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Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable DAVID VITTER, a Senator from the State of Louisiana.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord of all, who rules the raging of the sea, we celebrate the works of Your love and grace; early in the morning, our songs rise to You. Thank You for giving us answers to life's most difficult questions. Thank You also for undeserved blessings we enjoy each day.

Bless the Members of our legislative branch. Give them opportunities to be Your voice of hope in a world often filled with despair. Strengthen their families and the members of their staffs. Give them the talents they need to serve You in our time. Bring us all to the purposes which You have designed for us. Give us Your peace that can keep our hearts and minds from fear.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 14, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID VITTER, a Senator from the State of Louisiana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. VITTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will start a series of votes on motions to instruct conferees with respect to the tax relief bill. There could be up to as many as 16 votes on these motions and, therefore, votes will be kept to 10 minutes in length. I hope there will be fewer votes, and we will be working this morning to see if there is any way to lessen that number. Voting will begin momentarily, and thus Members should stay close to the Chamber today during these stacked votes so that we can move expeditiously. We will be recessing for lunch to accommodate the party luncheons, and we will lock in the time for that recess later in the morning. I would expect that we would continue the voting sequence around 2:15 after the luncheons today.

Following the appointment of conferees to the tax relief bill, we will be returning to the asbestos bill. As Members know, we filed cloture on the asbestos bill last night and that vote is scheduled to occur Wednesday morning.

FILING OF AMENDMENTS

Under the rule, first-degree amendments need to be filed by 1 p.m. today to be considered in order postcloture. We will likely be in recess at that time, so I ask unanimous consent that the deadline be until 2:30 today.

The ACTING PRESIDENT pro tempore. Without objection, so ordered.

Mr. FRIST. Mr. President, when we return to the asbestos bill later today, we have the motion to waive pending, and we will be talking to the two managers this morning to determine the best time for that vote to occur today. Having said that, we are going to have a very busy day with votes, and Senators should not stray far from the Chamber in order to not miss any votes so that we can accomplish all that we have set out to do over the course of the day.

We are ready to start with the motions and voting. Chairman GRASSLEY is on his way. We can have the Senator from Massachusetts start, if he is ready. Senator GRASSLEY should be here within the next couple of minutes.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 4297, which the clerk will report.

The assistant legislative clerk read as follows:

Resolved that the House disagree to the amendment of the Senate to the bill (H.R. 4297) entitled ''An Act to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.''

Pending:

Kennedy motion to instruct conferees to reject the extension of the capital gains and dividends rate reduction contained in section 203 of the bill as passed by the House of Representatives.

Reed motion to instruct conferees to insist that the final conference report include funding to strengthen America's military

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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contained in title VI of the Senate amendment instead of any extension of the tax cuts for capital gains and dividends, which does not expire until 2009, contained in section 203 of the bill as passed by the House of Representatives.

Wyden motion to instruct conferees to insist that the final conference report include a provision that repeals accelerated depreciation for geologic and geophysical costs for oil and gas exploration by the five major oil companies.

Obama motion to instruct conferees to insist that the final conference report include tax relief for the most vulnerable members of our society, including the low-income victims of Hurricane Katrina and children in families that are too poor to benefit fully from the refundable child tax credit.

Hatch motion to instruct conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities (based on section 108 of the amendment passed by the Senate), in order to improve American competitiveness.

DeWine motion to instruct conferees to insist that the final conference report accept the veterans' mortgage bonds expansion provisions contained in section 303 of the bill as passed by the House of Representatives with such revisions as are necessary to provide veterans in all 50 States with access to lower-rate mortgages.

Reid (for Menendez) motion to instruct conferees to insist that the final conference report include the Senate passed ''hold-harmless'' relief from the individual alternative minimum tax (AMT) in 2006, and does not include the extension of lower tax rates on capital gains and dividends.

Stabenow motion to instruct conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities, and to reject any extension of the tax rate for capital gains and dividends which does not expire until 2009.

Grassley motion to instruct conferees to insist that the final conference report include the ''hold-harmless'' relief from the individual alternative minimum tax in 2006 (sections 106 and 107 of the amendment passed by the Senate) to protect middle class families and includes an extension of lower tax rates on capital gains and dividends (based on section 203 of the bill passed by the House of Representatives) to protect tax cuts for middle class families.

Grassley (for Lott) motion to instruct conferees to insist that the final conference report include the repeal of the individual alternative minimum tax (based on sections 106 and 107 of the amendment passed by the Senate).

Grassley (for Hutchison) motion to instruct conferees to insist that the final conference report include a permanent extension of the election to deduct State and local general sales taxes (based on section 105 of the amendment passed by the Senate).

Grassley (for Santorum) motion to instruct conferees to insist that the final conference report include a permanent extension of the above-the-line deduction for tuition and fees (based on section 103 of the amendment passed by the Senate).

Grassley motion to instruct conferees to insist that the final conference report ensure that in 2009 and 2010, the international competitiveness of the United States in attracting capital investment, and therefore job creation, is not weakened further by a higher combined corporate and individual income tax rate on corporate and capital income as a result of a higher dividend tax rate.

Grassley (for Talent/Snowe/Lincoln) motion to instruct conferees to insist that the final conference report include a permanent extension of the modifications to the child tax credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Lautenberg motion to instruct conferees to insist that the final conference report does not increase the national debt of the United States.

Schumer motion to instruct conferees to insist that the final conference report include the Senate-passed provision to extend the above-the-line deduction for tuition and fees through December 31, 2009 (section 103), before it includes the House-passed extension of lower tax rates on capital gains and dividends (section 203), given budget constraints, noting that a conference report which maintains the tuition deduction will provide needed tax relief to more than 4,000,000 American families each year that are struggling to keep pace with rising tuition costs.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I understand that in the order that has been printed, the first instruction is by the Senator from Iowa, Mr. GRASSLEY, which includes both the alternative minimum tax relief and the tax cuts for dividends and capital gains. I understand that he has 2 minutes to speak in favor of that and there are 2 minutes in opposition to it. I, at this time, will use part of the 2 minutes in opposition.

I see the ranking member and I would suggest a brief quorum call so he may speak in opposition to the Grassley motion. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I would like to give a list of pending motions, and I ask unanimous consent that the time not be charged against the 2 minutes allocated to explaining the motion.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, the list of motions to instruct that we have thus far are in this order: No. 1 is the Grassley motion regarding AMT asking for both AMT relief and tax cuts. No. 2 is the Kennedy capital gains motion, which is in opposition to the former. No. 3 is the Lott motion on AMT. No. 4 is Senator MENENDEZ's AMT capital gains. No. 5 is Senator SANTORUM with respect to tuition deduction. No. 6 is Senator SCHUMER with respect to tuition deduction. No. 7 is Senator HATCH's motion with respect to R&D. No. 8 is Senator STABENOW's motion with respect to R&D and capital gains. That is where we are at this point. That is eight. There are a total of 16 on my list, and it is my hope that by the time we get through the eight maybe Senators will be a little less inclined to insist on recorded votes. But those are the first 8, with a total of 16 motions to instruct, which I understand will all be in order this morning.

I yield the floor.

MOTIONS TO INSTRUCT CONFEREES

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, would it be in order to call up my motion on the AMT and the capital gains dividend?

The ACTING PRESIDENT pro tempore. The Senator's motion is now pending.

Mr. GRASSLEY. I have 1 minute?

The ACTING PRESIDENT pro tempore. Two minutes.

Mr. GRASSLEY. Mr. President, 16 million additional American families could find themselves subject to the alternative minimum tax if we do not act quickly. Failure to pass a minimum level of alternative minimum tax relief, as was provided in the Senate-passed reconciliation bill, is not an option. In fact, I support full AMT repeal. Some of my colleagues are creating a false choice when they suggest that in order to provide AMT relief we need to remove incentives that encourage economic growth. We can design a tax package which will include dividends, capital gains, AMT, and a 1-year extension for all expiring tax relief, all within that $70 billion limit. I encourage my colleagues to vote for this motion which provides relief for alternative minimum tax and capital gains and dividends as well.

I yield.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I urge my colleagues to oppose this motion. Why is that? Essentially, we must choose between extending protection from the AMT tax increase this year for 17 million working families or extending $50 billion in investor tax breaks which do not expire until 3 years from now, after the next Presidential election. That is the choice.

This motion says you can have it all. This motion says there is no deficit problem. This motion says: Don't worry, be happy. Our Senate bill, supported by 66 Senators, chose to protect millions of working families from the 2006 AMT hit rather than extending 2009 tax breaks for investors. The truth is, we cannot have it all. There is a deficit problem. Something will have to give, and I wish we could realistically hope the House will be willing to agree to a significant amount of offsets, crackdowns on tax shelters, so we could do more on this tax bill, but I am not optimistic. I have deep experience with the House, and they will not do so, and that is forcing us to choose. That is why we must choose. Is it the R&D credit? Is it incentives for businesses to hire the hard-to-employ? Is it a true AMT hold-harmless?

Those are our choices. The House made their choice. They chose not to protect 17 million families threatened by the AMT. Some items can wait until 2007, 2008, or even 2009. Capital gains can wait. AMT cannot wait. Protection from that tax increase—that is, the AMT—which expires now, must be extended this year, not capital gains. That AMT protection expired in December, and 17 million working families are waiting to hear our choice.

I urge my colleagues not to embark on this dangerous course. I urge them to reject this motion. We have to choose. We cannot have it all. I urge my colleagues to be responsible.

Mr. GRASSLEY. Mr. President, if I have 10 seconds——

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 1 minute remaining.

Mr. GRASSLEY. I am only going to use 10 seconds. I hope my friend from Montana will agree with me on this, that we do have differences on this one part, the capital gains part of this bill, but I think we agree on everything else in the bill. I hope people listening to Senator BAUCUS and I maybe differing on this one point will remember that on most everything that goes on in our committee, we agree. I do not want them to get a distorted view of our friendship and our working together on this legislation.

I yield back my time, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the Grassley motion to instruct conferees. The clerk will call the roll.

The assistant journal clerk called the roll.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—53

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (FL)
Bond	Enzi	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hagel	Smith
Coburn	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Isakson	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Thune
Crapo	Lugar	Vitter
DeMint	Martinez	

NAYS—47

Akaka	Clinton	Jeffords
Baucus	Conrad	Johnson
Bayh	Dayton	Kennedy
Biden	Dodd	Kerry
Bingaman	Dorgan	Kohl
Boxer	Durbin	Landrieu
Byrd	Feingold	Lautenberg
Cantwell	Feinstein	Leahy
Carper	Harkin	Levin
Chafee	Inouye	Lieberman
Lincoln	Reed	Snowe
Menendez	Reid	Stabenow
Mikulski	Rockefeller	Voinovich
Murray	Salazar	Warner
Obama	Sarbanes	Wyden
Pryor	Schumer	

The motion was agreed to.

THE ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand, the pending instruction is mine.

The ACTING PRESIDENT pro tempore. The Senator is correct. There is 4 minutes evenly divided.

Mr. KENNEDY. Mr. President, this Senate is not going to have a clearer opportunity in terms of the Nation's priorities than on this next vote. Under the current proposal before the Senate, it provides the dividends and capital gains of $50 billion. The President's proposal which was submitted is $50 billion in Medicare and Medicaid budget cuts.

We have the choice of $50 billion for the further tax reductions for the wealthiest individuals or we are going to stand up on Medicare and Medicaid. If we care about the culture of life, we will vote for this amendment since one-third of all the children born are born under Medicaid and receive well-baby treatment and mothers are treated.

If Members care about our seniors and disabled and those mentally challenged and disabled, they will vote for this motion because it protects Medicare.

If Members are talking about children, nursing homes, and the frail and elderly, Members will vote for this motion because it will preserve Medicaid.

If Members care about research and NIH and believe this is the life science century, Members will not tolerate the extraordinary cuts in the NIH budget in cancer and Alzheimer's research, the whole range of research, and will vote for this motion.

If Members care about fairness for America's families, vote for this motion over giveaways to the very wealthy.

It is as plain and simple as that. I hope our colleagues will support it.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, this vote has nothing to do with Medicare or Medicaid. This motion by Senator KENNEDY calls for a tax increase in 2008 on millions of Americans. Critics of lower rates always want to persecute millionaires and at the same time punish everyone else trying to save money. The lower rates on capital gains have benefited low- and middle-income families in a very meaningful way and reduced the tax burden on citizens. They have contributed to our economic recovery and continue to help our economy grow. They have made capital investment in America more competitive so we can be competitive with global competition. They have helped impose transparency and discipline on corporate managers which is critical to protecting investors and workers. Business investors need certainty.

We need to act now. For these reasons, I encourage my colleagues to vote against this motion.

I point out something that directly involves the State of Massachusetts. We have heard the same old charge, that capital gains and dividends are only for rich folks. These charts behind me assert the opposite. According to Internal Revenue Service statistics on income for the State of Massachusetts, there are 589,000 individuals and families who benefit from the reduced tax on dividends, and 212,000 individuals and families benefit from the reduced tax on capital gains. There are not that many millionaires in that State regardless of how rich that State is. Not all of these folks are superrich. They are people like the average American benefiting from this. I don't know why anyone wants to persecute a few millionaires and punish everyone else.

The ACTING PRESIDENT pro tempore. The time has expired.

Mr. KENNEDY. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the Kennedy motion to instruct conferees.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 47, nays 53, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—47

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Snowe
Dayton	Levin	Stabenow
Dodd	Lieberman	Warner
Dorgan	Lincoln	Wyden
Durbin	Menendez	

NAYS—53

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Roberts
Brownback	Frist	Santorum
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	

The motion was rejected.

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

Mr. REID. Mr. President, I have spoken to the majority leader. In fact, he and I spoke last night and again today.

I am going to, in a minute or so, suggest the absence of a quorum.

I would ask Democratic Senators to stay around the floor. We are going to see, if working with our manager and Senator CONRAD and others, we can maybe jointly agree on not having as many votes as are scheduled now.

So I would note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I now ask unanimous consent that we proceed to immediate votes on the DeWine motion, the Wyden motion, and the Talent-Snowe-Lincoln motion—I would state for the record that these motions will be voice votes—provided further that following those votes, the Senate proceed to votes in relation to the Reed motion, the Hutchison motion, and the Lautenberg motion—and, again, we expect rollcall votes on these three; finally, I ask unanimous consent that following those votes the remaining motions be withdrawn and the Chair be authorized to appoint conferees.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, what we have just done is greatly simplify the course of the votes over the course of the morning. We will have three rollcall votes following the voice votes. I appreciate both sides of the aisle working together, condensing 14 motions down to 3 rollcall votes.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Ohio, Mr. DEWINE. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Oregon, Mr. WYDEN. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Missouri, Mr. TALENT. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Rhode Island, Mr. REED. There are 2 minutes, evenly divided, of debate on this motion.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, my motion to instruct conferees is simple. Our Army and Marine Corps have been engaged in combat operations for several years now. Their equipment is in a very difficult situation. It is estimated this year alone that the Army will need about $13.7 billion simply to repair the equipment, not to buy new equipment, that has been used in combat. The Marine Corps will need approximately $7.5 billion.

My instruction would simply say allocate $50 billion and pay for it by taking the capital gains and dividend preferences being awarded in this tax reconciliation bill. I think it makes a great deal more sense to give our troops the best equipment we can have rather than to give upper income Americans another tax break.

It is very simple: Are we going to give our troops a dividend in good functioning equipment or are we going to give the dividend to the wealthiest Americans?

The ACTING PRESIDENT pro tempore. The Senator's time has expired. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I appreciate Senator REED's attention to the issue of funding for our military. Proper funding for those serving our country should not be controversial. The method of providing this funding should not be made into a controversial issue, and that is where the controversy is.

My colleague suggests that in order to provide funding for our military, we need to eliminate a tax benefit that doesn't even arise until 2009. Look at how ridiculous this motion is. How can you provide funds that are so badly needed today to ensure that we meet the operational needs of our courageous military service personnel when it won't be funded until 2009? I remind you that last night all of us voted for my amendment to support the operational needs of our military that provides the same benefits but doesn't raise taxes.

I urge my colleagues to vote against the Reed motion. In addition, I remind my friend from Rhode Island that there are 79,000 families in his State that benefit from not having the tax on dividends at 15 percent.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Rhode Island.

Mr. REED. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant journal clerk called the roll.

The PRESIDING OFFICER (Mr. ISAKSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 55, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—45

Akaka	Boxer	Clinton
Baucus	Byrd	Conrad
Bayh	Cantwell	Dayton
Biden	Carper	Dodd
Bingaman	Chafee	Dorgan
Durbin	Landrieu	Obama
Feingold	Lautenberg	Pryor
Feinstein	Leahy	Reed
Harkin	Levin	Reid
Inouye	Lieberman	Rockefeller
Jeffords	Lincoln	Salazar
Johnson	Menendez	Sarbanes
Kennedy	Mikulski	Schumer
Kerry	Murray	Stabenow
Kohl	Nelson (FL)	Wyden

NAYS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (NE)
Allen	Ensign	Roberts
Bennett	Enzi	Santorum
Bond	Frist	Sessions
Brownback	Graham	Shelby
Bunning	Grassley	Smith
Burns	Gregg	Snowe
Burr	Hagel	Specter
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Isakson	Thomas
Collins	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	
DeWine	McConnell	

The motion was rejected.

The PRESIDING OFFICER. There are now 2 minutes equally divided on the Hutchison motion to instruct conferees.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to speak in favor of the motion. I certainly hope our colleagues will vote to instruct conferees on a basic issue of fairness.

Today, there are eight States that have sales taxes but not a State income tax. Until 2 years ago, they were disadvantaged by not being able to deduct their sales taxes from their Federal income taxes, whereas an income-tax State would allow their payers to do that.

It is very important in this country that we have tax equity. In fact, the motion to instruct would give equity to all. It creates jobs because there is more economic activity when we treat all people in our States the same and allow them to deduct the State taxes they pay. It is a matter of fairness.

The States of Washington, Nevada, Wyoming, South Dakota, Texas, Alaska, Florida, and Tennessee all have this situation in which their taxpayers will be disadvantaged if we do not instruct the conferees.

I urge my colleagues to support this motion.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield the 1 minute on our side to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 minute.

Mr. LAUTENBERG. Mr. President, the motion clearly says that taxpayers would have to choose between deducting their sales tax costs or their income tax costs. If a taxpayer lives in a State that chooses to have both a sales tax and an income tax, why should they be penalized? This motion is not fair for the people in my State or many States such as mine that have both sales and income taxes.

The Federal Government should not be micromanaging State tax systems. If we have the expense, we ought to allow the deduction. If we are going to allow the deduction of State sales taxes, we should allow it no matter where the taxpayers live.

I hope we will oppose this management from the Federal Government of how a State ought to conduct its tax system.

I yield the floor and urge opposition to the motion.

The PRESIDING OFFICER. The question is on agreeing to the Hutchison motion to instruct conferees.

Mrs. HUTCHISON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 75, nays 25, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—75

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Durbin	Murkowski
Allen	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Boxer	Frist	Obama
Brownback	Graham	Pryor
Bunning	Grassley	Reid
Burns	Hagel	Roberts
Burr	Hatch	Salazar
Cantwell	Hutchison	Santorum
Chafee	Inhofe	Schumer
Chambliss	Inouye	Sessions
Clinton	Isakson	Shelby
Coburn	Johnson	Smith
Cochran	Kerry	Snowe
Coleman	Kohl	Specter
Collins	Kyl	Stevens
Cornyn	Levin	Talent
Craig	Lieberman	Thomas
Crapo	Lincoln	Thune
Dayton	Lott	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner

NAYS—25

Baucus	Feingold	Mikulski
Biden	Gregg	Reed
Bingaman	Harkin	Rockefeller
Bond	Jeffords	Sarbanes
Byrd	Kennedy	Stabenow
Carper	Landrieu	Sununu
Conrad	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Menendez	

The motion was agreed to.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, the motion is simple. It says the conferees need to come back with a final bill that does not increase the national debt. So if you vote against this, you are saying it is OK to increase the national debt. Lord knows what we have by way of debt. It is drowning us and will be paid for by our children and our grandchildren. It is reckless to charge $50 billion on our Nation's credit card when we have another option. We can pay for these tax cuts by closing the egregious tax loopholes such as the $6 billion for oil companies with record earnings—on the front page of the paper this morning.

