 651 et seq.), relating
12 to occupational exposure to asbestos, the Administrator
13 shall refer the matter in writing within 30 days after re-
14 ceiving that information and refer the matter to—

15 (1) the United States Attorney for possible
16 criminal prosecution under section 5(a) of such Act
17 (29 U.S.C. 654(a));

18 (2) the Secretary of Labor for possible civil
19 penalties under section 17 (a) through (d) of such
20 Act (29 U.S.C. 666 (a) through (d)); and

21 (3) the Assistant Secretary for the Occupational
22 Safety and Health Commission, and the appropriate
23 State authority with jurisdiction to investigate asbes-
24 tos matters, for possible civil or criminal penalties,

1 including those under section 17 of the Occupational
2 Safety and Health Act of 1970 (29 U.S.C. 666).

3 (d) REVIEW OF FEDERAL SENTENCING GUIDELINES
4 FOR ENVIRONMENTAL CRIMES RELATED TO ASBES-
5 TOS.—Under section 994 of title 28, United States Code,
6 and in accordance with this section, the United States
7 Sentencing Commission shall review and amend, as appro-
8 priate, the United States Sentencing Guidelines and re-
9 lated policy statements to ensure that—

10 (1) appropriate changes are made within the
11 guidelines to reflect any statutory amendments that
12 have occurred since the time that the current guide-
13 line was promulgated;

14 (2) the base offense level, adjustments and spe-
15 cific offense characteristics contained in section
16 2Q1.2 of the United States Sentencing Guidelines
17 (relating to mishandling of hazardous or toxic sub-
18 stances or pesticides; recordkeeping, tampering, and
19 falsification; and unlawfully transporting hazardous
20 materials in commerce) are increased as appropriate
21 to ensure that future asbestos related-offenses re-
22 flect the seriousness of the offense, the harm to the
23 community, the need for ongoing reform, and the
24 highly regulated nature of asbestos;

1 (3) the base offense level, adjustments and spe-
2 cific offense characteristics are sufficient to deter
3 and punish future activity and are adequate in cases
4 in which the relevant offense conduct—

5 (A) involves asbestos as a hazardous or
6 toxic substance; and

7 (B) occurs after the date of enactment of
8 this Act;

9 (4) the adjustments and specific offense charac-
10 teristics contained in section 2B1.1 of the United
11 States Sentencing Guidelines related to fraud, deceit
12 and false statements, adequately take into account
13 that asbestos was involved in the offense, and the
14 possibility of death or serious bodily harm as a re-
15 sult;

16 (5) the guidelines that apply to organizations in
17 chapter 8 of the United States Sentencing Guide-
18 lines, are sufficient to deter and punish organiza-
19 tional criminal misconduct that involves the use,
20 handling, purchase, sale, disposal, or storage of as-
21 bestos; and

22 (6) the guidelines that apply to organizations in
23 chapter 8 of the United States Sentencing Guide-
24 lines, are sufficient to deter and punish organiza-
25 tional criminal misconduct that involves fraud, de-

1 ceit, or false statements against the Office of Asbes-
2 tos Disease Compensation.

3 **SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.**

4 (a) DENIAL, TERMINATION, OR ALTERATION OF
5 HEALTH COVERAGE.—No health insurer offering a health
6 plan may deny or terminate coverage, or in any way alter
7 the terms of coverage, of any claimant or the beneficiary
8 of a claimant, on account of the participation of the claim-
9 ant or beneficiary in a medical monitoring program under
10 this Act, or as a result of any information discovered as
11 a result of such medical monitoring.

12 (b) DEFINITIONS.—In this section:

13 (1) HEALTH INSURER.—The term “health in-
14 surer” means—

15 (A) an insurance company, health care
16 service contractor, fraternal benefit organiza-
17 tion, insurance agent, third party adminis-
18 trator, insurance support organization, or other
19 person subject to regulation under the laws re-
20 lated to health insurance of any State;

21 (B) a managed care organization; or

22 (C) an employee welfare benefit plan regu-
23 lated under the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1001 et seq.).

1 (2) HEALTH PLAN.—The term “health plan”
2 means—

3 (A) a group health plan (as such term is
4 defined in section 607 of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C.
6 1167)), and a multiple employer welfare arrangement
7 (as defined in section 3(4) of such
8 Act) that provides health insurance coverage; or

9 (B) any contractual arrangement for the
10 provision of a payment for health care, including
11 any health insurance arrangement or any
12 arrangement consisting of a hospital or medical
13 expense incurred policy or certificate, hospital
14 or medical service plan contract, or health
15 maintenance organizing subscriber contract.