Whether you voted for or against the bill, we should all agree that we should not stick future generations with the bill.

That is what my motion says. It is very simple.

On Valentines Day, vote against increasing the national debt.

Mr. GRASSLEY. Mr. President, I would like to inform the Senator from New Jersey that his motion would increase taxes on people in New Jersey through dividends of $838,000 and capital gains of $270,000.

If we don't do something about AMT, 600,000 people from New Jersey suffer; if we don't have the college tuition tax deduction, 121,000; and teacher deduction, 127,000.

I don't know how anybody would want to increase taxes on people in their States by that amount of money. If you take the approach of the Senator from New Jersey and have to offset all of these things, there are not enough offsets to go around to take care of the 100 ideas we have of where taxes ought to be reduced.

We now have taxes of 18 percent coming into the country into the Gross National Product for a 60-year high.

How high do taxes have to be to satisfy the Senator from New Jersey that taxes are high enough?

The PRESIDING OFFICER. The Senator's time has expired.

The question is on agreeing to the motion to instruct.

Mr. LAUTENBERG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 46, nays 54, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—46

Akaka	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Lautenberg	Sarbanes
Coburn	Leahy	Schumer
Conrad	Levin	Stabenow
Dayton	Lieberman	Voinovich
Dodd	Lincoln	Wyden
Dorgan	Menendez	
Durbin	Mikulski	

NAYS—54

Alexander	DeMint	Lott
Allard	DeWine	Lugar
Allen	Dole	Martinez
Baucus	Domenici	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hagel	Smith
Cochran	Hatch	Snowe
Coleman	Hutchison	Specter
Collins	Inhofe	Stevens
Cornyn	Isakson	
Craig	Kyl	
Crapo	Landrieu	
Sununu	Thomas	Vitter
Talent	Thune	Warner

The motion was rejected.

RECESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent the Senate stand in recess until 2:15 today for weekly policy luncheons.

There being no objection, the Senate, at 12:23 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005—Continued

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the pending business is the motion to waive the budget point of order, is it not?

The PRESIDING OFFICER. H.R. 4297 is still the pending question.

Under the previous order, the Chair appoints Mr. GRASSLEY, Mr. KYL, and Mr. BAUCUS conferees on the part of the Senate.

Mr. ROCKEFELLER. Mr. President I am very pleased that the Senate is taking the necessary steps today to move forward with a reasonable tax relief package. In the coming days, conferees from the Senate and the House will work together to craft a final bill for the President to sign. Yesterday and today, I supported a number of motions offered by my colleagues to instruct our conferees to maintain the Senate's position because, indeed, the Senate package enjoys bipartisan support.

I am very proud that the Senate legislation also includes a bipartisan amendment that I worked hard to develop that will stimulate investment in mine safety. Our amendment has two key components. The first provision allows accelerated depreciation to encourage mines to invest in new telecommunications technology, tracking devices, improved breathing apparatus, and other critical safety equipment. The second major initiative provides incentives for the creation of additional mine safety rescue teams. While a miner is trapped, he or she should not have to wait for hours for a rescue team to arrive from far away.

West Virginia, Appalachia, and our entire Nation have been stunned and saddened by the recent mine tragedies in West Virginia, Kentucky, and Utah that took the lives of 18 miners and devastated families, friends, and communities. I have visited our West Virginia communities and spoken with families and officials. In the memory of these brave miners, we must take bold and swift action to promote mine safety. We owe it to coal miners who continue to work in mines to do all we can to improve their safety.

Coal mining is hard, dangerous work. But coal is the fuel for more than 50

percent of the electricity that powers our country and enables economic growth. The miners who produce the coal deserve the best technology to make our mines as safe as possible. But we must acknowledge that there will be future accidents in our coal mines because of the nature of the industry, and so we must also invest in additional mine rescue teams.

This tax package presented an immediate opportunity to promote mine safety. I deeply appreciate the work and support of West Virginia's senior Senator, ROBERT C. BYRD. We are a team when it comes to mine safety and coal issues, and we are working together on additional legislation that will impose strict new safety standards on the mining industry.

I am very pleased that the mine safety tax incentives have been included in this legislation. Indeed, I believe that the bill before the Senate includes many important tax provisions that we ought to enact without delay. Most of these tax cuts are longstanding, broadly supported policies that were unfortunately allowed to expire at the end of last year.

Among the tax provisions that the Senate is acting to extend here is relief from the alternate minimum tax for upper middle class families who are about to be hit with a tax only ever intended for the very wealthy. This bill would extend AMT relief for 2006 in order to be sure that families are able to benefit from the income tax cuts the Congress has enacted since 2001. I support this relief, and indeed, I believe Congress needs to act quickly to address fundamental AMT reform. I have cosponsored legislation to permanently repeal the individual AMT because this so-called millionaires' tax is no longer serving its original purpose. As part of overall tax reform that is fiscally responsible, Congress ought to permanently eliminate the specter of this parallel tax system. For now, I am pleased to at least be able to support a bill that will protect families for this year.

This bill also extends important tax incentives for the business community. For example, the bill extends the research and development tax credit to provide more than $20 billion to companies that do innovative research to keep America at the forefront of the competitive world economy. I have cosponsored legislation that would make the R&D tax credit permanent, but again, I am pleased to be able to at least support this bill which provides a 2-year extension of this valuable tax incentive.

I have also supported legislation to make permanent the welfare-to-work tax credits. The legislation before us today improves and extends these credits for 2 years. I know that many companies in West Virginia have used these credits to provide work opportunities to individuals who previously have been marginalized in our economy. There are many other provisions in this bill that enjoy my support, including an extension of the new markets tax credit, the creation of incentives for additional charitable giving, and tax breaks for our dedicated teachers who spend their own money improving the educational experiences of their students.

Having said that I support many of the provisions of this bill, I would like to take just a few moments to discuss some reservations I have with the process under which Congress is considering it. This bill is a tax reconciliation bill, meaning that it will enjoy some procedural protections in the Senate—the costs to the Treasury need not be offset and the final package can pass the Senate with a mere 51 votes.

I fear that the reconciliation procedure being used here has put us on a very dangerous course. As this legislation is conferenced with the House of Representatives, the reasonable, bipartisan tax relief that we have passed may be replaced with partisan priorities that do not serve the best interests of average Americans. The House-passed bill does not provide any relief from the alternative minimum tax but instead extends the capital gains and dividend tax cuts beyond 2008. In my own State of West Virginia, fewer than 17 percent of taxpayers reported any taxable dividend income, and fewer than 11 percent of taxpayers had any taxable capital gains. Indeed, nationwide, more than half of the benefits of these investor tax breaks goes to people with more than $1 million in income. The Senate must insist that AMT relief now is a higher priority than investor tax breaks 3 years down the road.

The impact on the deficit, facilitated by the reconciliation process, is also a serious concern. I supported a substitute amendment offered by my colleague, Senator CONRAD, which would provide all of the same tax relief but would have taken the fiscally responsible step of offsetting the losses to the Treasury. The cost of this bill could be covered by closing tax loopholes and insisting that corporations and individuals are not able to avoid taxes by gaming the system, including in some cases by simply abandoning their U.S. citizenship. I was disappointed that my colleagues did not support this fiscally responsible course at a time when the Treasury Secretary has informed us that the Congress already needs to increase the national debt limit to $9 trillion.

These reservations, and indeed the declared intention of some of my colleagues on the other side of the aisle to add investor tax breaks during conference, prevented me from supporting this legislation when the Senate first considered it last November. As I said at the time, and I would still prefer, the reasonable tax relief contained in this Senate bill could be passed using the normal legislative process, garnering well more than 60 votes.

However, earlier this month, I supported this Senate bill after two important improvements. First and foremost, the mine safety tax incentives were added to this bill. As a representative of so many coal miners and their families, I will do all I can to advance measures that encourage additional investment in mine safety. I was also encouraged that during consideration in early February, the Senate passed an amendment offered by Senator MENENDEZ, by a vote of 73 to 24. That amendment expresses the sense of the Senate that relief from the alternative minimum tax should take precedence over any additional tax cuts for capital gains and dividend income.

I hope to work with my colleagues as differences between the House and Senate bills are resolved. I hope that we can work together to enact reasonable tax relief that enjoys broad bipartisan support. And I will fight to be sure that the tax incentives for investment in mine safety are maintained in the final legislation.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Pending:

Frist (for Specter/Leahy) amendment No. 2746, in the nature of a substitute.

Specter modified amendment No. 2747 (to amendment No. 2746), to provide guidelines in determining which defendant participants may receive inequity adjustments the Administrator shall give preference.

Kyl amendment No. 2754 (to amendment No. 2746), to reduce the impact of the trust fund on smaller companies and to expand hardship adjustments.

The PRESIDING OFFICER. The motion to waive the point of order is the pending question.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the point of order which has been raised has no substance on the merits. The point of order has no substance on the merits because there is no Federal funding involved in the legislation which creates a $140 billion trust fund. All of the money comes from private sources, from manufacturers, and from the insurance companies under the agreement reached by Senator FRIST, the Republican majority leader, and then-Senator Daschle, the Democratic minority leader, establishing this trust fund.

The Congressional Budget Office filed a letter yesterday, February 13, on the substitute which was offered. Instead of having a managers' package of some 47 amendments, which could have been considered one by one, they were added to the original text of S. 852 as a substitute bill.

The Congressional Budget Office letter made the essential conclusion that the substitute is budget neutral. The key paragraph reads as follows:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate.

This is the crucial line:

Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So as a matter of the merits, the point of order has no substance because there is no Federal funding involved.

The argument which was made last Thursday by the Senator from Nevada, Mr. ENSIGN, was that some future Congress might obligate the Government to pay money. The obvious response to that, which I made on Thursday and repeat now, is that this Congress should not try to bind what some future Congress may do. It is difficult enough for us to decide what is the appropriate course of action in the year 2006, without trying to look ahead, as this budget point of order contemplates, for a 10-year period, from the year 2016 to the year 2055, on payments in excess of some $5 billion over a 10-year period.

The underlying merits of the bill, I think, have been established. You have a chaotic situation today where litigation costs on asbestos claims eat up 58 cents on the dollar, so that claimants only get 42 cents on the dollar. This has resulted in some 77 companies going bankrupt. Some $70 billion has been expended. The courts are overburdened, leading the Supreme Court of the United States to ask the Congress, on several occasions, to deal with this problem.

This legislation has been drafted and analyzed and amended and modified, I think, more than any bill in the history of legislative action. I know that is a grandiose statement. I made it last week, and I repeat it today. I would challenge anybody who knows of any bill which is as complicated to step forward.

Shortly after the bill was reported out of the Judiciary Committee in July of 2003, I asked a distinguished senior Federal judge, Edward R. Becker, who had been chief judge of the Third Circuit, to undertake the mediation of the great many complex issues involved. For 2 days in August of 2003, Judge Becker and I met with about 20 so-called stakeholders in his chambers in Philadelphia, the stakeholders being the manufacturers, the insurers, the trial lawyers, and the AFL–CIO, to try to work through the problems.

Since that time, there have been some 36 meetings held in my office. We reported a bill out of the Judiciary Committee last May 26. We have accepted a great many amendments and are here today to move ahead with the amendment process.

I have urged my colleagues and have talked to most of the Senators on an individual basis, and visited many of my colleagues in their offices, talked to many more on the floor when we have had a break in between votes. When I have talked to people and explained to them the intricacies of this complex legislation, the responses have been good. There is a proposal for a medical criteria bill. I think that is not a preferable solution because it would not provide a fund for the employees of companies which have gone bankrupt, nor would it provide funds for the veterans who have sustained their damages at shipyards or in military service. But that is something which could be debated and voted upon before cloture is invoked, or perhaps a germane amendment can be drafted which would survive cloture, which is scheduled for tomorrow.

But, in any event, it is my expectation that we ought to be ready to vote some time this afternoon. So I urge any of my colleagues who have anything to say about this budget point of order to come to the floor so we may debate the issue and be prepared to vote.

In the absence of any Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, the distinguished Senator from California is preparing to take the floor.

I wish to present a chart. I am not big on charts, but I think this is one which has some special significance; and that is, there were some projections which were made by the Senator from North Dakota, Mr. CONRAD, last week about asbestos claims going up, which is simply not factual. The fact is—as this chart shows—these are findings from the Congressional Budget Office, which show the projection of asbestos claims in a sharp decline. This is based upon the fact that the latency period for asbestos to produce damage is some 30 years. They are going to be on a sharp decline, which is one of the reasons the Congressional Budget Office has estimated that $140 billion is more than sufficient.

The other chart I want to put up is the key paragraph which comes from the Congressional Budget Office report. This is the critical paragraph in which CBO concludes definitively that the FAIR Act is deficit neutral:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

The line in red is the conclusion, which is the most emphatic: ''Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.''

So what you have here is a private trust fund taking care of people who have asbestos-related injuries, where the companies have gone bankrupt and they have no one to collect from, where you would be stopping the tremendous clogging of the Federal courts, where the Supreme Court has asked Congress to act, and where you have a situation where people can collect for their damages.

I note the Senator from California is on the floor of the Senate. So at this time, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee. I note that the ranking member is here also. If he would like to go ahead of me, I have no problem with that.

Mr. LEAHY. Mr. President, the Senator from California has been a strong and consistent voice on this issue. I will follow her. Thank you.

Mrs. FEINSTEIN. I thank the Senator very much for that.

Mr. President, let me give you at least my bottom line of this bill. Up to 2004, 74 American companies had been bankrupted. Salaries have been diminished for a large number of people. More people are thrown into the unemployment market as a product of bankruptcy. Victims receive less than 50 percent on the settlement dollar. Those are facts. It is deeply disturbing to me. I deeply believe that a no-fault fund, which has a medical board that evaluates the medical condition of an individual and automatically grants that individual an amount of money, is a much sounder way to go.

Now, clearly, this is complicated legislation and there are difficult and technical issues involved. But a lot of misinformation has plagued the asbestos debate, and it continues to be repeated. I cannot say we have a perfect bill, but we have tried, and tried very hard. This has not been a take-it-or-leave-it bill. The chairman and the ranking member have been open to suggestions. They have been open to requests for amendments. There will be a substitute amendment that further refines the bill.

Today, I want to discuss the concerns raised by those who oppose the bill and provide what I hope are important points.

On Thursday, one Senator argued:

It really comes down to a very basic question—the question of whether or not this bill has been carefully crafted, whether or not it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims that will have to count on it.

Let me address the beginning of that statement, Mr. President. I cannot think of any other bill where more

time, more effort, and more man-hours have been committed to thoroughly understanding and trying to address all of the complex issues, and even to respond to the hypothetical issues that might potentially come up. The drafters of this legislation have worked for literally thousands of hours through the process of dozens of meetings over the past six years. The Judiciary Committee has held at least 8 hearings on the asbestos bill—4 just in the past year—and has heard testimony from 57 witnesses. We have met with experts from all sides who currently evaluate asbestos claims and make statistical projections for companies, for victims, and the courts. We met with doctors, victims, corporate CEOs, and general counsels. We met with trial lawyers, insurance representatives, and individuals who work for asbestos bankruptcy trusts.

I recognize that there are real concerns from the opponents of the bill. Some people are unsatisfied with some of the compromises that have been incorporated. But to assert that the legislation was not carefully drafted is one argument that has no basis in reality.

Now for the second part of the argument. Again, it is important to remember the history. Through this extensive consultation process, it became clear that there was an expected range of claims that could come into the fund. From this, several different experts, including Goldman Sachs, calculated the amount of funding necessary to cover the claims' values that the bill provided and the number of claims that the fund would pay based on the range of claims.

We learned that the amount necessary to create a national trust was between $90 billion and $155 billion. The legislation now on the floor has funding of $140 billion—clearly, on the high side of the range of what the technical experts expect.

I also think it is important to remember that previous versions of the asbestos bill had significantly less guaranteed contributions. S. 1125 provided $108 billion, with a $45 billion contingent fund. S. 2290 provided $104 billion, with a $10 billion contingent fund. However, each of these bills assumed that part of the money to pay claims would be collected through interest on savings. They did not meet the full funding through guaranteed contributions by businesses and insurers as this bill does. That is a significant difference.

The underlying assumption of the prior two bills was that the amount of money being paid into the trust would be more than sufficient to pay claims and, instead, there would be an excess that the administrator could invest to help build the trust fund's assets. So the amount of money being paid into the fund was much less than $108 billion and $104 billion. In addition, neither of those bills contained provisions to guarantee that the remaining companies would be required to make up any potential shortfall. Yet the bill on the floor of the Senate today is over $30 billion above S. 1125 and S. 2290 in guaranteed contributions, with no contingency funding.

In addition, when the CBO was asked to evaluate how much money the fund would need to pay claims, it projected that ''the proposed fund would be presented with valid claims worth $120 billion to $150 billion.'' This is the CBO language:

> CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 billion and $150 billion, not including possible financing (debt service costs) costs and administrative expenses.

Again, $140 billion is well within the expected range. I think it is also important to note that throughout the process, the medical criteria has been tightened. I don't believe anybody really speaks to this. One category of claims—individuals who had lung cancer but no underlying asbestos markers—has been eliminated from the bill. An Institute of Medicine study has been added to the legislation that requires an evaluation of the link between asbestos exposure and cancer, other than lung cancer. If that link cannot be established by the IOM, then those claims will not receive compensation. With these modifications, the number of claims coming into the trust will be substantially reduced.

Finally, many protections have been put in place that ensure that if, in the long run, the trust does not have sufficient funding to cover all claims, individuals will be returned to the tort system—the very solution opponents are advocating now. So if the trust were to run out of money, the individual would go back to the tort system.

Some opponents also argue that passage of this act would lead to federalizing the responsibility for asbestos claims. We just heard this in the Democratic Caucus. It is this argument that is being used to make the case for a budget point of order against the bill. Some opponents have argued that the trust creates a new, albeit capped, entitlement for claimants. However, this statement is very misleading.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending which require the payment of benefits to persons if specific criteria established in the authorized law are met. If one only looked at the first part of the definition of entitlement, this concern may be understood. However, CRS further states that entitlements are not subject to discretionary appropriation from Congress. Instead, they are subject to mandatory appropriations. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment. This is not the case here.

Let me state that again. This is not the case here. The trust fund created by this legislation will be privately funded. The money collected for the trust comes from businesses and insurance companies. It does not come from the U.S. Treasury. While some opponents acknowledge that the Federal Government must play a role in the trust fund for it to be classified as an entitlement, they inaccurately conclude that if an individual satisfies the medical criteria and filing deadlines, then he or she is entitled to compensation from the Federal Government. This is not true.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from businesses and insurers. In addition, as an extra protection, it is expressly stated several times throughout the bill that the United States, or the U.S. Treasury, will in no way be required to satisfy any claim or any costs if the amount in the trust is inadequate.

This bill expressly provides:

> Repayment of moneys borrowed by the administrator is limited solely to amounts available in the fund.

It also states that nothing in this act shall be construed to create any obligation of funding from the U.S. Government, including any borrowing authorized. Read section 406(b). This is what the opponents say is not there. This is the face of the bill. It is there:

> Nothing in this act shall be construed to create an obligation of funding from the United States Government . . . or obligate the United States Government to pay any award or part of an award, if amounts in the fund are inadequate.

I don't know what better guarantee there can be. If someone can suggest one, I am sure the chairman and the ranking member, and certainly myself, would agree to add it to the bill. With these explicit statements throughout the bill, it is abundantly clear that this legislation will not be a burden on the U.S. Treasury.

While Congress can obviously pass any law it so chooses in the future, this bill specifically states multiple times in the text that taxpayers and the U.S. Treasury will in no way be required to cover any shortfall, any administrative costs, any debt or interest costs, or any costs incurred by the trust fund. Therefore, the only way taxpayers will be called upon to subsidize this legislation is if a future Congress chooses to pass, and the President signs, new legislation which would create such an obligation. This seems to me very unrealistic and highly unlikely. But even if it were to come to pass, we should not defeat this bill because of what some other Congress and some other President may or may not do at some time in the future.

Opponents also argue that the Federal Government's liability is likely to arise through the debt service. They argue that the administrator could borrow beyond the fund's ability to repay the Treasury.

I wish to respond to that. This statement ignores the plain text of the bill.

The administrator's ability to borrow funds from the Federal Financing Bank is only available for the first 5 years. Section 221 states:

The administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 as needed for performance of the Administrator's duties under this Act for the first 5 years.

So for the first 5 years, there can be some borrowing. How is that borrowing limited and how is the loan paid back? This same section specifically limits the borrowing capacity of the administrator so that he or she may not overextend the fund's assets by borrowing beyond what the trust fund will be able to repay.

Again, section 221 states:

The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations to the fund at the time of borrowing, can be repaid in full with interest in a timely fashion from the available assets of the fund as of the time of borrowing, and all amounts expected to be paid by participants during the subsequent 10 years.

So it requires the administrator to look at what he or she could potentially repay and what contributions are still outstanding. It is hard to believe that any private lending institution would risk lending money to the trust fund which it could not clearly repay in the future. However, even if some private institution decided to take that risk, the bill specifically prohibits the administrator from entering into such a financially risky transaction.

As I just read, the explicit language in the bill limits the administrator's borrowing capacity to an amount that can be repaid in full with interest from the available assets of the fund as of the time of borrowing and all amounts expected to be paid by participants during the subsequent 10 years.

Finally, those who support the budget point of order argue that collection of the contributions by the businesses and insurers could fail to materialize, leaving the U.S. taxpayer on the hook to cover the costs, and we should look at that. We should look at it very carefully. But this ignores explicit provisions contained in the legislation.

Senator LEAHY and I fought hard to ensure that the payment obligations included in the bill were enforceable and guaranteed.

First, the bill gives the administrator enforcement authority to compel payment by the companies, both defendant businesses and insurers alike.

Let me quote section 223. It provides:

If any participant fails to make any payment in the amount of, and according to, the schedule under this Act or as prescribed by the Administrator after demand and a 30-day opportunity to cure the default, there shall be a lien—

Not there may be a lien; there shall be a lien, mandatory language—

for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

The participants of the fund are liable for the maintenance of the fund. I don't see how it could be any clearer.

The chairman of the committee who is the author of this bill is in the Chamber. If someone has an amendment and comes to the chairman and says: Look, we think there is an oversight here or there, it could be tightened up by doing X or Y, I am sure this chairman will listen. But the language is very specific: If any participant fails to make any payment in the amount in the schedule under this act or as prescribed by the administrator after a demand and 30 days to pony up to cure the default, there shall be a lien for the amount of the payment, including interest, upon all property and rights to property. That includes every big business, every big insurance company, everyone that is in this fund, and it is only within that initial period that the administrator can, in fact, borrow. So how people come to the conclusion that the Government is on the hook for $40 billion I will never understand. If the company refuses to pay or fails to pay, the administrator must get a lien from a court on the company's assets in order to compel payment.

Secondly, the bill ensures that if any one company cannot pay its obligation under the trust fund—and this is important—if any one company can't pay its obligation under the trust fund, the other companies must shoulder the cost.

Specifically, section 204(h)—please read it, opposition—Guaranteed Payment Surcharge, states that if the required contribution does not come in,

The administrator shall assess a guaranteed payment surcharge.

Here it is, section 204(h)(3):

To the extent it is insufficient to satisfy the required minimum aggregate annual payment, the administrator—

Not may—

shall assess a guaranteed payment surcharge.

So the administrator shall collect any shortfall in contributions from other defendant companies. This legislation contains specific language to require that companies pay and that if the enforcement mechanism should fail for any reason, the the money still comes into the trust through payments from other companies.

With explicit language protecting the American taxpayer and the U.S. Treasury from ever having to contribute to the fund, with explicit language limiting the administrator's borrowing authority, and with explicit language ensuring that the anticipated contributions are made, this legislation makes it abundantly clear that in no way, shape, or form can the trust harm the Federal budget.

Opponents of the bill argue that those of us who support the bill have ''significantly distort[ed] CBO's conclusions'' and, at the same time, they assert that CBO ''likely understates'' the amount of money needed for the trust. They argue that because CBO uses qualifiers in their estimates such as acknowledging uncertainties in calculating the number of claims and the amounts to be paid, that one must draw the conclusion that CBO actually believes the cost to be much higher than that which is contained in their paper. Yet time and time again, when CBO has been asked to review their estimate and make changes based on new information, including the rather notorious Bates White study, they have declined to make changes. I was in that hearing; I heard the Director of CBO decline to make changes directly after the Bates White testimony. With each request, CBO has refused to alter its estimate of the projected costs. This is what they said in a letter to Chairman SPECTER dated December 19, 2005:

The Bates White Report contains no new information that would cause CBO to revise its cost estimate.

The size of the fund is based on the strongest statistical data and economic models available. Now, that is the best that is out there. That is the state of the art. Some can say it isn't enough. I can't counter that. All I know is that the committee sought the best, the committee sought the most responsible.

As I said on the floor previously, a leading actuary with Tillinghast-Towers Perrin, an actuarial firm for the Manville Trust, testified before the committee that ''$108 billion appears to be more than adequate,'' and the RAND Institute estimates the future remaining costs of asbestos-related loss and expense at $130 billion. In addition, the new projections calculated by Tillinghast also confirm that the contributions to the asbestos trust fund should be sufficient.

While opponents argue that the latest Tillinghast studies support their argument that there is inadequate funding, a closer analysis reveals that the new Tillinghast projections are actually in line with the projections used to calculate the money necessary to pay claims under the bill. Let me tell you how that happens.

The new Tillinghast claims projections include claims for foreign exposures as well as Manville's level VI cancers. Both of these categories of claimants are ineligible for compensation under this bill's medical criteria. When these changes are accounted for and the Tillinghast numbers are adjusted, their new projections fall squarely within the range that the asbestos trust fund is based on, and the adjusted Tillinghast numbers are actually less than CBO's projections.

In addition, by using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs which almost all experts agree consume more than half of the total amount paid out for asbestos claims.

Remember at the beginning I said that one of the most startling things to me was to realize what happens with settlements, what happens to the dollars of settlements. The fact is that 61 percent of all of the settlement monies go for defendant costs, go for plaintiff costs, go for court costs, go for legal fees. Sixty-one percent. Sixty-one percent, then, of any tort court sum goes not to the victim but to lawyers and to tort costs.

In addition, by using a no-fault administrative system, the fund significantly reduces the substantial transaction costs of the current tort system: (A) you don't need a lawyer; and (B) if you want to come in with a lawyer, that lawyer is limited to a 5-percent fee—not 30, 40, 50, 60, or 70 percent of a recovery, but 5 percent.

According to the RAND Institute, 58 percent of the money spent on asbestos claims goes toward attorney's fees—31 percent to defense attorneys, and 27 percent to plaintiff attorneys.

I urge everyone to read the RAND Institute's recent study. It is 168 pages. It describes what is happening in the tort system, and it is an independent, very good analysis.

The bottom line: The asbestos bill needs less money to pay victims fair compensation since it eliminates these transaction costs which drain money away from the individual.

This bill as amended obligates defendant and insurer participants to contribute $136 billion—that is a lot of money—$136 billion to the fund, and at least $4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds. In fact, CBO recently estimated that the amount to be contributed by bankruptcy trusts will likely be around $8 billion. Here is what CBO said:

> The value of cash and financial assets of the asbestos bankruptcy trust funds would be $7.5 billion in 2006 and $8.1 billion when liquidated.

As I stated previously, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts. With this safety net, the legislation ensures that no one is left without an avenue of recourse.

Some people have said there is a lack of certainty. A lack of certainty is not unusual when projecting what might occur in the future for the Federal budget or for future programs. I do not believe that uncertainty or ambiguity necessarily leads to the conclusion that the trust fund will require more funding. But I would hope opponents would view the ambiguities for what they are—an acknowledgment that no one can predict the future with 100 percent certainty, and the best anyone can do is make projections using sound statistical analyses, which this committee's bill has attempted to do.

We don't know how many people have been exposed to asbestos and, of course, who will develop a disease—nor can we possibly know. However, that should not mean that we do nothing, that we let the present system, which we know is not good, prevail. That does not mean that the analyses and projections that have been done are useless, not valuable, or inaccurate. Instead, we have to find the best projections available, the most sound, the ones that are based on sound calculation and real-world experience of other trusts. That is what this legislation does.

Another argument made by opponents is that there will be additional costs related to the debt service that could overwhelm the trust. Some have declared:

> Debt service contributes greatly to the trust fund's insolvency, underlining the severe mismatch between the timing of payments into the fund.

Opponents have said that this conclusion is based on the argument that there will be a flood of claims at the start of the trust. However, this concern has also been examined and addressed through the process of drafting this bill. The so-called upfront funding has been significantly increased to the point where the trust fund now will have $42 billion in the first 5 years to pay claims. Under S. 2290—the old bill—the administrator would have collected up to $19 billion during the first 3 years and only $29 billion in the first 5 years. The difference is $15 billion has been added to the upfront funding of this bill. That is a 30-percent increase in the startup funding from what was provided in the bill last Congress.

In addition, the Judiciary Committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

Section 204 requires the defendant companies to pay their initial payment within 90 days from the date of the enactment, and we are very serious about that. Section 212 requires the insurers to make their first payment within the same time line. And Section 402 requires the bankruptcy trusts to also make their first payment within the first 90 days.

Here is what the bill says:

> Each defendant participant shall file, not later than 90 days; insurer participants, not later than 90 days.

This is bill language.

> The assets in any trust established to provide compensation shall be transferred to the fund not later than 90 days after enactment.

So everything is done in this bill to move a fast start forward. Within 3 months, the administrator will have collected initial payments from all the participants and will have almost $9 billion.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately—immediately—upon enactment of this legislation. That is what is so attractive to me. Someone who has a very short time to live, someone with mesothelioma, has a chance of getting paid upfront, right away—much more than a chance, a commitment. This provision ensures the terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing and most expensive claims before the trust is up and running so that there will not be an overwhelming flood of claims filed with the trust on day one.

Senator SPECTER included language in the statute of limitations to give individuals sufficient time to file their claims—5 years—so there will not be a need to rush to the fund for fear of being cut off and the administrator and the medical board can concentrate on the sickest people first.

Finally, as I mentioned previously, there are tight restrictions on how much the administrator may borrow for the express purpose of ensuring that the trust does not face a shortfall simply because of a debt service problem.

I would like to address the Bates White study in a little more depth. When opponents argue that the projections are too low, many of the arguments made to support this conclusion appear to be based on the Bates White study.

During consideration of this legislation, the Committee held a hearing on the Bates White study and asked CBO to review its conclusions. I was present and listened carefully to the testimony. Several criticisms and concerns were raised about the Bates White study, its assumptions, and its methodology. Witnesses before the Committee made several points that significantly undermined the credibility of the Bates White study.

First, witnesses argued that the Bates White study overestimated occupational exposure. In determining the overall number of individuals who could recover from the bill the Bates White study appears to have counted every employee who ever worked in an industry where there was asbestos exposure. This conclusion was reached by comparing the Bates White study to the Nicholson study.

The Nicholson, Perkel and Selikoff study, conducted in 1982, set the standard on this subject and is considered the most comprehensive asbestos study. It provides a good foundation for estimating the future cases of asbestos disease, and has been utilized in many of the models to develop future asbestos disease claims projections, including claims projections made for the Manville Trust. Yet, Bates White's conclusions are almost triple Nicholson's.

Navigant is a consulting firm that has worked on asbestos claims since the 1980s doing evaluations of claims projections and costs to companies. During the hearing, Navigant's witness explained that this discrepancy seemed to occur because Bates White simply used a straight percentage of the total U.S. workforce, whereas Nicholson conducted an extensive analysis of the industry and occupational exposure to asbestos.

Next, Bates White did not make a distinction in its calculations between exposed populations and eligible populations. This means that in the Bates White study it appears that every person who was ever exposed to asbestos was counted as eligible under the trust fund. However, not all individuals who are exposed to asbestos will become sick, nor will all individuals who are exposed to asbestos be able to meet the medical criteria and the exposure requirements necessary to receive compensation.

While considering asbestos legislation, several witnesses have pointed out that just because someone may have been exposed to asbestos at some point in their lifetime, it does not follow that they will become sick or will qualify for payment. I think this is an important point and is feeding some of the misperceptions around this bill. The science has not determined that every person who is exposed to asbestos will get sick.

This is true not just because each individual is different from one another and has differences in their immune systems, but because developing an asbestos-related disease usually requires prolonged and sustained exposure. Asbestos is a naturally-occurring mineral and most of us have been exposed to asbestos dust simply by walking outdoors. However, the current science concludes that casual contact is rarely sufficient to develop an asbestos disease.

Dr. James Crapo is Professor of Medicine at the National Jewish Medical and Research Center. He has more than 25 years of experience with asbestos-related issues, including medical research and clinical treatment of patients suffering from asbestos-related diseases and has published in the field of environmental toxicology, including the basis of asbestos-induced lung injury.

He testified that:

> All of us are exposed to asbestos from the environment and consequently have asbestos in our lungs. This background level of exposure does not cause any asbestos-related disease. Those diseases normally require substantial occupational exposures or the equivalent.

In addition, the Navigant and the labor witnesses pointed out that the Bates White study did not seem to take into account that exposure rates within certain occupations decreased over time. This means that the Bates White study did not account for the fact that as companies became more aware of the dangers of asbestos they often did more to protect their workers.

The committee also heard from Dr. Laura Stewart Welch, a board-certified physician in internal medicine and occupational medicine. She has an active medical practice and treated many workers with asbestos-related disorders. She is currently medical director for The Center to Protect Workers Rights, a research institute affiliated with the Building and Construction Trades department of the AFL–CIO, and has authored over 50 peer-reviewed publications and technical reports in the field of occupational and environmental medicine, including papers describing the findings of asbestos-related disease in this group of construction workers.

She pointed out that the overall number from which Dr. Bates calculated the claims that will go into the trust is at least ten times too big. She explained that Dr. Bates extrapolated from a study that uses 2–3 fiber years as the basis for what constitutes significant exposure. The reference to fiber years is a way to calculate how much asbestos an individual has been exposed to. However, the legislation requires at least 25–40 fiber years to constitute significant exposure. So the legislation requires a much higher level of exposure to qualify.

Witnesses concluded that by failing to adequately consider each of these factors, the Bates White study provided a significant overestimation of claims.

Next, the committee heard testimony that argued the estimates made by the Bates White study do not reflect current experiences. The Bates White study asserts that by creating a no-fault system there will be a huge increase in filing of other cancer claims because it is no-fault rather than the adversarial system in the courts. However, the Manville Trust has similar, and in some cases exactly the same, medical criteria as the criteria in the FAIR Act, and it does not have litigation costs nor the deterrent of the adversarial system.

The Manville Trust was formed in 1988, and is the first and largest asbestos trust. In fact, it is not just the largest asbestos trust, but it is the largest toxic tort or personal injury trust of any kind. As of mid-2005 the trust had paid about $3.3 billion to settle 655,096 claims. The Manville Trust has gained so much experience in the field of asbestos claims settlements that it plans to begin offering claims-resolution services to other companies. Therefore, the experience of the Manville Trust should be considered a fair starting point for projections.

When comparing the Bates White study to Manville, witnesses from the committee hearing asserted Bates White projections are four times higher for other cancers than Manville. This was viewed as well outside a reasonable difference.

In addition, witnesses pointed out that there are several evidentiary requirements that do not seem to be adequately accounted for. In the two areas where the Bates White study predicts significant growth in claims, it does not account for the role of the physicians panel which is made up of three doctors who will personally review claims.

Lastly, the committee heard from experts who stated that the Bates White study used a methodology that has not been accepted by the unions, businesses, insurers, trial lawyers, CBO, the current bankruptcy trusts, or the courts now hearing asbestos cases.

For all these reasons, many of us concluded that the Bates White analysis fell far outside acceptable ranges for projections. To be clear, throughout this process both the AFL–CIO witness as well as business witnesses disputed the assumptions underlying the Bates White study and rejected its conclusion.

The next argument used by opponents is that the asbestos trust fund is going to fail because other trust funds have failed. This is not a new concern. In fact, throughout the process we looked at previous trust funds and attempted to evaluate the problems that arose.

The Black Lung Disability Fund was established by the Black Lung Benefits Revenue Act to pay black lung benefits to eligible miners whose mine employment ended before 1970 or whose employers were no longer in existence and therefore could not be assigned liability for their benefits. It was funded by excise taxes levied on coal sold by mine operators, but the Act includes language for repayable advances to the fund from the U.S. Treasury. This meant that when the Black Lung Trust Fund's resources were inadequate to meet its obligations the U.S. Treasury could advance the fund money to cover the costs. This provision is intentionally not included in the asbestos bill and instead language stating the opposite is included.

It is true that the number of black lung benefit claims were vastly underestimated and the costs of the black lung program were also underestimated. However, while the Black Lung Fund's costs were to be paid by industry, by 1977, 7 years after enactment, industry had made very few payments to the fund. The fund then sustained a deficit and the U.S. Treasury had to pay claims because of this default by mining companies. We did not ignore the problems created by the Black Lung Fund, rather we included several provisions in the asbestos bill to prevent this situation from taking place.

They are: explicit language prohibiting the Administrator from requiring any costs to be paid by U.S. Treasury; limits on borrowing authority and capacity; strong enforcement provisions if businesses default; requirements that other companies cover any potential shortfall; and reversion to the tort system if the trust runs out of money. I have already discussed the language in the asbestos bill to ensure that the business and insurer contributions are made and enforced, and to limit how much the administrator may borrow.

Finally, I would like to address an overarching concern that has been repeated throughout the debate. Interestingly, opponents keep arguing for 100-percent certainty. I don't know when we are ever provided 100-percent certainty. Congress is supposed to look at all the information available, hold

hearings, raise questions, draft legislation, offer amendments and then try to pass a statute. That is exactly what has been done here.

Senators SPECTER and LEAHY have gone well beyond what is normally done around here to address problems. Every time an issue has been raised, they have tried to address the problem and find a solution. This stands in sharp contrast to the take-it-or-leave-it process that often describes legislative craftsmanship.

To now hear my colleagues express such an intense level of outrage that the bipartisan bill before the Senate does not contain adequate certainty or enough compromises is hard to swallow. To argue that a bill should not move forward because there might be unintended consequences would mean we would almost never pass legislation. And if we can't pass legislation unless we can guarantee there will never be an unintended outcome, then we might as well pack up and go home.

I should say I think this is a very important bill. Let me end with what I started. People who think the tort system is the way to go, who think it is OK that 61 percent of the settlement dollars go to transaction costs, who think that the victims who do not get this money are best served by the tort system—they are going to vote to sustain the point of order against the bill.

For those of us who believe it is the sickest victims who are going to be best taken care of in this trust, that this trust sets up an orderly and medically oriented protocol for a no-fault trust system and that victims are going to benefit from it and businesses will cease going into bankruptcy because of it, if you think that is a worthy thing, then you will vote for us.

I thank the Chair. I particularly thank the chairman and the ranking member of the committee. This has not been an easy bill. I truly believe they have both done a wonderful job, in the finest interests of the Senate, by working together across the aisle.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Vermont.

Mr. LEAHY. Mr. President, parliamentary inquiry: Are we operating under controlled time?