16 (c) CONFORMING AMENDMENTS.—

17 (1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the
20 end the following:

21 “(I) Participation in a medical monitoring
22 program under the Fairness in Asbestos Injury
23 Resolution Act of 2004.”.

24 (2) PUBLIC SERVICE HEALTH ACT.—Section
25 2702(a)(1) of the Public Health Service Act (42

1 U.S.C. 300gg–1(a)(1)) is amended by adding at the
 2 end the following:

3 “(I) Participation in a medical monitoring
 4 program under the Fairness in Asbestos Injury
 5 Resolution Act of 2004.”.

6 (3) INTERNAL REVENUE CODE OF 1986.—Sec-
 7 tion 9802(a)(1) of the Internal Revenue Code of
 8 1986 is amended by adding at the end the following:

9 “(I) Participation in a medical monitoring
 10 program under the Fairness in Asbestos Injury
 11 Resolution Act of 2004.”.

12 **TITLE V—ASBESTOS BAN**

13 **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-** 14 **UCTS.**

15 (a) IN GENERAL.—Title II of the Toxic Substances
 16 Control Act (15 U.S.C. 2641 et seq.) is amended—

17 (1) by inserting before section 201 (15 U.S.C.
 18 2641) the following:

19 **“Subtitle A—General Provisions”;**

20 and

21 (2) by adding at the end the following:

22 **“Subtitle B—Ban of Asbestos** 23 **Containing Products**

24 **“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.**

25 “(a) DEFINITIONS.—In this chapter:

1 “(1) ADMINISTRATOR.—The term ‘Adminis-
2 trator’ means the Administrator of the Environ-
3 mental Protection Agency.

4 “(2) ASBESTOS.—The term ‘asbestos’ in-
5 cludes—

6 “(A) chrysotile;

7 “(B) amosite;

8 “(C) crocidolite;

9 “(D) tremolite asbestos;

10 “(E) winchite asbestos;

11 “(F) richterite asbestos;

12 “(G) anthophyllite asbestos;

13 “(H) actinolite asbestos;

14 “(I) any of the minerals listed under sub-
15 paragraphs (A) through (H) that has been
16 chemically treated or altered, and any
17 asbestiform variety, type or component thereof.

18 “(3) ASBESTOS CONTAINING PRODUCT.—The
19 term ‘asbestos containing product’ means any prod-
20 uct (including any part) to which asbestos is delib-
21 erately or knowingly added or used because the spe-
22 cific properties of asbestos are necessary for product
23 use or function. Under no circumstances shall the
24 term ‘asbestos containing product’ be construed to
25 include products that contain de minimus levels of

1 naturally occurring asbestos as defined by the Ad-
2 ministrator not later than 1 year after the date of
3 enactment of this chapter.

4 “(4) DISTRIBUTE IN COMMERCE.—The term
5 ‘distribute in commerce’—

6 “(A) has the meaning given the term in
7 section 3 of the Toxic Substances Control Act
8 (15 U.S.C. 2602); and

9 “(B) shall not include—

10 “(i) an action taken with respect to
11 an asbestos containing product in connec-
12 tion with the end use of the asbestos con-
13 taining product by a person that is an end
14 user, or an action taken by a person who
15 purchases or receives a product, directly or
16 indirectly from an end user; or

17 “(ii) distribution of an asbestos con-
18 taining product by a person solely for the
19 purpose of disposal of the asbestos con-
20 taining product in compliance with applica-
21 ble Federal, State, and local requirements.

22 “(b) IN GENERAL.—Subject to subsection (c), the
23 Administrator shall promulgate—

24 “(1) not later than 1 year after the date of en-
25 actment of this chapter, proposed regulations that—

1 “(A) prohibit persons, from manufac-
2 turing, processing, or distributing in commerce
3 asbestos containing products; and

4 “(B) provide for implementation of sub-
5 sections (c) and (d); and

6 “(2) not later than 2 years after the date of en-
7 actment of this chapter, final regulations that, effec-
8 tive 60 days after the date of promulgation, prohibit
9 persons from manufacturing, processing, or distrib-
10 uting in commerce asbestos containing products.

11 “(c) EXEMPTIONS.—

12 “(1) IN GENERAL.—Any person may petition
13 the Administrator for, and the Administrator may
14 grant an exemption from the requirements of sub-
15 section (b), if the Administrator determines that—

16 “(A) the exemption would not result in an
17 unreasonable risk of injury to public health or
18 the environment; and

19 “(B) the person has made good faith ef-
20 forts to develop, but has been unable to develop,
21 a substance, or identify a mineral that does not
22 present an unreasonable risk of injury to public
23 health or the environment and may be sub-
24 stituted for an asbestos containing product.