The PRESIDING OFFICER. We are not.

Mr. LEAHY. Mr. President, first, I thank the distinguished Senator from California. She has talked about the daunting hours the senior Senator from Pennsylvania has put in on this legislation, as well as those of us who have been concerned with it.

I note the Senator from California has spent those hours with us. She has been there, her staff has been there—I don't know how many times I have received calls that start with: Patrick, I have been thinking about this—and off we go. Usually, that is about points to which I should be paying more attention. All of that has gone toward a better bill.

The senior Senator from Pennsylvania is not on the floor looking for praise, but I am going to take a moment to praise him from this side of the aisle. I do not know a single Senator, Republican or Democrat, who came to him and said: I want to talk to you about this, who was not given a fair, thorough hearing. If they had a better way of doing it, the Senator from Pennsylvania would say: Let's consider it. He and I would talk about it, and if we were convinced it was a better way, it became part of the bill.

I have been here 31 years, as I am sometimes wont to say. My children remind me they had forgotten I was that old. But I have been here 31 years, and I very rarely have seen a chairman of either party take that much time and effort to accommodate every single Senator. I applaud my friend from Pennsylvania for doing that.

But the proof comes in the pudding. Because he did do that, we have an even better bill than when we started. We spent several years on this. I recall conducting one of the first hearings on this several years ago. We have done this through two different Congresses. We have had numerous markups, and we have come out with a better bill. It is on the floor now because it is the aggregate of great ideas.

This is why the point of order is so frustrating, the point of order that the nonpartisan Congressional Budget Office said they would not expect this legislation to add to the Federal debt. Yet we still have to face this point of order because the point of order has become for many a backdoor way of killing this bill. If it is done to kill the bill, Senators should ask themselves what they are then faced with? I will tell you what they are faced with. They are faced with thousands upon thousands of victims—and we are all for the victims. Lord knows everybody said that. But if you vote to sustain this point of order what you are telling thousands upon thousands of victims is: You are on your own. You probably have no chance of getting the recovery you would have here.

Certainly, you tell all those veterans who have no place of recovery that they are gone. That is why every single veterans group I can think of has endorsed the legislation, the Specter-Leahy legislation. They have endorsed it. That is why all those veterans organizations said: Don't vote to sustain this point of order.

I have a great deal of respect for the Senate Budget Committee. Certainly, I do for my friend, the ranking member, and my friend the chairman. But I disagree with any position that says this legislation would add to our deficit. If you fully read the text of our legislation and the testimony of the Congressional Budget Office and the recent analysis of the fiscal impact of this legislation, it does not support the point of order. We have heard people who are opposed to this say that somehow a privately funded trust will add to the Federal debt. This week, the Congressional Budget Office made it very clear that the trust fund set up under this bill does not add to the Federal debt. CBO stated in its letter that ''the legislation would be deficit neutral over the life of the fund.''

I ask unanimous consent that that letter from CBO be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 13, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the request of the Committee on the Budget, the Congressional Budget Office (CBO) has reviewed Senate Amendment No. 2746 to S. 852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005, a substitute amendment that was printed in the Congressional Record on February 9, 2006. This review addresses the amendment's year-by-year budgetary impact over the first 10 years, its aggregate impact in succeeding 10-year periods, and its cumulative budgetary impact over the life of the proposed Asbestos Injury Claims Resolution Fund (Asbestos Fund). It also addresses the potential costs of intergovernmental and private-sector mandates in the legislation.

BUDGETARY IMPACT

Assuming that the bill as amended is enacted before the end of 2006, and based on the assumptions underlying our August 2005 cost estimate for S. 852, CBO estimates that payments to eligible claimants, start-up costs, investment transactions, and administrative expenses of the Asbestos Fund would total about $64 billion over the 2006–2015 period (excluding debt-service costs). Those sums would appear in the federal budget as direct spending (see the table below). Over the same 10-year period, we estimate that the fund would collect about $58 billion from firms and insurance companies with past asbestos liability and from certain private asbestos trust funds. CBO expects that those sums would be treated in the budget as federal revenues. In addition, the Joint Committee on Taxation (JCT) estimates that enactment of the legislation would lead to a reduction of about $1.1 billion in receipts from corporate income taxes over the 2007–2015 period; this would affect the budget totals but would not affect the balances of the Asbestos Fund. Thus, CBO estimates federal revenues would increase by about $57 billion over the next 10 years under the bill.

ESTIMATED BUDGETARY IMPACT OF S. 852, IF AMENDED BY AMENDMENT NO. 2746

	By fiscal year, in billions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	*	8.7	23.1	11.1	5.3	4.0	5.1	5.0	4.9	4.7
Estimated Outlays	*	8.7	6.7	8.2	9.3	9.4	6.6	5.2	5.1	5.0
CHANGES IN REVENUES										
Asbestos Fund Revenues	0	8.7	7.0	8.2	9.3	9.1	4.0	4.0	4.0	4.0
Corporate Income Taxes	0	−0.1	−0.2	−0.2	−0.2	−0.1	−0.1	−0.1	*	*
Total Revenues	0	8.6	6.8	8.0	9.1	9.0	3.9	3.9	4.0	4.0
CHANGES IN THE DEFICIT										
Estimated Net Increase or Decrease (−) in the Budget Deficit	*	0.1	−0.1	0.2	0.2	0.4	2.7	1.3	1.2	1.0

Note: *= Between $50 million and −$50 million.

CBO's estimate of spending from the Asbestos Fund over the 2006–2015 period differs from that in CBO's August 2005 cost estimate for S. 852 because we now assume a later enactment date for the legislation. In addition, certain provisions in section 402 regarding when assets would be transferred from private asbestos bankruptcy trust funds to the proposed federal Asbestos Fund would slightly reduce both spending and revenues, relative to the amounts shown in the earlier cost estimate. CBO estimates that other provisions of the amendment would not significantly affect spending or receipts over the 10-year period, relative to the amounts shown in CBO's earlier estimate.

The revenue effects shown in the table also incorporate a change in CBO's cost estimate unrelated to the amendment. That change involves effects of the legislation on the amounts that insurers and defendant firms would deduct to arrive at taxable corporate income. In CBO's earlier estimate, it was judged that the amounts deducted as payments made over the life of the trust fund were approximately the same as would be deducted to cover claims under the current tort compensation system, producing no net effects on corporate income tax collections over the life of the fund.

This assessment has not changed. But while total deductions over the life of the trust fund would not change, their distribution over those years could. Larger deductions up front, as a result of S. 852, could produce less revenue from corporate income taxes in the earlier years, which would be offset by a revenue gain in later years. Lacking any basis for estimating this timing effect, CBO elected not to incorporate it into its cost estimate. Recently, the Joint Committee on Taxation produced an estimate of this timing effect. In its estimation, receipts from corporate income taxes would be reduced by about $1.1 billion over the 2007–2015 period. CBO has elected to incorporate JCT's estimate of this effect in its projections. That adjustment does not affect spending or receipts of the proposed Asbestos Fund.

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting the bill as amended would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

MANDATES

The proposed amendment contains the same intergovernmental and private-sector mandates as the reported bill. It would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. It also would require state governments to comply with requests for information from the Asbestos Insurers Commission. CBO estimates that any cost associated with those intergovernmental mandates would be insignificant and well below the threshold—$64 million in 2006, adjusted annually for inflation—established in the Unfunded Mandates Reform Act (UMRA).

The proposed amendment would also impose mandates on certain individuals filing claims for compensation for injuries caused by exposure to asbestos; certain companies with prior expenditures related to asbestos personal injury claims; certain insurance companies; trusts established to provide compensation for asbestos claims; health insurers; and persons involved in manufacturing, processing, or selling certain products containing asbestos. Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established by UMRA ($128 million in 2006, adjusted annually for inflation).

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Mike Waters, who may be reached at 226–2860.

Sincerely,

DONALD B. MARRON,
Acting Director.

Mr. LEAHY. Former Senator Don Nickles, with whom many of us served, raised this concern. The Government Accountability Office responded:

> [T]o ensure the Government incurs no liability for repayment of borrowing under this act, Congress may wish to explicitly state repayment of borrowing is limited solely to balances available in the fund.

That is precisely what we did in the FAIR Act.

A simple reading of the text of the bill shows that defendants and their insurers are obligated to pay $136 billion to the fund, and additionally another $4 billion of the assets from existing bankruptcy trusts. If this level of funding proves to be insufficient—most doubt it will not, but if it does—then we revert back to the tort system which we have now.

If we pass this legislation, thousands of people who had their health severely impacted through no fault of their own because of asbestos will have a chance to recover. Will some recover as much as some of the lucky few who were able to get through the whole tort system? No, nor will their attorneys even begin to recover the huge amounts some of the attorneys did.

The private companies are required under this legislation to continue making payments to the fund even after sunset until all of the fund's obligations are satisfied under section 405. Even the administrative expenses are paid from this private fund.

Finally, the bill clearly states:

> Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . .

The Senator from Pennsylvania and I have this as a touchstone all the way through, that we are not passing a piece of legislation for the taxpayers to fund. We are seeking help for those who have been injured.

Senator SPECTER and I have been working on this issue for years. We have carefully considered the design of the compensation program for asbestos victims and ways to avoid the pitfalls of other Federal compensation programs that have been enacted by Congress. Many of the compensation programs cited by the opponents of S. 852 were created by Congress with mandatory Federal spending and did not contain a provision to sunset the program if it went under-funded. We rejected such proposals for asbestos legislation.

Many opponents of our trust fund wanted the claims processing to be in a private corporation. Labor groups and victims testified that operating this trust fund in a new, private entity would delay compensation to sick victims and would entail significant administrative costs. Accordingly, we agreed to house the asbestos trust fund within the Department of Labor because it has expertise with compensation programs. It has existing staff with relevant experience and critical infrastructure and contracting capabilities to ensure an accelerated pace to pay the sickest victims within months of enactment.

Members of the financial services community recently contacted my office to rebut the conclusions made in the recent ''white paper'' distributed by the minority staff of the Senate Budget Committee. The investment community indicates that this minority staff report circulated last week dramatically overstates the financing expenses to be expected under this legislation.

This document alleges that $125 billion will be spent by the fund on borrowing because it vastly overstates claims projections and interest rates. The minority staff document ignores the fact that section 221 of the legislation provides that borrowing by the trust fund will be within a 10-year time frame. The document alleges that the FAIR Act will pay borrowing at an interest rate of a whopping 25 percent. This assumes an interest rate six times higher than the current 10-year Treasury bond rate.

In fact, the financial community opines that due to the structural aspects of the legislative language, it is ''overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit'' and therefore it would have access to highly favorable borrowing rates.

I ask unanimous consent to have printed in the RECORD the FIAR letter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINANCIAL INSTITUTIONS FOR ASBESTOS REFORM,
Washington, DC, February 10, 2006.

Re Senate Budget Committee Democratic Staff White Paper.

Hon. ARLEN SPECTER,
Hon. PATRICK LEAHY,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATORS: As members of the investing community we must take issue with the recent report prepared by the Democratic staff of the Senate Budget Committee. This staff paper flunks ''Finance 101''. The analysis by Democratic staff of S. 852 displays a basic misunderstanding of the financing that will occur in the proposed asbestos claims trust fund. It suggests that the trust fund's obligations will exceed designed contributions by a hair-raising total of $150 billion in nominal terms. This suggestion lacks any credible basis.

The Democratic staff report attributes $117 billion of this $150 billion to increased financing expenses. The report estimate of $125 billion in financing costs contrasts with a Congressional Budget Office estimate that net financing expenses for the trust will be $8 billion. This huge discrepancy is the result of flawed and unrealistic assumptions in the staff report.

The staff study projects that the trust fund will make $160 billion in claims payments, vs. $130 billion estimated by the CBO. In a worst case scenario where the incremental $30 billion of claims would be financed by borrowing in the trust fund's initial years of operation, the trust would need to borrow $50 billion as opposed to the $20 billion estimated by CBO.

Section 221 of the FAIR Act provides that borrowing by the trust fund will be within a ten year time frame. Doing the math, the trust fund would be borrowing $50 billion at an unheard of interest rate of 25% in order to generate $125 billion of net financing expenses over the ten-year borrowing period. It should be noted that ten-year Treasury bonds currently yield 4.54%.

There is not even a remote possibility that the trust fund administrator will have to borrow at rates even approaching 25%. Structural aspects of the proposed trust, including a super priority lien securing obligations of the payers, make it overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit.

If the trust gets even the lowest investment grade rating (BBB) and pays market rates, which are under 6%, its total borrowing costs under the staffs draconian scenario would be under $30 billion; a far cry from $125 billion.

Sincerely,

Financial Institutions for Asbestos Reform.

Mr. LEAHY. Mr. President, at the heart of most arguments against the funding structure provided under the FAIR Act are allegations that predictions about the number of claims expected to come to the fund have been underestimated. Over the past 5 years, the Judiciary Committee received extensive testimony from a variety of auditing companies, economic analysts and existing asbestos trusts about claims projections. Three years ago, a leading actuary with Tillinghast-Towers Perrin testified that ''$108 billion appears to be more than adequate'' while other firms estimated that $130 billion would be sufficient to cover the trust fund expenses.

It is not surprising that projections about future behavior vary from firm to firm because the assumptions are different. Some professional analysts have estimated that we will experience significantly less than $140 billion in claims and others have estimated that we will experience more.

Last week's document produced by some staff on the Budget Committee assumes that $160 billion will be paid out in claims based on a worst case scenario of one projection of claims activity.

The minority staff document circulated last week adopted claims projections plainly at odds with the experience of the Manville trust and without consideration for the medical criteria in S. 852. The overwhelming majority of nonmalignant claims paid by the Manville trust go to unimpaired claimants. The fund created by the FAIR Act would not compensate these claims, so this significant disparity must be taken into account.

The minority staff document also fails to account for the different medical criteria for malignant claims paid by the Manville trust. Thankfully, the CBO's estimate takes the FAIR Act's specific medical criteria into account when it considered its claims projections.

The CBO considered all relevant estimates and met with scores of stakeholders, financial experts, economists and auditors in determining whether the compensation provided for victims under S. 852 would be adequate. After years of analysis, they found that while victim compensation could range from $120 to $150 billion, its middle range estimate using its chosen claims projections would yield approximately $130 billion in claimant compensation, and that $140 billion, plus investment income, would be sufficient to cover all claims payments, administrative costs, and borrowing costs.

Of course opponents can seize upon worst case scenarios in an 11th hour attempt to scuttle this bipartisan legislation, but $130 billion in expected claims is the CBO's middle range and is provided for under our legislation.

Finally, opponents of this legislation contend that the fund will not actually receive $140 billion from the private companies obligated to contribute based on their previous asbestos expenditures. In his testimony before the Senate Judiciary Committee last Fall, then-CBO Director Douglas Holtz-Eakin clearly stated that: ''CBO projects that total receipts to the fund over its lifetime would amount to about $140 billion, including a small amount of interest earnings on its balances.''

The FAIR Act contains several provisions to ensure that the contributions will be collected through numerous enforcement provisions which provide the administrator with subpoena power and the ability to pursue punitive damages for nonpayment. In addition, our legislation contains a funding guarantee so that other companies will make up the difference if some companies are unable to pay their own contribution.

Even if the fund sunsets and victims are allowed to return to the tort system, the private companies are nonetheless required to continue to pay into the fund until all of the fund's obligations from borrowing costs and resolving victim claims are satisfied.

I understand that some of my colleagues have raised this budget point of order to sink the FAIR Act, but I urge them to consider the purpose of such budgetary mechanisms in light of the simple fact that we have created a privately financed structure that the Congressional Budget Office has estimated will not add to the Federal debt.

This point of order is a procedural mechanism intended to promote fiscal discipline. In light of CBO's explicit statement that ''CBO concludes that the legislation would be deficit-neutral over the life of the fund,'' no point of order should prevent such important, completely privately funded legislation as the FAIR Act.

This latest analysis from CBO reinforces the fact that the asbestos trust fund legislation would not add to the Government's Federal debt. The bottom line from CBO is that this bill is ''deficit-neutral.'' There is no reason to sustain the budget point of order. The FAIR Act is the right solution for victims and businesses. This bipartisan bill offers fair and efficient relief to long-suffering victims of asbestos exposure while providing business with financial certainty and an alternative to bankruptcy.

I recently received a letter from the International Association of Heat and Frost Insulators and Asbestos Workers. The workers represented by this union know first hand the devastation caused by asbestos, and I know they would hate to see the unique opportunity we have before us be destroyed by a technicality.

They wrote:

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members.

Let us not let down the very people we are seeking to help. I ask unanimous consent that the letter from the International Association of Heat and Frost Insulators and Asbestos Workers of February 13, 2006 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,

Lanham, MD, February 13, 2006.

DEAR SENATOR: We write you to express our concern regarding the budget point of order that is currently being considered with respect to the Fairness in Asbestos Injury Resolution (FAIR) Act, S. 852. It is frankly very troubling to see critical legislation that impacts our members be imperiled by a mere technical procedural motion.

The Fund at the heart of S. 852 is financed by private dollars and it does not make sense to us that the legislation could have any real impact in the U.S. budget. We urge you to support waiving this false point of order so the Senate can work on this important legislation.

We represent tens of thousands of members and retirees who have been exposed to asbestos in the workplace.

We believe the current system is broken and must be fixed for the current victims and the victims of the future. More than seventy-five companies have gone into bankruptcy. What is most disturbing to us is the fact that only 42 cents of every dollar spent goes to the victims, their widows, and children.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

We strongly support the FAIR Act. For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members. We believe to kill the FAIR Act on a disingenuous technicality would be wrong and, as appalling as the current system itself. Our members and their families know the horrors of asbestos-induced disease and the heartache associated with it. We also know that the problem is not going away soon.

Senators Specter and Leahy along with many others have worked extremely hard over the past three years to address what almost everyone concedes is a national crisis.

Senators who oppose this Bill may vote against it in the end, but the members of our Union (International Association of Heat and Frost Insulators and Asbestos Workers Union) deserve to see this bill put to a final vote.

Sincerely,

JAMES A. GROGAN,
General President.
JAMES P. MCCOURT,
General Secretary-Treasurer.

Mr. LEAHY. Mr. President, I urge my colleagues to consider all the work that has gone into the crafting of this legislation including the specific provisions I have highlighted in this statement making it absolutely clear that the Federal Government is simply not liable under this legislation.

The Judiciary Committee received extensive testimony from economists and experts in claims projections. All of this process and expertise was considered as part of the Congressional Budget Office official estimate.

The CBO has testified that the FAIR Act is not predicted to add to the Federal debt; therefore, it should not suffer from the budget point of order raised against it. I urge my colleagues to waive the point of order. The victims of asbestos exposure will not benefit from this latest tactic to stop this legislation.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, discussions have proceeded since this morning on the point of order and the motion to waive the point of order, and we have come to an agreement whereby we will have a vote sometime around 6 o'clock tonight.

I ask unanimous consent that there now be 3 hours for debate in relation to the motion to waive prior to a vote on the motion, with the time divided as follows: 40 minutes for Senator SPECTER, 40 minutes for Senator LEAHY, 40 minutes for Senator ENSIGN, 40 minutes for Senator DURBIN; provided further that if the point of order is sustained, the two filed cloture motions are vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I would be the last to put forward my proficiency in math, but I do think that math is wrong.

Mr. FRIST. Mr. President, I modify my unanimous consent request, that there now be 3 hours minus 20 minutes—2 hours 40 minutes—for debate with the times as designated.

Mr. REID. Mr. President, reserving the right to object, this point of order which has been raised is a difficult vote for Democrats and Republicans. I express to my friend, the Senator from Vermont, that I hope my advocacy here on this issue has not offended anyone. I know there was a time when it did offend my friend from Pennsylvania. I have already apologized in that regard, if in fact I offended him. But Senator SPECTER, Senator LEAHY, and I have been in courtrooms long hours, and you have to put all of this stuff behind you, no matter the feeling at the time. Senator FRIST has been in the operating room involved in very critical stuff. He looks at this a little differently than I do, but our intent is the same. We need to have this vote, find out what happens there, and move on to this legislation, or whatever else comes up.

Again, if I have offended Democrats or Republicans because of my advocacy on this issue, I apologize.

I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, to clarify, given my math being incorrect, that vote would be a little bit after 6 o'clock tonight on the motion to waive the point of order.

Mr. REID. Although people do not have to use all time.

Mr. FRIST. That is correct. It could be earlier than that. Then we would not have any more rollcall votes after that vote tonight.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am advised that Senator HATCH, Senator DOMENICI, and Senator ALEXANDER would like time, and they are welcome to it if they would come to the floor. I have already spoken on this issue at some length and reserve my time for rebuttal.

At this time, I ask unanimous consent to have printed in the RECORD a letter from the International Union of Painters and Allied Trades, dated February 14, and a letter from the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, dated February 13, objecting to the point of order.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,

Washington, DC, February 14, 2006.

Subject: FAIR Act of 2005 (S. 852).

DEAR SENATOR: This week, the Senate continues consideration of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and urges all Senators to reject the technical budget point of order that has been raised against the bill.

The asbestos trust fund that would be established by the passage of this bill will be entirely financed by contributions from defendant companies and insurers and will have no impact on the federal budget, thereby invalidating the point of order against the bill. While all of the funding will be provided from private sources, the actual administration of the fund will be housed within the Department of Labor, causing this technical point of order to be raised. The IUPAT strongly feels that housing this fund within the Department of Labor will ensure that this newly established trust fund is administered in an orderly and professional manner that will be fair to victims. Therefore, we urge all Senators to defeat this budget point of order and any attempt to remove the administration of this fund from the Department of Labor at this stage in the process.

As this process moves forward, the IUPAT strongly believes that the FAIR Act represents the best opportunity to provide timely, equitable compensation to the victims of

asbestos related diseases. We urge you to reject the budget points of order and any other obvious attempts that seek to derail the bill or weaken any of its core provisions.

Thank you for your time and attention to this matter.

Sincerely,

JAMES A. WILLIAMS,
General President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, February 13, 2006.

DEAR SENATOR: This week the Senate is expected to continue consideration of the Specter-Leahy asbestos compensation legislation, the FAIR Act (S. 852). The UAW strongly supports this critically important legislation.

We are pleased that Senators Specter and Leahy have offered a manager's amendment that substantially addresses various concerns that have been raised by some unions. Specifically, this amendment will:

Clarify that binding settlements between victims and defendants will be preserved, not canceled by the bill;

Expressly state that civil rights and disability claims are not pre-empted by the bill;

Establish a paralegal program to help asbestos victims process claims before the trust fund, and allow lawyers to collect additional attorneys fees beyond the 5% cap for work on administrative appeals;

Ensure that individuals with both asbestos and silica disease who are sufficiently impaired to satisfy medical criteria for levels III, IV and V will in fact receive compensation under these higher award levels, and will not be required to rule out silica exposure as a ''more likely cause'' of their impairment;

Allow increased awards for mesothelioma victims with dependent children;

Improve the start up provisions so that non-exigent claimants may continue to receive payments from existing bankruptcy trusts, and thus will not have to wait for lengthy periods of time to begin receiving compensation; and

Improve the sunset provisions, both by requiring an independent audit of the status of the asbestos compensation trust fund, and by requiring the administrator's annual reports to be more comprehensive.

The UAW commends Senators Specter and Leahy for proposing these improvements to S. 852. We urge Senators to approve the manager's amendment.

At the same time, the UAW strongly urges Senators to vote against the technical budget point of order that has been raised against the bill. Because the asbestos compensation trust fund is financed entirely by contributions from corporations and insurers, there should not be any valid point of order against the bill. The only reason a technical point of order exists is because the asbestos compensation program would be administered by the Department of Labor. This is something the entire labor movement has supported, to ensure that the program is administered in a competent manner that is fair to victims. The UAW urges Senators to reject the technical budget point of order, both because it could threaten the provisions that involve the Labor Department in the administration of the program, and because it represents an obvious attempt to kill the entire legislation.

The UAW firmly believes that the FAIR Act is the best opportunity to establish a program that will provide prompt, equitable compensation to the victims of asbestos related diseases. We urge you to reject amendments that seek to undermine this legislation, to support cloture to cut off debate on this measure, and to support passage of the overall bill.

Thank you for considering our views on this measure.

Sincerely,

ALAN REUTHER,
Legislative Director.

Mr. LEAHY. Mr. President, I ask unanimous consent that at the appropriate time the Senator from Montana gain the floor and that he be granted 10 minutes of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I rise today to speak to you again about a special place in my state, Libby, MT.

It is important for my colleagues to know that the vote on the budget point of order affects the lives of Libby residents dramatically.

It affects the thousands of people who are sick and the hundreds more who will die.

I ask my colleagues to vote on the merits of this bill. Budget points of order should not be misused. They should not impede consideration of this important legislation.

The budget point of order should not be used to hurt the folks in Libby. They have suffered enough.

The situation in Libby is unique. The asbestos in Libby is different. It is a much different asbestos than other parts of the country. It is much more pernicious. It is wicked, awful stuff.

Libby is different because we are talking about community exposure to asbestos—not a few workers.

The entire Libby community was exposed to asbestos because of the vermiculite mine and mill.

Until the mid-1970s in Libby, W.R. Grace milled vermiculite from a mountain in Libby. W.R. Grace exposed the entire community to this deadly disease.

I have been up there. I have been at that site. It is an unbelievably dusty mess.

This asbestos bill will make W.R. Grace pay Libby residents for the intentional harm this company caused these people.

I do not use the word ''intentional'' loosely because it was intentional. Documents show it was intentional. Documents show the company knew it was harmful, that it was sending this stuff out to the people in Libby, and that many of them would become very ill and would die.

Not only were mine workers employed by W.R. Grace exposed to high levels of asbestos, but the mill's ventilation stack released 5,000 pounds of asbestos every day. Mill workers swept dust outside. Often, they could not even see their broom handles because it was so dirty with asbestos.

They dumped it down the mountainside. White dust covered the entire town.

The layers of rock where people found the vermiculite contained harmful asbestos and this vermiculite in Libby is laced with a particularly dangerous type of asbestos, called tremolite.

Asbestos in Libby is tremolite asbestos rather than the more common, chrysotile asbestos. Tremolite asbestos is a significantly more toxic than chrysotile asbestos.

The Libby tremolite disease process is different. It's far more disabling and deadly than ordinary asbestos, as bad as ordinary asbestos is and 76 percent of diagnosed patients progress to serious disease or death in Libby, MT.

Just compare this to chrysotile asbestos, where 25 percent of diagnosed patients progress to serious disease or death.

People in Libby are uniquely affected by asbestos related disease. They are sick. They suffer from asbestos-related disease at a rate 40-to-60 times the national average.

And people from Libby suffer from the asbestos cancer, mesothelioma, at a rate 100 times the national average.

The asbestos has contaminated the whole town. In addition to the mines and the mill, extensive asbestos contamination is found in homes, in ball fields, and in schools. It's found in the playgrounds and in the gardens. A recent study even found asbestos contamination in the tree bark.

I have worked very hard with the Judiciary Committee and my colleagues, the chairman of committee, Senator SPECTER, and Senator LEAHY, ranking member, to tailor a solution that addresses the unique problems in Libby. We are extremely grateful to Chairman SPECTER and Senator LEAHY for all their work to protect Libby. They have worked very hard. They have sent staffers to Libby, MT. They have seen it. I am thankful for the staff they have sent to Libby to see how bad this stuff is.

I urge my colleagues not to use this point of order to kill the bill and to kill all this hard work. Many Senators have worked very hard for years to try to find a solution, a way to get compensation to people who otherwise will not get compensation and who desperately deserve it. The people who suffer from asbestos-related diseases need our help. Let's stand up for the people of Libby, MT. Let's not turn our backs on them. If this bill goes down, this Senate will be turning its back on the people of Libby, MT.

I urge my colleagues to oppose the point of order and vote on the merits of this bill. Senators can always decide later to oppose this bill. There are many opportunities for Senators to reexamine their positions on this bill and offer amendments.

We should not kill this bill simply on a technical point of order. It will undermine months and months of very hard work of well-meaning people to try to find justice for people who are suffering from asbestos. Let's stand up for the people of Libby and not turn our backs on them.

I urge my colleagues to oppose the budget point of order and vote on the merits of the bill. The people of Libby have been through enough. They need our help. They need it now. If you do not support the bill, say so, but do not hold the people of Libby and the community of Libby hostage. We cannot do that. That would be grossly unfair.

I will do whatever it takes to continue fighting for the people of Libby and fighting for the justice they deserve.

I wish all Members of this Senate were able to sit in the living room of Gayla Benefield—when I first learned how bad things are in Libby—and look in the eyes of Les Skramstad. He is a great guy. He is dying from asbestos. He worked on the mine. He is not old. He is not an old man at all. He is a middle-age guy. He would go home, embrace his wife, the kids would jump in his lap. They now all have asbestos-related diseases. That is common.

I ask my colleagues, please, vote to waive this point of order so we can stay on the bill, work on it, and help the people of Libby. Let's work our will so these folks in Libby can get justice. W.R. Grace is bankrupt. People in Libby cannot get justice from them. W.R. Grace has turned its back on these people.

Let's say yes to the people of Libby and find a way for this to work.

I yield the floor.

Mr. LEAHY. I suggest the absence of a quorum, and I ask unanimous consent the time be equally charged.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time? The time is controlled by the Senator from Pennsylvania and the Senator from Vermont.

Mr. HATCH. I yield myself time from the time of the Senator from Pennsylvania.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, every couple of years, this august chamber is given a chance to make good on its billing as the greatest deliberative body in the world, to set aside the predictable partisanship that today passes for deliberation and, instead, work together to solve a real problem besetting our Nation.

We face such a moment today. Later this afternoon, each of us will have a choice. Either we will vote to address a litigation crisis that has made a mockery of our judicial system—and demonstrate that we, as a body, can still function when absolutely necessary—or we will use a clever, parliamentary maneuver to avoid having to face a problem that is too inconvenient and confounding to fix without political cost.

We have been here before, and we have failed miserably. Why? Because, unfortunately, the most effective legislative solution is also the most politically impracticable. To solve the asbestos crisis, conservatives are being asked to turn a deaf ear to many of our traditional supporters and endorse the very kind of Federal structure against which we battle daily—a cumbersome, unwieldy program that seems to teeter on the brink of obsolescence before it even begins.

And liberals are being asked to say enough is enough to one of their most important and influential constituencies and to set aside the one governmental institution over which they feel they can still exert some control—the courts. It is a legislative formula that seems designed for failure.

And then there is the greed. Oh, yes, the greed. For years, Members from both sides have waxed eloquent condemning the pecuniary gluttony of one side or the other but, in truth, there is so much greed among so many that it has obliterated any chance for an accurate debate of the realities we should be confronting.

What are those realities? Let us be honest. By this time, we all understand that asbestos litigation has swallowed companies whole, driving them into bankruptcy, wiping out jobs, careers, pensions, health care, and hope. All of us know that those who mined asbestos and used it to manufacture products are long gone, demolished in the first wave of lawsuits. All of us appreciate that today, far too many businesses are being targeted more because of their perceived wealth than their presumed culpability.

All of us realize that under the current system, tens of thousands of Americans who are the most sick, the most deserving, have no place to seek compensation. Veterans exposed by their government and hard working men and women left sick by their now bankrupt employers have become the jetsam of this litigation—cast aside by the new potentates of asbestos—a small, infamous gaggle of personal injury lawyers who have manipulated victims, companies, and the courts to divert billions and billions of dollars to their own pockets. Amazingly, not even such a massive transfer of wealth from so many to so few is enough. Even as we speak today, their lobbyists stand literally feet away, pandering advice, counsel, and contributions to those who will prevent their despicable avarice from being stopped.

But the greed can not be laid just at the feet of some lawyers. There are also companies who have grown weary of paying, not just the wrong people, but paying for their real and technical complicity. There are corporations who want to be free of mistakes they made during the merger and acquisition madness of the late 1990's. And there are businesses that believe they can game the current system, relying upon insurance and the inherent lethargy of litigation to delay paying what they owe.

Then there are insurance companies, some of which fear having to make good on the policies they sold. Even after nearly a decade of debate on this issue, no one is certain exactly who is responsible, especially with the tangled web of insurance and reinsurance and domestic insurance and foreign reinsurance.

Of course, all of us know there is also an unacknowledged giant in the room. For nearly half a century, the Federal Government of the United States was one of the biggest consumers and promoters of asbestos. Today, people are dying from mesothelioma, not because of corporate misdeed but because they worked in the boiler room of a naval ship or in a military shipyard or in the furnace room of an Army base. The Government required asbestos to be used in buildings and workplaces, in factories, homes, and schools. Yet today, as we discuss how best to solve the asbestos epidemic, the Government's own responsibility is not to be mentioned.

Finally, all of us know the current tragedy will not abate on its own. Over the last 6 years, we have proven conclusively, beyond any shadow of doubt, that while we have stood frozen, incapable of any, even the slightest remedial act, the avarice of asbestos has become an industry unto itself.

These are the realities we face today. What are our options? Some on my side of the aisle have suggested the adoption of a medical criteria bill, legislation that would make changes in the applicable litigation rules in State courts. I understand their motivation, but they have to appreciate that it falls short with respect to the most compelling players in this tragic tale—veterans and employees of bankrupt companies who have no place to seek relief. It does nothing to address the manipulation of liability and responsibility which has become commonplace at the State court level. Such a solution was inadequate 4 years ago, it is inadequate today, and it will still be inadequate 2 years from now.

Then again, at least it represents an attempt to solve this crisis. For the past decade, there has been a thundering silence from too many on the other side of the aisle. They are quick to criticize what has been suggested, but not once in more than a decade have they proposed their own solution. Not once have they come up with one idea that might possibly help solve this crisis, for a very good reason: their top hard-money contributors happen to be the people who bring these suits.

This year, they have raised the canard of lost days in court. They are like people who, when they find a man dying of thirst in the desert, give him an empty glass. Now, if by some miracle you find water, they proclaim, you can quench your thirst with the dignity and decorum you deserve. As the man slowly dies from dehydration, they marvel at their own benevolence.

They know that a day in court is meaningless to a veteran who cannot sue his government or an employee who cannot sue a bankrupt company. They know a day in court is worthless to those who currently are being paid only pennies for every dollar of their settlements. For nearly a decade, their objections have been endless and their solutions nonexistent.

So, Mr. President, we arrive today at a critical juncture. We have rejected the suggestion of a medical criteria bill. Our choice is simple: We can act or we can hide. We can vote to keep working on the Specter-Leahy legislation, or we can vote for the budget point of order and stop the legislation dead in its tracks. It is a clever tactic, using the mantle of fiscal responsibility as an excuse not to legislate. Of course, leaving the asbestos crisis unresolved is the ultimate act of fiscal irresponsibility. And, since the Specter-Leahy bill does not require 1 cent of Federal money—this budget point of order is a sham. And we all know it.

Or we can hide behind a cloture vote, knowing that without cloture, the bill will be pulled from the floor and the status quo—the ridiculous and irresponsible status quo—will be preserved. In today's world of relentless stalemate and partisanship, it is a vote easy to explain and justify. But each of us also knows these measures are nothing more than procedural subterfuges—some parliamentary arcanum designed to confuse the public about what is really happening. The Senate has failed the country on this issue before. The time really has come to act.

The Specter-Leahy bill before us is by no means without flaws. All of us admit that. All of us understand that the legislation is—like major pieces of legislation at a similar juncture—a work in progress, the inevitable product of a political process that to date has been as dysfunctional as it has been prolonged. Yet even with its shortcomings, the legislation represents the best hope, the most salient chance for an effective legislative solution. And we will not even have a chance to get that far if we do not pass it on the floor of the Senate.

We know this is step one—actually step two in at least a four-act play. The committee passed it out of the committee. If we can succeed in passing it out of the Senate, the House has to pass its bill, and then we have to go to conference, and then the final play will be a vote in both Houses of Congress. In all of those steps, I have seen our chairman and ranking member willing to compromise and resolve problems as they come up, as colleagues have brought them up. They cannot blame the distinguished Senator from Pennsylvania or the distinguished Senator from Vermont in this matter.

I beseech my colleagues, do not let this bill die today. Do not end what could very well be the last chance we have to solve a crisis we all have universally condemned. Let's stop the debilitating games and tactics. For once, let's give to the bill the same energy and creativity that to date have been invested in its downfall and destruction.

There are thousands of veterans throughout our Nation who are watching us today. When the Nation asked for their service, their blood, they gave it willingly, without complaint. They did their part. Now it is time for us to do ours.

There are thousands and thousands of sick working men and women with no place to turn but us. They, too, are watching. They ask for our assistance, not excuses. They have asked for candor, not cold calculation. They ask for compassion, not clever procedural ploys.

If there is any justice, we will be remembered long after we have left elected office, not for the unfulfilled promises we have made or the good intentions we have so readily proclaimed but for the votes like the ones we will soon cast. For, in truth, this vote is about more than asbestos. It may well signal the last chance this body will have to be productive, to break free from our respective orthodoxies and legislate for the public good. Did any of us really seek public office so that in the face of a crisis, we could hide behind a budget point of order or a cloture vote?

The time has come to reveal who we are, who we have become. Can the Senate legislate in an area in which the Supreme Court has said we need legislation—three times? The real frustration with this institution is not a lack of ethics or the unseemly tangle of lobbyists, Members, and campaigns. No. Our real failing is our collective trepidation, our fear of stepping free of the pack to work together to solve real problems without concern for political advantage or personal benefit.

If we cannot find a common will to address something as pernicious as the asbestos litigation crisis, then one has to ask what real purpose this legislature serves. Too often, we find it convenient to act like mice. Today, our country needs lions. Let us not give it mice. Vote against the budget point of order. Vote to invoke cloture. And, for once, let us consider fixing the asbestos crisis with the honesty, candor, and ingenuity the American people deserve.

Mr. President, I compliment the distinguished Senator from Pennsylvania and the ranking member from Vermont. This has been a monumentally difficult bill to bring to the floor. As I say, this is step one in probably a five- or six-act play. We do not have to make it perfect here; we just have to do the best we can. The House then, if we pass this bill, will have to do its work. Then conference committees will have to meet together, and we will have to do the final work on this bill after listening, during all of that time, to complaints, suggestions, good ideas, bad ideas, but at least—at least—we will be doing the people's business, the people's work in helping people who really have no other place to turn.

Above all, we will help our country because we all know what has been going on in asbestos litigation around the country has been horrendously wrong. I would like to see us do what is right today. So I hope we will vote against this budget point of order. And I hope we will vote to invoke cloture, so we can proceed with this bill and hopefully get it into conference. Ultimately, that is where we will continue to work on it and see if we can make it more perfect and resolve some of the conflicts and problems people feel they have with this bill today. I have every confidence in the chairman and ranking member that they will work to do exactly that. They have been doing it every day I have worked with them, and I am very proud of both of them.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, I ask unanimous consent that 10 minutes of Senator LEAHY's time be yielded to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, in the next several hours, I expect we are going to have a critically important vote, a vote with respect to how we are going to proceed or not proceed with respect to the asbestos litigation reform. There is more at stake than a parliamentary squabble. This is a question to say whether we are going to continue to have a system where the people who are sick and dying from asbestos exposure are going to be quickly compensated for the harm that has been done to their bodies. And there is a question as to whether companies will be bankrupted by the dozens, and you continue to see that sort of thing happen. There is a question of whether we are going to continue to see a situation where a majority of the moneys that are paid out for damages end up not in the pockets of those who have been harmed or their families but in the pockets of others.