1 “(2) TERMS AND CONDITIONS.—An exemption
2 granted under this subsection shall be in effect for
3 such period (not to exceed 5 years) and subject to
4 such terms and conditions as the Administrator may
5 prescribe.

6 “(3) GOVERNMENTAL USE.—

7 “(A) IN GENERAL.—The Administrator of
8 the Environmental Protection Agency shall pro-
9 vide an exemption from the requirements of
10 subsection (b), without review or limit on dura-
11 tion, if such exemption for an asbestos con-
12 taining product is—

13 “(i) sought by the Secretary of De-
14 fense and the Secretary certifies, and pro-
15 vides a copy of that certification to Con-
16 gress, that—

17 “(I) use of the asbestos con-
18 taining product is necessary to the
19 critical functions of the Department;

20 “(II) no reasonable alternatives
21 to the asbestos containing product
22 exist for the intended purpose; and

23 “(III) use of the asbestos con-
24 taining product will not result in an

1 unreasonable risk to health or the en-
2 vironment; or

3 “(ii) sought by the Administrator of
4 the National Aeronautics and Space Ad-
5 ministration and the Administrator of the
6 National Aeronautics and Space Adminis-
7 tration certifies, and provides a copy of
8 that certification to Congress, that—

9 “(I) the asbestos containing
10 product is necessary to the critical
11 functions of the National Aeronautics
12 and Space Administration;

13 “(II) no reasonable alternatives
14 to the asbestos containing product
15 exist for the intended purpose; and

16 “(III) the use of the asbestos
17 containing product will not result in
18 an unreasonable risk to health or the
19 environment.

20 “(B) ADMINISTRATIVE PROCEDURE ACT.—
21 Any certification required under subparagraph
22 (A) shall not be subject to chapter 5 of title 5,
23 United States Code (commonly referred to as
24 the ‘Administrative Procedure Act’).

1 “(4) SPECIFIC EXEMPTIONS.—The following
2 are exempted:

3 “(A) Asbestos diaphragms for use in the
4 manufacture of chlor-alkali and the products
5 and derivative therefrom.

6 “(B) Roofing cements, coatings and
7 mastics utilizing asbestos that is totally encap-
8 sulated with asphalt, subject to a determination
9 by the Administrator of the Environmental Pro-
10 tection Agency under paragraph (5).

11 “(5) ENVIRONMENTAL PROTECTION AGENCY
12 REVIEW.—

13 “(A) REVIEW IN 18 MONTHS.—Not later
14 than 18 months after the date of enactment of
15 this chapter, the Administrator of the Environ-
16 mental Protection Agency shall complete a re-
17 view of the exemption for roofing cements, coat-
18 ings, and mastics utilizing asbestos that are to-
19 tally encapsulated with asphalt to determine
20 whether—

21 “(i) the exemption would result in an
22 unreasonable risk of injury to public health
23 or the environment; and

24 “(ii) there are reasonable, commercial
25 alternatives to the roofing cements, coat-

1 ings, and mastics utilizing asbestos that is
2 totally encapsulated with asphalt.

3 “(B) REVOCATION OF EXEMPTION.—Upon
4 completion of the review, the Administrator of
5 the Environmental Protection Agency shall have
6 the authority to revoke the exemption for the
7 products exempted under paragraph (4)(B) if
8 warranted.

9 “(d) DISPOSAL.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), not later than 3 years after the date of
12 enactment of this chapter, each person that pos-
13 sesses an asbestos containing product that is subject
14 to the prohibition established under this section shall
15 dispose of the asbestos containing product, by a
16 means that is in compliance with applicable Federal,
17 State, and local requirements.

18 “(2) EXEMPTION.—Nothing in paragraph (1)—

19 “(A) applies to an asbestos containing
20 product that—

21 “(i) is no longer in the stream of com-
22 merce; or

23 “(ii) is in the possession of an end
24 user or a person who purchases or receives

1 an asbestos containing product directly or
2 indirectly from an end user; or

3 “(B) requires that an asbestos containing
4 product described in subparagraph (A) be re-
5 moved or replaced.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 The table of contents in section 1 of the Toxic Substances
8 Control Act (15 U.S.C. prec. 2601) is amended—

9 (1) by inserting before the item relating to sec-
10 tion 201 the following:

 “Subtitle A—General Provisions”;

11 and

12 (2) by adding at the end of the items relating
13 to title II the following:

 “Subtitle B—Ban of Asbestos Containing Products

 “Sec. 221. Ban of asbestos containing products.”.

Calendar No. 472

108TH CONGRESS
2D Session
S. 2290

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.

APRIL 8, 2004

Read the second time and placed on the calendar