The status quo, in my judgment, is not acceptable. We have an opportunity today to take an important step toward improving that situation. The legislation before us today has evolved over the time that I have served in the Senate. A question that has been raised again and again, as it should be, is: Is the money that is going to be set aside in a trust fund that we propose to create adequate?

Earlier in our deliberations, the committee of jurisdiction, as they wrestled with this problem, trying to figure out

how much money to ask of the defendant companies, how much to ask of their insurers—initially, I think thought was given that a $90 billion trust fund would be adequate to compensate people whose breathing has been impaired by exposure to asbestos. Over time, we have seen that number raised from $90 billion to $100 billion, to $110 billion, to $120 billion, to $130 billion, and now to $140 billion. Still the question is asked, as it should be: Is even $140 billion adequate?

CBO has been asked to be the arbiter in this debate. They have come and testified a couple of times before the Judiciary Committee, and I guess they have provided letters as recently as yesterday and today to attempt to deal with this issue and this question: What do we do if we run out of money, if the $140 billion is not enough—with the moneys coming in over the next 30, 40 years, if it is not sufficient to meet the demands of the claims that ought to be paid? Concerns have been raised, sort of leading to this budget point of order, that in the end the responsibility may fall back on the taxpayers. It is a question that ought to be raised and a question that ought to be answered.

There is nothing in this bill that is before us today that stipulates that taxpayers should pay for any shortfall that may occur if the legitimate demand on funds exceeds the amount of funds paid into this trust fund that we propose to establish. There is nothing that stipulates that taxpayers would have an obligation or should have an obligation. In fact, the opposite is the case. The legislation clearly stipulates that any obligation to people who are harmed that exceeds the amount of money in the trust fund would not be borne by the taxpayers. CBO is not absolutely sure that $140 billion is the right number or $130 billion or $120 billion or maybe even $150 billion. But in reading the different letters they have submitted, and reading their testimony, they believe $140 billion is in the ballpark.

What if they should be wrong? What if more money needs to be funneled into the trust fund to meet legitimate claims? What does the trust fund do? The only reason this is a budgetary issue at all is because the moneys paid for by insurers and by defendants are going to go into a trust fund established and administered by the Department of Labor. That is why it is considered even remotely a Federal obligation—because of the desire on the part of some, including those representing folks who have been injured, that the Department of Labor, that has been able to do this sort of thing and has experience in dealing with these kinds of issues, should play a role. It is because the Department of Labor is playing a role as a conduit through which moneys are paid from the private sector, through which moneys are paid to those who are harmed, that there is even a question of whether a budget point of order can be raised against the flow of funds or against this bill.

What if the moneys are not enough? What if $140 billion is not enough? What do we do? Some have suggested that we are going to go right into the taxpayers and ask them to pick up the tab. That is not the case. What will we do? First of all, there is a recognition that during the first 5 years of the trust fund, when there is going to be a lot of demand on the funds and moneys are going to be paid in by insurers and defendants, there is going to be a shortfall. That is freely acknowledged, I think, by everyone.

With that expectation, there is an opportunity spelled out in the bill for the fund administrator to go to the Federal Finance Bank to borrow moneys against future revenues of the fund—payments by defendants, payments by insurers—to seek those from the Federal Finance Bank. I might add that the cost of Federal funds probably available through that funding mechanism is probably 5 percent in today's environment, maybe even less than that. Some have said that we are so short, so far off target that we are looking for a shortfall of $150 billion or $200 billion or $300 billion over the life of this fund.

Let's say, in the first 5 years, there is a shortfall, and say it is $10 billion a year. I don't know if that is right; it may be high or low. So if there is a $10 billion shortfall and the fund administrator has to go to the Federal Finance Bank and borrow the money—$10 billion for year one and $10 billion for year two and up through year five, at a rate of 5 percent a year for 5 years; how much money would that amount to with respect to the debt service? Well, 5 percent of $10 billion is about a half-billion dollars through year two. So it is roughly $2.5 billion at the end of the 5-year period. That is not a debt service cost of $50 billion or $100 billion or $150 billion. That is a debt service cost of about $2.5 billion. That is a reasonable amount of money that may be needed to borrow from the Federal Finance Bank.

Who has to pay that back? The folks who are paying into the trust fund have to pay it back. The insurers and the defendants have an obligation to repay the money, through the fund administrator, back to the Federal Finance Bank. They have that responsibility.

What if the amount of money that is coming into the trust fund is not repaid—and each year there is an obligation, I think, of $3 billion a year for the defendant companies that had an obligation and have been paying these claims in the past—cumulatively and in the aggregate they have to pay something like $3 billion a year into the fund. What if they are not paying enough and they have an obligation of $90 billion over 30 years? Maybe they are only paying $2.5 billion a year. What can be done about that?

Under this bill, the fund administrator has the discretion to impose a surcharge on the defendant companies to make sure their $3 billion-a-year obligation is being met. What happens, though, if, despite that discretion that might be used and the ability to borrow money for short periods of time from the Federal Finance Bank—what if it becomes clear that there is not enough money coming into this trust fund to pay the claims that are going to be needed? Do we leave people, the victims, the folks who are suffering from an impairment of their breathing who have been exposed to asbestos—do we hang them out to dry? No.

Under the language of the bill—and this is in large part due to the work of Senator DIANNE FEINSTEIN—if it becomes clear that people are not going to have a chance to be made whole by the trust fund because it runs out of money, we revert back to the tort system. And folks who have a claim, if they are not going to get satisfied through the fund itself, will go back into the tort system. They can go back into the State where they live, and they can go back to the tort system in the State where they were harmed or they can go back into Federal Court.

There is no obligation that falls on the taxpayers. I believe the committee has done a good job of trying to make sure that at the end of the day the money needed to pay these benefits is adequate. And if, for some reason, it is not, they provide a number of steps along the way that could be taken to provide the funding that is needed, either in the first 5 years or in the years subsequent to that.

If, in the end, it is recognized that this dog is not going to hunt or this fund we are creating is not up to doing the job of meeting the need to pay the claims, we go back into the tort system, and folks will have the opportunity, in their State and their courts or in the State where they were damaged or in a Federal court, to be made whole. Is this perfect? No, it is not. I will tell you this. From the day we started this bill about 2 years ago, 3 years ago, it has sure gotten a lot better. My guess is that it is going to get better still.

I thank Senators SPECTER and LEAHY for their willingness to listen to us and work with us and develop amendments. If you look at the managers' amendment, they have tried to accommodate the concerns that lot of us have raised. Are there more amendments that could be offered? You bet there are. My hope is to be able to support some of those, and I suspect some of my colleagues will as well.

I will tell you what is not acceptable. A system is not acceptable where we have people who are harmed, where their breathing is impaired and they are sick and dying, and for them not to be able to get the money they deserve and their family deserves quickly. What is not acceptable is a system that exists—and for years it has existed—where people who have been exposed to

asbestos, whose breathing is not impaired, and who may never be impaired, for them to be receiving payments and siphoning off money that ought to be going to people who are sick and, in many cases, dying from asbestos-related illnesses. What is not acceptable is a situation where, in a day and age when we are losing manufacturing jobs not by the tens of thousands or by the hundreds of thousands but by the millions, for us to turn our backs on what is a hard-fought and, I think, well-crafted, much-improved proposal to get us to where we need to go.

With that, Mr. President, I yield back whatever time I have not consumed.

The PRESIDING OFFICER. Who yields time.

The Senator from California is recognized.

Mrs. BOXER. Mr. President, what is the rule? Can I speak for up to 15 minutes or 10 minutes?

The PRESIDING OFFICER. The Senator can take time from one of the two Senators who hold time.

Mrs. BOXER. Mr. President, I ask unanimous consent I be yielded 10 minutes of Senator DURBIN's time with the hope that I can finish in that time. If not, I will ask for another 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I am going to support the budget point of order on S. 852. I want to explain why I am doing this. First, I want to say if anybody has listened to Senator KENT CONRAD talk about what is going to happen in the outyears with this bill, the trust fund, if anyone listened to him, it seems very difficult to me to vote against this budget point of order.

We are on the edge of passing a bill that is masquerading as a solution to a deadly problem, and asbestos victims need to know the truth. Frankly, they were lied to once when companies exposed their workers to asbestos without telling them of the danger, and I don't want to lie to these victims again. The simple truth is there are not sufficient funds in the trust fund to compensate all the current and future asbestos victims. We should not compound the problem of the past by offering false promises and cutting victims off from help.

I know there are many who don't agree with what I have just said, but I think if, again, you listen to Senator CONRAD, and you go back to see what has happened to other trust funds, I think it is very clear there are not enough funds in this trust fund. Some estimates are it is perhaps 50 percent of what it ought to be.

Some say that people will go back to court if there are not enough funds. I know that is a very well meaning part of this bill, but it isn't as easy as all that. It is going to be very difficult for people in the future years. I think we are going to see more companies claim they are bankrupt. There will be a lot of lawsuits.

That is not to say there is no problem for asbestos victims today. Providing them with just compensation is something they deserve. If we were able to increase the size of the fund and include all of the victims who deserve to be compensated, that would be a good solution. I know this is what many honorable and hard-working Senators on both sides have tried to do, but the current legislation doesn't get us there.

Asbestos kills 10,000 Americans every year. Such a large number of deaths is hard to comprehend, so let me tell my colleagues about just a few of the victims in California and why this bill will hurt them, not help them.

Here is a picture of Rebecca Martinez. Rebecca is the wife of Margarito who lived in Baldwin Park, CA, and she is pictured here on the right. Margarito worked as a plasterer and Rebecca would clean his asbestos-covered clothes when he came home, breathing in the dust as she shook them out and did the laundry. They were never warned about the dangers of asbestos.

Rebecca was diagnosed with mesothelioma in 2002, as we all know, a deadly cancer caused only by asbestos. She died 4 months later, leaving behind her husband and three children.

Her husband has spent more than $50,000 on a pending wrongful death suit. However, if this bill is passed, he will never get to go to court and face the people who are responsible for his wife's death. This bill will force him back to square one, and he will face, potentially, years of delay. And here he is, a widower having to raise his kids.

For those who are about to resolve their court cases, I see no reason to force them into a trust fund process. It is wrong. People have invested time in the court system, and this bill will rip them out of the court system just as they are about to get justice.

This is a picture of Georgina Bryson. She lived in Riverside, CA, when she died of mesothelioma. From 1962 until 1980, Georgina lived downtown from two cement companies that used asbestos to manufacture their products. Georgina was also exposed to asbestos when she lived with her dad who worked with gaskets that contained asbestos.

Georgina was only 40 years old when she died from mesothelioma. Her family filed a wrongful death action and, to the credit of the California court system—to the credit of the California court system—the suit settled. The cement plants agreed to pay 90 percent of the award, recognizing that they were primarily responsible for the death.

The problem with the legislation before us is, if Georgina's family didn't have access to the courts, and they filed the claim with the asbestos fund, they could receive possibly no compensation. Because Georgina's asbestos exposure was not work related, she lived downwind from the cement manufacturers, she would not meet the occupational requirements of the bill.

There are many people in California and elsewhere who never worked with asbestos but were exposed to it because they lived near factories, mines, and processing plants with asbestos. This certainly was the case in Libby, MT, and residents of that town are taken care of in the bill. That is a wonderful thing for them. Lord knows there is suffering there. The exposure requirements for anyone who lived or worked for at least 12 months within 20 miles of the mining or milling facility in Libby are waived, so the people in Libby are taken care of, and I am happy for them. But the bill fails to provide the same relief to people in at least 41 other communities across the country who live near a plant that processed vermiculite from Libby. How is that equal justice under the law? It also fails to protect people who lived near other mines or plants that released asbestos into the air.

For example, Santa Ana is one of roughly 23 cities in California that received more than 1 million tons of Libby's vermiculite. Yet this bill would compound the injuries to affected community members by largely barring nonoccupational exposures. As I said, no one can call this justice.

The bill also fails to adequately address another problem important to my State, as well as the Nation—naturally occurring asbestos. I am going to show you a map of California where we show the counties containing naturally occurring asbestos. Forty-four of California's 58 counties are known to have naturally occurring asbestos. The problem, however, is not California specific. Twenty-nine States are known to have naturally occurring asbestos.

This asbestos can threaten public health. This shows in red where the States have this problem with naturally occurring asbestos. In 2005, a University of California-Davis study found that the risk of mesothelioma decreased by 6.4 percent for every 6 miles further away a person lived from a naturally occurring asbestos source.

Under the bill, people who get a terminal illness from naturally occurring asbestos may take their case to the medical exceptions panel, but there are three problems.

First, I want to thank my colleague, Senator FEINSTEIN, for getting that into the bill. At least they can go to this special panel. But there are problems. First, the level of funding established by the bill for the trust fund, as I said before, is insufficient to pay for the claims expected to be filed with the exceptional medical claims panel. It is insufficient. There wouldn't be funding left.

The CBO stated in a letter on February 1 to Senator SPECTER that:

There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

This is, in part, because the CBO explicitly stated that it did not include ''the costs of any exceptional medical claims'' in its estimate. What kind of chance do my people have for being exposed to naturally occurring asbestos

and the people who live in all of these States?

This isn't justice. If we want to do justice, we need a bill that is sufficiently funded through the trust fund to take care of all of our people, not just some of our people.

The Democratic staff of the Budget Committee predicts a shortfall in the trust fund of $150 billion or more. That is $150 billion that taxpayers may have to pay to bail out the trust fund. It is easy to say: Oh, you will just go back to the courts. But that is a time period in which we don't know what the situation will look like, more companies will claim bankruptcy, and people will then have to move from the trust fund over to the courts. It is a giant nightmare.

Second, it is not clear that the companies paying into the fund should be the ones responsible for compensating people who become sick from naturally occurring asbestos. Construction companies disturbing naturally occurring asbestos may expose residents to fibers, but those companies are generally not the ones paying into the fund. So this makes no sense at all for people who live in areas with naturally occurring asbestos. They are different defendants that need to step up and pay compensation.

Third, there is no deadline by which the medical exceptions panel must act on a claim. Given the number of people who may file claims with the panel, it could be years before the panel makes a decision on a particular case. Is this better than the current court system?

Mr. President, I ask unanimous consent for just 2 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I don't think it is better than the current court system, certainly not in my State. In California, we have an expedited processing of suits for sick plaintiffs. Roughly 22 States have procedures that ensure mesothelioma victims and those with other very serious cancers have their cases heard in a year or less. In California the courts can hear such cases within 120 days. There are States where the courts work, and they should be allowed to continue their good work without getting taxpayers involved in this trust fund. Where it is working, do no harm. Let it proceed.

Most, if not all, of us could support an asbestos trust fund that is fair to victims, but this proposal is not. I have gone through the ways that it is not. I have shown my colleagues the faces of those who would be harmed or would have been harmed if this trust fund were in place.

We can fix this. We can make the trust fund bigger, that is one solution, or we can say in the 22 States that are dealing with this, let them deal with it. Let's grandfather in the cases that are already in the system.

I am very fearful—very fearful—that a lot of people who are going to depend on this trust fund are going to find out that it isn't what it is cracked up to be. The bill promises the Moon, and I don't even know if it will deliver a sliver of the Moon.

I just want to say to those who are following this debate who are suffering, I honestly believe that everybody thinks, everybody thinks they are working for you, but what I say is this: If the system is already working for you, let it work for you. Let's not promise you the Moon and not be able to deliver it. Let's make sure there is justice for people who live, say, downwind in California from a company that received the product from Libby.

The people in Libby are taken care of. The people in my State and many other States are not taken care of. This isn't fair. What happened to equal justice? What happened to fairness? We can do it. People of goodwill on both sides can do the right thing. This isn't a question of this bill or no bill.

So I honestly think that by supporting this point of order, first of all, we are being honest with the people. We are being honest with the people. We are saying there is not enough money in this trust fund and the taxpayers are going to have to bear the burden and who knows what will happen at that time. With the kind of deficits that are being racked up here, with the kind of national debt that is being racked up here, where is the money going to come from?

Some say: Go back to the court system. That is a very complicated matter. Every State has its own way. In some States it works well, like California. In other States, it doesn't. So I urge my colleagues, yes, to protect asbestos victims who may not be so lucky as the people in Libby. Let's take care of the people in Libby, and let's take care of all of the victims and potential victims and vote against waiving this budget point of order.

A budget point of order lies against this bill. The Parliamentarian has told us; the CBO has told us. Let's do the honest thing. Let's support the budget point of order, go back to the drawing board. Let's take care of these people and do it in the right way.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS. Mr. President, I come to the floor today, and after a discussion over lunch about Libby, MT, and some of the provisions found in this legislation, listening to the distinguished Senator from California, I think we had better answer some of the questions that are being asked about this.

As you know, I am here on the floor again, joining Senator BAUCUS, my colleague, urging our colleagues not to support this budget point of order. We have to deal with this terrible thing. If the point of order on the bill is successful, the bill dies and we will get no bill at all. There will be nothing to go to final passage, nothing to go to the House of Representatives, nothing to be considered in conference. I do not think that serves the interests of the victims of asbestosis or other asbestos-related diseases.

I want to talk about Libby, MT, I guess, because I live there—not in Libby, but in Montana. Many of my great friends live in Libby, MT. Families are watching this together in their living rooms today, watching this broadcast on C–SPAN. Televisions are set up in restaurants and dining rooms and hotel lobbies so people can continue to see what happens here as they go about their day.

I have been in close contact with the community leaders and people directly affected by health problems on a daily basis. For some of my colleagues, this debate is about technical details of a very complicated bill. For people in Libby, of course, it is life or death.

I want to show some pictures that have been sent to us. We want to give you an idea about how important this is.

Behind me—I don't know whether the cameras are picking it up; I assume they are from somewhere—is a picture of a baseball field. This field was built in 1959. You have to remember, this vermiculite mine started in 1924. For many years we didn't know anything about asbestos. We didn't know anything about the problems it caused. But we know if you are exposed, these diseases develop over time, and it takes a long time.

This baseball field was built in 1959, next to the processing plant. For years, the children of Libby played baseball in asbestos-contaminated fields while their siblings played on actual vermiculite piles of asbestos next to the fields. It is unbelievable. The former Governor of Montana was raised in Libby, MT. They thought it was a lot of fun because it was slick and, boy, you could slide a long way. The high school running track and football field were built on tailings from that mine site. For over 25 years, children have been directly exposed to tremolite-laced tailings which were used to line the track and, of course, the football field.

Maybe I can consider myself lucky; I never had to referee a football game up there and I had some 20 years refereeing that game in that State.

The saddest of all is it is all now coming home. It is now being identified. This is the photo of 250 crosses at Libby, MT, memorializing those residents who have died from asbestos-related diseases. Mr. President, 250 is 10 percent of the entire population of the town. Gayla Benefield told my office recently about how much this matter affected her life:

> Slow suffocation from tremolite asbestos is a terrible way to die but worse yet, watching our parents die and then, watching the looks on their grandchildren's faces when we tell them we have the disease is worse than dying.
>
> To watch one person die from the effects of our fiber is horrific. But to know that your own fate is no better, and that you cannot

even protect your children or assure them that help will be there is even worse.

Earlier this week I read a letter I received from Jim Davidson who has been diagnosed with mesothelioma. He is one of many cases in the small town of Libby. His pleas were to get this legislation passed and to do the right thing—get something to conference and get something to the House, because a lot of these folks will not live long enough to ever hear their case pleaded in court.

Jim has been watching these debates with his family. Yesterday, Jim's son, Dr. Steve Davidson, wrote me a letter about some of the statements that have been made here on the floor. He said:

As a past board member of our local hospital and as a past board member of our federally funded community health center, I have seen firsthand the impact of asbestos exposure on my hometown. As a health care provider, I am reminded daily of the price that has to be paid by my community. And as a son who is helping his father cope with mesothelioma, I must watch him struggle with his mortality. My father worked at the Grace facility for several months in the 1950s.

This is way back in the 1950s. Now, later, this terrible disease surfaces.

We rely on Congress to do the will of the people. Since the Grace bankruptcy was ignored by Congress, we must now seek a reasonable remedy.

There exists no empirical medical data to support the assertion on the Senate floor that ''Libby is like East Hampton. . . .''

I and my community would appreciate access to any facts to support such a statement. In their absence, we would appreciate an apology from the Senate floor. These remarks seek to minimize the humanity of the crisis in Libby and my Father's struggle.

It is something when it touches your life.

We are uncertain if your remarks were made from ignorance or malice. Please help us to understand your position.

He is asking the Senate to clarify some of the statements that were made that seem unfair to some of the folks who are victims of the situation around Libby.

This is a photograph of Vernon Riley putting flowers on his wife's grave. Darlene Riley never worked at the mine or had anything to do with it. She died of the most severe type of asbestosis in 1995.

The fact is, no other asbestos location in the United States created as widespread a catastrophe as is in Libby, MT. To suggest that enclosed asbestos treatment facilities are the same as an open-pit mine that blew dust and the winds took it for miles and miles into the air since 1924, and it rained down on a town—to say that is not different than any other situation in this country is not true.

I think it is important that we pass a bill. That is why I urge my colleagues not to support this point of order because it will kill this piece of legislation. How many hours have all of us put in, trying to pass something that would give justice to people who right now stand to collect nothing for their injuries?

I urge my colleagues to support the motion to waive the budget point of order. It is necessary that we get a bill out of this Senate, send it to the House of Representatives. Let them deliberate. Let them carry on this argument. Let's get to conference and let's do what is right for the people who have been impacted by asbestos and asbestosis and the diseases related to it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Montana for his impassioned advocacy for the people of Montana. I want to make sure he has completed his remarks. I have plenty of time to wait if he has not.

Mr. BURNS. I completed. I yield to the Senator from Tennessee.

Mr. ALEXANDER. I wish to add to those remarks. This morning I met with a number of Tennesseans here in an event we call Tennessee Tuesday. It is a meeting we have every Tuesday. Senator FRIST and I host it for Tennesseans who are visiting Washington, and it is a chance to let them know what we are working on.

I talked with them about asbestos. One of my friends on the other side of the aisle began this debate, which should have started earlier, by saying: Why are we talking about asbestos when we have a war, when we have deficits out of control, when jobs are going overseas, when kids are not learning in schools, when Medicaid costs are rising and prescription drug benefits are not being delivered as efficiently as we would like? Why are we talking about asbestos?

I think we have an obligation to say to the American people, and to ourselves, we know exactly why we are talking about asbestos. We are talking about asbestos because it has to do with tens of thousands, maybe hundreds of thousands of American jobs. We are talking about asbestos because it has to do with whether we are going to retain our preeminence as the leader in the world in competitiveness, whether we are going to be able to lead the world in terms of the standard of living we have. We are talking about asbestos because we have thousands of Americans who have been hurt and who deserve compensation and who cannot be compensated.

Asbestos is right where it ought to be. It is at the top of our agenda. We have Democrats and Republicans working together to solve the problem because it is about jobs, it is about America's role in the world, and it is about Americans who have been hurt and who have no way to be compensated unless we decide to help them.

Let's take the first point. The FAIR Act, as we call it—and that is a good name for it—is about jobs because since the 1980s, more than 70 companies have gone bankrupt as a result of asbestos lawsuits. These lawsuits have occurred because people were working for those companies and they were exposed to asbestos and many of them died or were seriously ill. More than 60,000 workers lost their jobs since the 1980s because 70 companies have gone bankrupt over asbestos lawsuits.

If we picked up the paper and read in the morning that 60,000 jobs had gone to China, there would be speeches made all across this Senate floor about whose fault it was. It will be our fault if we do not solve the asbestos problem and 60,000 more jobs are lost. Those are real, good-paying, manufacturing jobs that will be lost if we do not solve the asbestos problem.

My State of Tennessee has its share of those jobs. The auto industry, as an example, has one-third of the manufacturing jobs in Tennessee. We are glad that Saturn and Nissan have come to our state, and that we have gone from a handful of suppliers to nearly a thousand. But those companies, those suppliers, those jobs are at risk if we do not solve the asbestos problems.

The FAIR Act is about America's role in the world. It's about our competitiveness. The President talked about that in his State of the Union Address. He talked about it in Nashville. He is now talking about it wherever he goes. We are confident in our ability to lead the world. We know we are only 5 percent of the people and that last year we produced 30 percent of the wealth. We know the rest of the world is eyeing that statistic and saying, If American brainpower and economic conditions produced a growth economy that gives Americans 30 percent of the wealth for 5 percent of the people, we want to emulate that. So we have to work hard every day to make sure we create an environment in this country in which American businesses can grow the largest number of new American jobs. The last thing we want to do is lose American jobs.

How do we do that? We keep costs down. We stop runaway lawsuits. We solve the health care problem. We invest in science and technology because 85 or 90 percent of our new jobs since World War II have come from advances in science and technology. That is why we have introduced the Protecting America's Competitive Edge or PACE Act in this Senate, where we have 31 Democrats and 31 Republicans who have signed onto legislation recommended by the National Academies that would invest 9 billion new dollars this year in keeping our advantage in science and technology. We want to stay competitive.

According to a report from NERA Economic Consulting, ''Asbestos litigation has damaged U.S. competitiveness.'' For example, if you are worried about asbestos lawsuits, you want to put your plant somewhere overseas and your jobs somewhere overseas, and we lose out.

Productivity growth in the United States, according to that report, in asbestos-affected manufacturing sectors

has lagged behind growth in their counterparts in other countries by half a percent.

We Tennesseans worry about that because we like manufacturing jobs. As I said, one-third of them are auto jobs, and many of them are chemical jobs. We don't like lagging behind. We like our standard of living. That report says we lose $51 billion annually, with a total loss of $303 billion. The dollars are hard to comprehend. But jobs and competitiveness are what we are talking about here.

Finally, the FAIR Act is about compensation to Americans who have been hurt. We say the words ''compensation to victims,'' but that doesn't really say it as plainly as ''Americans have been hurt.''

Here is a fact that got my attention. This is one reason I am speaking about this issue. This is the reason I am a cosponsor of the bill offered by Senator SPECTER and Senator LEAHY. Seventy billion dollars has been spent on asbestos litigation through 2002. Asbestos litigation is litigation to help people who have been hurt, who are going to die, in many cases, from asbestos. Nearly 60 percent of that $70 billion was spent on attorney's fees and other transaction costs. In other words, the people who are hurt got 40 percent of the $70 billion. That is not right.

In addition, it is taking up to 3 years for victims to collect their compensation as a result of complex litigation. Some businesses have gone bankrupt, so you don't collect from them. Some people have died, so they are in no position to collect. The legal process has taken too long for them, and 60 percent of the money that is collected is going to the lawyers.

This is not about plaintiffs' lawyers. Half the money goes to defense lawyers and half to the plaintiffs' lawyers. Whose fault is that? I don't know whose fault it has been, but I will tell you whose fault it will be if we allow this to continue. Former Chief Justice Rehnquist and Justice Ginsburg both said it to us. They said: We can't fix this problem in the judiciary; the Congress needs to do it. In one case, the Supreme Court said:

> The elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.

That is us. That is what we are here for. That is why we get the big bucks. That is why we have the salaries. This is a big problem. We are supposed to solve it, and we ought to solve it. We have been trying to solve it. For the last 10 years, some of the best Members of this body on both sides of the aisle have been working on it. I could not begin to name them. I have heard Senator SPECTER say that Senator Gary Hart, more than 20 years ago, came to see him about it. Senator SPECTER and Senator LEAHY have worked hard, as have Senator HATCH and many other Members. Some of them don't agree about the eventual result, but many of the best Senators are working hard because they see this as a problem of jobs and competitiveness and Americans who have been hurt.

Where do we come at this point today? We have a budget point of order against the bill. If the point of order succeeds, the bill fails. Those of us who believe it is our job to solve the asbestos problem won't get to take the next step to actually debate the bill and see if we can bridge our differences and save jobs, improve competitiveness, and help Americans who have been hurt. I urge my colleagues not to let this point of order kill the asbestos legislation because we in Congress are the only ones who can solve this problem properly.

I respect the fact that the point of order is being made. But a point of order, as the Senator from New Mexico, the former chairman of the Budget Committee for so long, has said, doesn't automatically kill a bill; it just says to us: Stop and think; consider the point of order. And when we consider the point of order, which is designed for the purpose of making sure we don't slip in the legislation provisions which will cause big expenses in future years, we find this doesn't cause big, unanticipated expenses in future years. In fact, a February 13, 2006 letter from the Congressional Budget Office concludes that ''this legislation would be deficit neutral over the life of the fund.'' So the point of order deserves respect, but this bill does not deserve to be killed by a point of order.

I implore my colleagues. We have a job to do. This is a tough piece of legislation. We are divided on our side. We have some who like the trust fund, but we have other Members who like another approach. There are some Democrats who like the trust fund and some who prefer another approach. I believe it is our responsibility to the people who put us here to solve this big problem. It will save tens of thousands of jobs, it can help tens of thousands of Americans who have been hurt, and it will help to assure America's preeminence 10, 15, 20 years from now.

I urge my colleagues, don't let the point of order kill the bill and kill our opportunity to solve this problem.

I thank the Chair. I yield the floor.

Mr. DORGAN. Mr. President, we are voting on a motion to waive the Budget Act in order that the bill creating an asbestos trust fund can continue to be considered on the floor of the Senate.

For the past couple of years, I have encouraged the creation of some kind of a trust fund to settle the many asbestos claims that are clogging our court system.

The current tort system does not work at all, in my judgment, with respect to asbestos-related claims.

According to the RAND study, lawyers on both sides of the issue are getting 58 cents of every dollar spent on asbestos litigation, which means that the victims are only getting 42 cents of every dollar expended. In addition, there are some very sick people who are getting no help while some people who will never get sick are getting awards. Frankly, that isn't fair or equitable.

So I have been sympathetic to the creation of some kind of a trust fund, and I know that the chairman and ranking member of the Judiciary Committee have worked very hard to develop the trust fund proposal now being considered.

I also know that the motion to waive the Budget Act is considered by some a technical issue. But some recent studies, including one done by my colleague Senator CONRAD, the ranking member on the Senate Budget Committee, suggest that the potential budget exposure to the United States Government is substantial.

The Conrad study indicates that this trust fund could fall short by more than $150 billion, which in the out years will put powerful pressure on the Congress to fund the shortfall.

This country has a Federal budget that is increasing its indebtedness by $704 billion in this fiscal year alone. We also have a trade deficit of $720 billion this year, for a combined $1.4 trillion debt problem. Our country's economic future is threatened by this massive debt, and I am reluctant to put in place anything that might substantially add to that burden.

The prospect that this trust fund could fall far short of that which is necessary to reimburse asbestos victims makes it a very real possibility that the Federal Government would be forced to add to its debt by covering the extra liability for those asbestos victims.

Until or unless those issues are resolved, I feel that the best course is to support the point of order in the hope that the authors of the legislation can resolve these differences and offer us greater confidence that this legislation will not add to the crushing debt that America already faces.

Therefore, while I will support the point of order, I will continue to work with my colleagues to find a solution that addresses this important issue.

Mr. GREGG. Mr. President, section 307 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, permits the chairman of the Senate Budget Committee to make adjustments to the allocations and aggregates provided certain conditions are met relating to Asbestos Injury Trust Fund legislation.

Pursuant to sections 307, I hereby submit the following revisions to H. Con. Res. 95. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

	($ in millions)
Current Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,528
FY 2006–2010 Budget Authority	32,071
FY 2006–2010 Outlays	31,766
Adjustments:	
FY 2006 Budget Authority	0

	($ in millions)
FY 2006 Outlays	0
FY 2006–2010 Budget Authority	48,200
FY 2006–2010 Outlays	32,900
Revised Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,526
FY 2006–2010 Budget Authority	80,271
FY 2006–2010 Outlays	64,666
Original Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,580
FY 2011–2015	274,999
Adjustment:	
FY 2006	0
FY 2006–2010	400
FY 2011–2015	6,600
Revised Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,980
FY 2011–2015	281,599

Mr. GREGG. Mr. President, as we worked through the Budget last year, one of the main dilemmas confronting us as a government was clearly the unsustainably high levels of entitlement spending now and in the future. This spending in the not too distant future will crowd out the Government's ability to do much more than merely pay the costs of the entitlement programs themselves. Eventually, it will rob us of the ability to fund most essential discretionary Federal programs. So layering on new payments and programs, which claimants in time will come to expect as another entitlement from the Federal Government rather than the private sector, will threaten the Nation's economy with even more damage from too much Government borrowing and high tax burdens.

I, too, am concerned about the immense hardship that the asbestos litigation explosion has imposed on our economy for more than a decade now. The immense volume of litigation from occupational exposure to asbestos has already bankrupted numerous companies, large and small. The greatest harm from the litigation is that genuinely and critically sick individuals cannot get their day in court—and the financial help they desperately need—because the court system is overwhelmed by asbestos claims from tens of thousands of individuals who are not even sick yet, and may never be sick. Moreover, a disproportionate amount of victim compensation is being siphoned off in attorney fees.

Congress needs to address this crisis so that those who are truly sick from asbestos exposure are quickly and fully compensated. Yet our national economy also needs to be protected from further damage due to these thousands of protracted, unnecessary, and unfounded asbestos claims in our courts. But as part of that effort, we also need to ensure that the costs of compensating asbestos victims are not shifted off of the companies that would be legally liable in court and onto America's taxpayers.

I therefore hope the Senator, who is one of the authors of the bill, will allow me to ask him a few questions to clarify the legislative intent behind the bill we have before us and the degree of confidence he has that the trust fund established by the FAIR Act will be funded from nontaxpayer sources for the life of the fund, as required by the budget resolution for fiscal year 2006.

This past August CBO estimated that paying claims as provided for under this legislation would cost between $120 and $150 billion. CBO also estimated that the trust fund would incur an additional $10 billion in administrative and interest costs. CBO's total estimate for the bill then was that it would cost between $130 billion and $160 billion in order to meet the obligations of the trust fund over its 50-year life.

Then in a letter on December 19 to the Senator as chairman of Judiciary Committee, CBO elaborated on its earlier estimate for S. 852 and its ability to stay within the $140 billion provided for under the bill by stating:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty [over 50 years].

Given the uncertainty of this statement, I have been concerned that the fund could rapidly run up a deficit and that the taxpayers would then be asked to bail the asbestos trust fund out.

The clear track record of Government administered compensation programs designed to mandate a ''no-fault'' solution for liability claimants as in this case—has been that Congress ends up bailing out such funds' exploding costs with tax dollars. The Government Accountability Office, GAO, released a report just this past November that found that four victim compensation programs—the Black Lung Program, the Vaccine Injury Compensation Program, the Energy Employees Occupational Illness Compensation Program, and the Radiation Exposure Compensation Program—all expanded significantly over time after their creation to include additional categories of victims, to cover more medical conditions, or to provide significant additional benefits. GAO also found that those new and added costs ended up being paid by the taxpayers even if the victim compensation programs started out as privately funded.

So, again, while I strongly agree—as most everyone does—that the asbestos litigation crisis needs to be solved, it is unfair to do it by making hard working American taxpayers pay the tens of billions of dollars in additional compensation instead of the private companies responsible for the problem.

So, I would ask the senior Senator from Pennsylvania and the manager of the bill, what assurances can he provide—beyond the uncertain and not entirely inspiring CBO estimate regarding this bill—that the taxpayers will not end up footing the bill for this program, and that the new asbestos trust fund will not increase the Federal Government's budget deficit over the 2006–2056 period, as required by section 307 of the budget resolution for fiscal year 2006, the so-called reserve fund.

Mr. SPECTER. First, I want to commend my colleague for raising this important issue; that is, the potential impact to the American taxpayer of the asbestos trust fund. In response to my colleague's inquiry, I have been working very diligently to make every effort to tailor the trust fund so it remains solvent and to ensure that the American taxpayer will never be required to spend money to bail out the fund.

As you know, the measure would create a $140 billion trust fund, financed by companies facing lawsuits and their insurers, to compensate victims of asbestos exposure. This amount of funding was a difficult issue to resolve and took a long time to negotiate.

However, the bill contains several provisions that express our intent for the fund to remain funded by private, nontaxpayer sources for its full life. First off, the bill should not cause the deficit to go up because the FAIR Act requires a commensurate amount of revenues to come in from the private sector as is paid out in claims and program costs.

Second, the bill explicitly states that the American taxpayer should never bear the burden to pay for asbestos claims should the fund become insolvent. Indeed, section 406(b) of the bill expressly provides that the legislation would not obligate the Federal Government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. In addition, the ranking member and I added a finding to the managers' amendment to underscore our intent that the taxpayer should not have any obligation whatsoever under the proposed trust fund.

Admittedly, we as a Congress now cannot tie the hands of a future Congress, but our expectation is that future Congresses will honor our commitment in this regard.

The FAIR Act also provides the trust fund administrator with the ability to sunset the fund if he or she finds that it ''will not have sufficient resources to pay 100 percent of all resolved claims while also meeting all other obligations of the fund under this act. . . .'' After such a determination, the trust fund is supposed to terminate.

In the event a sunset does occur, all pending and future claims will revert back to the tort system. Some claimants would then have to litigate their claims in court and would not have a predetermined award. Many companies would also be thrown back into the tort system—even as they and their insurers have to continue payments into the trust fund to pay off any outstanding debt incurred by the fund.

While that will hopefully not occur, we also fully expect that future Congresses will not step in and try to take over the asbestos trust fund's obligations using taxpayer funds.

Mr. GREGG. I appreciate my colleague's willingness to clarify this important point. I would note the Congressional Budget Office yesterday released an estimate of the chairman's substitute on the asbestos trust fund bill, consistent with what the chairman just said, which states:

> . . . so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So given Chairman SPECTER's assurances and this conclusion by CBO; it is my intention to adjust the Judiciary Committee's 302(a) allocation to the extent that such legislation would not increase the deficit for the life of the fund—which brings me to my second concern. There is no argument that the genesis of this crisis was fueled primarily by the aggressive and abusive tactics of trial lawyers. I think you will agree that those same trial lawyers should not now gain a windfall from this legislation. However, they should be compensated fairly and adequately for their work on any claim on behalf of injured victims.

Under this bill, an attorney may not receive more than 5 percent of a final award made under the trust fund. This is more than generous compensation for filing a claim under a no-fault compensation system where no litigation cost will be incurred and which for the most part will only involve filling out forms for clients.

Under the tiered compensation scheme using set medical criteria and awards for multiple levels of asbestos-related injury, awards to claimants will range from $25,000 for level II claimants, with a so-called ''mixed disease with impairment'', to $1.1 million for mesothelioma victims in level IX. At a 5 percent fee, attorneys who merely prepare forms in order to file a claim on behalf of a client can receive between $1,250 and $55,000. This is very generous compensation for merely filling out paperwork.

Does the Senator foresee any circumstances under which the 5 percent limit on attorney fees could be increased?

Mr. SPECTER. I agree with my colleague's assessment that a 5 percent cap on attorney's fees will ensure that victims and not attorneys are the ones that actually receive the lion's share of the compensation that they are entitled to. That is one of the primary goals of this litigation reform bill. The bill makes no provision anywhere that would allow the 5 percent cap to be exceeded for filing a claim with the fund; however, in the case of appeals of an award under the fund, attorneys are permitted to receive reasonable hourly rates for their services rendered.

Mr. FEINGOLD. Mr. President, I wish to speak about S. 852, the so-called Fairness in Asbestos Injury Resolution Act of 2005. Because this legislation does not provide fairness for asbestos victims or small businesses, I oppose it. We need to take more time to address the problems with this bill and work to produce a result that is fair to all parties involved.

At the outset, I commend my colleagues on both sides of the aisle who have been working for years to develop a bill that addresses this issue appropriately. There is no doubt that this is one of the most difficult and complicated issues that the Judiciary Committee and the Senate have dealt with in recent years. Both last year, and in 2003, the Judiciary Committee spent weeks and weeks marking up legislation. In both cases, the end result was not satisfactory. But this was not because of lack of effort on the part of the Senators who want to find a solution.

Unfortunately, the solution this bill provides is badly flawed. This bill simply is not ready for floor consideration. That, if nothing else, is evident from the managers' package or substitute that will include over 40 significant changes to the bill. When the managers of a bill are still working on a managers' package with that many changes, before many amendments have even been offered, the only conclusion to be drawn is that the bill is not ready for the floor.

Asbestos victims around the nation deserve just and fair compensation for the exposure and resulting injuries they have suffered. My own State of Wisconsin ranks 16th in the Nation in asbestos-related deaths, and I know many Wisconsinites are following this debate closely because the outcome could have a substantial effect on their pending legal claims and their right to fair and just compensation.

Many Wisconsinites who were employed at mills and factories around my state were exposed to asbestos. Some of these workers even unknowingly brought asbestos material home on their clothes. A number of these asbestos victims, or their survivors, have pending claims in court. Under this legislation, their claims would be extinguished and they would have to start over to seek compensation from the trust fund. These are real people who have endured horrible disease and loss. Some had a loved one cut down in the prime of life, just months after getting a diagnosis. We need to find a solution that compensates these victims in both a fair and timely way and ensures they are protected after we force them to give up their rights to pursue their claims in court.

I support the concept of a national trust fund to compensate victims of asbestos-related diseases and address the strain that these asbestos cases have placed on our legal system and our economy. But I will only support a bill that in my judgment is fair to all parties involved, including, most especially, the victims of asbestos disease. That means, not only do the medical criteria and claims values have to be fair, but the design and funding of the system has to be adequate to pay the victims properly and completely.

There are, in my mind, enough conflicting reports regarding the adequacy of the fund that this bill creates to warrant opposition to the legislation. During this debate, many of my colleagues have referenced the CBO study that was completed last fall. Supporters of this bill cite the CBO report and its estimate that valid claims submitted to the asbestos fund over the next 50 years could be between $120 billion and $150 billion as justification for the $140 billion asbestos fund pricetag.

But as CBO itself points out, the pricetag could run higher than $150 billion for a variety of reasons. As the Senate Budget Committee minority staff pointed out in its analysis, CBO said the legislation is designed to produce incoming revenue of $140 billion. It did not conclude that the fund will in fact be able to collect $140 billion. According to CBO, it is possible that defendant companies could go bankrupt and therefore would not be able to pay into the asbestos fund, thereby raising the possibility that the fund could not raise $140 billion.

In addition, the pricetag could run significantly higher than $140 billion because according to CBO, it is very likely the administrator is going to have to borrow money from the Treasury Department at the outset of this process. Numerous studies and experts have predicted that there will be more claims filed than revenue collected in the initial years of the fund. That borrowed money will have to be repaid with interest, adding considerably to the cost of the fund. More important, having a large portion of the trust fund dedicated to interest payments means less money for asbestos victims. There is more than a little doubt that $140 billion is an adequate amount to keep the fund solvent and functioning. Until Congress can be virtually certain that the amounts to be raised by the fund will cover all victims' claims, I do not believe we can fairly ask asbestos victims in Wisconsin and around the nation to give up their legal rights and take a gamble with this fund.

And so a budget point of order was raised against this measure. Supporters of the bill have asserted that the point of order and other budget points of order that also potentially lie against the legislation are purely technical in nature. Their arguments suggest that it is only through some unintended fluke of the Budget Act that supporters must find 60 votes to waive the budget points of order so they can proceed with the proposal.

In fact, while some may view the points of order as technical in nature, the budget issues raised by this bill are significant. Indeed, the risk to taxpayers created by this bill would be

considerable even were the nation not already in the most dire of fiscal straits. The budget policies of the White House and Congress for the past 5 years have been nothing short of reckless, and the last thing we should be doing is to add to our budget problems by roping taxpayers with a massive new underfunded commitment.

The analysis presented by the Senator from North Dakota, Mr. CONRAD, the ranking member of the Budget Committee, a few days ago is telling. Based on conservative estimates, a review by professional staff of the Senate Budget Committee projects that over time the trust fund established by this legislation to compensate people made sick by asbestos will fall $150 billion short of the funds it needs. Moreover, the analysis shows that the shortfall may amount to $300 billion under even reasonable assumptions.

Lest some argue that these figures aren't meaningful, $300 billion is more than we spent last year on the Departments of Agriculture, Commerce, Education, Energy, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency, combined.

This bill presents a potentially massive new burden for taxpayers on top of the record government debt with which they have been saddled. And because they face that burden, taxpayers are entitled to the full protection of the Budget Act, no matter how technical such protection may be in the eyes of the bill's supporters. Taxpayers deserve the safeguard of a 60-vote budget point of order. I will not vote to waive the Budget Act.

There is no doubt that this bill will require a significant number of asbestos victims to give up their legal rights and, in many cases, pending claims in court. Under the language of this bill, unless a claimant is already presenting evidence before a judge or jury or the final verdict has been issued, the claimant's case is stayed and the claimant is redirected to the asbestos trust fund. We are all aware that there will be victims who have invested a significant amount of their time and resources into pursuing legal claims, but for whatever reason, their cases have not yet reached the evidentiary stage. As any legal observer knows, cases can take years to reach the evidentiary stage. Is it fair to ask asbestos victims who have invested years of their lives and extensive resources to give up their legal rights and instead file claims with a fund that may not have enough money to pay out all the claims? I do not think it is fair or reasonable and I had hoped we would take more time to ensure the fund will remain solvent before moving forward with this legislation.

I am also concerned about the ability of victims to reenter the legal system in the event the asbestos fund is declared insolvent. This issue involves fundamental questions of fairness for victims, but also for the businesses and insurers that are paying into this fund. Again, I want to reiterate that I support the concept of a trust fund to compensate victims of asbestos disease and I understand that if correctly created and administered, the fund could guarantee certainty to both victims and defendant companies. This legislation, however, does not give that certainty to either party. If the fund's ability to pay claims declines, asbestos victims could find themselves at the mercy of Congress. Last week, Senator SPECTER voiced a willingness to make modifications to medical standards or criteria if it looks like the fund might exceed $140 billion. This is anything but fair to asbestos victims. To change the medical standards or criteria midstream introduces great uncertainty for these victims, which I find unacceptable. If we are going to ask victims to forgo their legal rights and enter this system, the least we can do is assure them that they will receive just compensation.

There are two things we absolutely have to do in any asbestos legislation. First, we have to be sure that there is adequate money right away to pay the large number of claims that we know will be filed almost immediately. I think this debate has shown that there is not enough money to pay out the initial claims and substantial disagreement as to whether there is even enough total money in the fund to pay out claims over the life of the fund.

The other thing we must do is make sure there is a strong sunset provision that will allow victims to file suit in the future if this trust fund isn't able to pay their claims. Under this bill's language, asbestos victims have to wait until the administrator has declared that the fund can no longer pay claims and has followed procedures before they can file their cases in court again. Moreover, the bill states that the termination of the fund takes effect 180 days after the date that the administrator determines that the fund will not have sufficient resources to pay all of its obligations. So, even though the administrator has declared that the fund does not have enough revenue to meets its obligations, asbestos victims would have to wait until the fund formally terminates 180 days later to file their claims in court. For some victims, 180 days of waiting seems a lot to ask, after they were forced to give up their legal rights to enter this fund in the first place. I would hope that we can legislate a more prompt and certain sunset provision before asking asbestos victims to give up their legal rights.

I have also heard concerns from small business owners that this bill will unfairly impact their businesses, in some cases even driving them out of business. There are a number of small and medium-sized businesses around the nation that have purchased insurance in the past to cover their asbestos liability. Under this legislation, that coverage would not be taken into account. Small businesses will have to pay into the trust fund at levels comparable to their past asbestos liability, even if that liability had been covered by insurance. In effect, small businesses will be punished for responsibly ensuring their liability. A number of these smaller businesses have said these mandatory payments would drive them into bankruptcy. Meanwhile, larger businesses that also have asbestos liability would benefit from paying into this trust fund because of the way the mandatory payments are structured. Under the bill, many of these larger businesses would pay far less than they currently pay to resolve these claims. I cannot support legislation that unnecessarily hurts smaller businesses while allowing more culpable and larger businesses the chance to evade their full responsibility to asbestos victims.

In addition, like many of my colleagues, I have concerns about the impact that this legislation will have on the Federal budget. Supporters of the bill assert that no taxpayer money will ever be used to keep this trust fund solvent. But what happens if the fund does become insolvent? I agree with my colleagues who say that if we pass this bill, Congress will find it very difficult to let the trust fund expire. Senator SPECTER is on record as saying medical standards and criteria could be altered, which I already noted is incredibly unfair to victims. Others in this chamber have voiced concerns that the obligation for the fund could be shifted to taxpayers and I share those concerns also. I know Senator SPECTER and Senator LEAHY, two colleagues whom I deeply respect and who have worked tirelessly on this issue, say that taxpayer money will not be used for this fund. But there is no way to say that with absolute certainty. If the fund runs out, one possibility is that taxpayer money will have to be used to continue to pay claims. This option is no more desirable than changing the medical standards under the bill or forcing claimants and companies back into the legal system. The potential budgetary impact is one more reason that this legislation should be studied further so that we can ensure the trust fund will provide fair compensation to asbestos victims.

We can do better by both the victims and business interests looking to us for a solution to this problem. I believe that if we take more time to ensure the solvency of the fund, to ensure that victims' legal rights are adequately protected, and to ensure that taxpayer money will not have to finance the fund, we can reach a solution that truly can be called fair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. DURBIN. I ask unanimous consent I be given an additional 5 minutes to speak to compensate for the 5 minutes requested by the Senator from Tennessee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, the issue before the Senate today could not have more importance for hundreds of thousands of American peoples. Unbeknownst to many, in their workplace environment, in their homes, places they have visited during the course of their lives, innocent people have been exposed to asbestos fibers. The fibers are inhaled into the lungs and sit like tiny detonation devices that someday may explode. If they do, they could cause asbestosis which reduces the efficiency of the lungs or, even worse, mesothelioma, a fatal condition similar to lung cancer which claims the life of the innocent victim.

As I have said repeatedly, I don't know of a single worker or person afflicted with this disease who willingly put themselves in this circumstance. But for many thousands of people, they find themselves infected and dying.

Conversely, we know that many companies that made products with asbestos over the years knew for decades that it was a dangerous substance, a substance which was shortening the lives of their employees and a danger to their customers. They said nothing. As a result, when these little detonation devices or timebombs went off in the lungs of Americans, thousands and hundreds of thousands and millions of Americans, it created a wave of lawsuits against the companies that made products containing asbestos.

That has been going on for decades. Those who estimated the number of afflicted victims have been way off. The Johns Manville trust fund said there would be 200,000 victims. It turned out there were 2.1 million. So it has been a test of our legal system to give fair compensation to the people who have been hurt. Many people have gone through the system and received compensation.

Of course, there have been some who have abused the system on both sides. There have been some filing lawsuits for people who were not sick. There have been businesses, which were clearly liable, that did everything they could to avoid paying victims. Those things happen in courts of justice across America every single day.

Now comes the bill before the Senate, this so-called Fairness in Asbestos Injury Resolution Act, which says that we should basically deny to hundreds of thousands of Americans their day in court, their due process, their chance to stand before a judge and jury to have their fate decided, their chance to say that we believe the person on the other side of this lawsuit is responsible for the illness and death in our families. This bill is designed to close down that opportunity, to shut the courthouse doors and to replace them.

As I said before, it is quite a bold undertaking to replace the court system in America with something new. That something is this trust fund. And in a few moments, we will have a vote on in this Senate. The vote is critically important. It is a budget point of order. It goes to the heart of this trust fund and as to whether we can trust that $140 billion in the trust fund will do the job. It asks the most basic question: Are we, in fact, not creating a private-funded trust fund but, rather, an obligation of the American Government, the Government, to pay in years to come for these victims? Are we replacing a court system, where the businesses which have some exposure, some liability, pay up in court, with a system where the taxpayers take care of the victims?

If you believe that the companies that are most liable are paying into this trust fund the amounts they otherwise would pay in court—we know that is not true. Three weeks ago, U.S. Gypsum, a major company, announced if they were to pay off all the asbestos claims against their company they would be paying out somewhere in the range of $4 billion. However, under this bill, U.S. Gypsum will pay into the trust fund somewhere in the range of $800 million, maybe $900 million at the most. So for this company, this is a windfall. They will escape some $3.1 billion in exposure and liability and others will step in to pay the difference. Companies will step in to make up the difference and ultimately, it is my belief, when the trust fund fails, as it is likely to fail, then it will fall on the shoulders of the American taxpayers to make up the difference.

If this bill passes, you can expect the stock of many of these companies that are on the line for asbestos claims to go up dramatically, declare dividends, pay more to their CEOs, make sure that their profits are larger and shared by more. But when it comes to the stock of the American people, it will go down because we will be accepting responsibility not for just this generation but generations to come.

The budget point of order before the Senate raises this fundamental question. It is one that, on its face, few would argue with; that ultimately, the American taxpayers are going to be holding the bill, making up for these corporations which will be off the hook.

This afternoon, Senator CONRAD, the ranking member on the Committee on Budget, received a letter from the Congressional Budget Office, signed by Donald Marron, the Acting Director. The letter clarifies a letter that has been talked about in the Senate a lot. I will not read the entirety of the letter but it says, to clarify an earlier letter:

> As CBO has noted in previous assessments of asbestos legislation, there is an enormous amount of uncertainty about the potential costs under the proposed amendment. Operating the Asbestos Injury Claims Resolution Fund would be an entirely new government task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation. No one can be certain, because of the limited data that are available, as to how many claimants there would be and how much would have to be paid to them. The revenues under the amendment would be, at most, $140 billion, but could be significantly less.

He goes on to say:

> CBO concluded, in its February 13 letters to Senators Gregg and Specter, that the proposed amendment would be ''deficit-neutral over the life of the fund.'' That conclusion is based on the fact that the sunset provisions of the legislation would limit spending for claims compensation, debt service, and administrative costs to an amount no greater than the budgetary resources that would be available to the fund from assessments on liable firms, assets of existing bankruptcy trust funds, any interest earnings. Thus, if valid claims and other costs of the funds were to exceed its resources, the administrator would not have the authority to spend amounts in excess of those resources.

Senator SPECTER admitted it. He came to the Senate last week and was asked: What happens if this fund runs out of money? What if our guess that it is going to cost $150 billion is wrong? He gave an honest answer: We will just cut the compensation to victims and give them less money.

I think that is right. That is the only place to turn because the alternative is to turn back to the U.S. Treasury. That is what this budget point of order is all about.

Members of Congress in the Senate and House who are mindful of the budget deficit we face together understand that we are not only plunging into the darkness with this trust fund, into something that has never been tested or tried at this magnitude but, more importantly, we are putting at risk the lives and fortunes of families across America, innocent victims of asbestos exposure, who simply want justice so that before their loved one dies, before the suffering continues from asbestos exposure, that, in fact, they will have a chance for fair compensation. With this trust fund they will not. Their lawsuit will stop the minute this bill is signed into law, if it reaches that point. Their day in court is over. They will wait to see if this trust fund, as promised, will make them whole.

I reserve the remainder of my time. I see the Senator from Delaware. How much time is remaining on our side?

The PRESIDING OFFICER. There is 15½ minutes.

Mr. DURBIN. I yield to the Senator from Delaware 5 minutes.

Mr. BIDEN. Mr. President, I have refrained from speaking on this bill up until now because, quite frankly, my colleague, our leader, Senator DURBIN, and our ranking Member of the Committee on the Budget and others have spoken with eloquence and precision, I believe, about this point of order.

I have a number of amendments if this point of order fails. But before the

time closes on this vote, I did want to ask the indulgence of my colleagues to make a few very brief points.

No. 1, this is a Herculean attempt by one of my best friends in the Senate—one of my best friends, period, Senator SPECTER—to try to deal with the real problem. The real problem is that there are a lot of people out there suffering from the effects of asbestos. There are not a lot of companies out there with the money to pay all of these claims. There is the concern that some of the very companies we have to go to, to recover from, may very well declare bankruptcy. So I understand the motivation. It is a decent, honorable motivation.

But the bottom line is, what we are asking an awful lot of people to do is to give up a right in tort that has existed in common law for hundreds and hundreds of years prior to our Nation's history but throughout our Nation's history. The deal was it would be in return for a guarantee. They would take less, they would get in line, people who had claims they could pursue now would not be able to pursue them immediately until the medical effects occurred. All kinds of limitations were prepared to be put on individuals' rights and claims in return for a deal.

What was the deal? The deal was that they—the victim—having met the criteria of the bill, would be guaranteed a payment and guaranteed a payment within a time certain and that everyone would know the rules.

When I was a young Senator my first year here, I was No. 100 in seniority. I sat in the back corner. Russell Long was in the Senate with the finance bill. Senator Schweiker of Pennsylvania and Senator Case from New Jersey and I worked out an agreement related to a compact relating to the Delaware River area. I walked up to the Senator from Louisiana, Mr. Long, and I said: Senator, I hope you can support this. We have worked this out. He said: Yes, I will be with you. I will be with you.

I had a staffer who had a lot more experience than I. I had only been here months, maybe a year. This staffer worked here before and was seasoned and said: By the way, ask for a rollcall vote. I asked for a rollcall vote. And in the process, when the vote came, it got to Long and Long voted ''no.'' I said: He just told me ''yes.''

Well, he told me, yes, he would vote for it, if it were not a rollcall vote. I didn't know he said that, but he meant that only if it was a voice vote he would vote for it—meaning he could drop it in conference. I walked up to him and I said: Senator, we had a deal. And I was referring to my colleagues from Pennsylvania and New Jersey and Delaware. And he put his arm around me, as only he could do, he pulled me in close like he used to do to everyone: JOE, as my Uncle Earl used to say: I ain't for no deal I ain't in on.

Guess what. The victims are not in on this bill. They are not in on this bill. Because if my colleagues are right—and I believe they are—about how short this fund is going to come and how quickly it is going to reach that point, and how underfunded right from the very beginning this is likely to be, guess what happens. At some point, the administrator of this whole outfit can look down the road and say: By the way, we are going to run out of money, and he can recommend a couple of things. He can recommend that the criteria to qualify change. He can recommend that the amount of money recovered change or he can recommend the fund sunset and people go back, in part, to what they had before.

What would happen if I had said to the business community: There is one other thing he could do. He could go back and change the contributions and what category each of the businesses fall in. He has the discretion to do that. He can go to a company that had more money than another company, even though not as much responsibility, and kick them up into a higher category. I wonder how many of my friends would be saying: Wait, wait, wait a minute. That is not fair. Businesses have to plan. Businesses have to have certainty. You have to make sure that what you tell them in here is going to happen.

Guess what, folks. That is what we are doing to the victim. That is what we are doing to you, the person who gave up your right that only the Congress can take away from you. Give up your right.

There is much more to say. I hope I will not have to say it because I hope this point of order is sustained. But if it is not, there are a number of amendments I have.

Mr. DURBIN. Mr. President, I yield the Senator 2 additional minutes.

Mr. BIDEN. Mr. President, I thank the Senator very much.

The bottom line is, I do not, for a moment—and, again, because he is on the floor and he is my friend—I do not question the motivation, the intention, the desire, the intensity with which my friend from Pennsylvania feels about this issue. I believe he believes if this passes we are going to be doing the victims of asbestosis—and all other aspects of the exposure to asbestos—we are going to be doing them more good than harm.

But I disagree. If the money were here, if the money were guaranteed, under no circumstances could it fall short, then, in fact, that would be the case. But the last piece I will mention here is, I heard my good friend from California talk about Goldman Sachs has a list. Isn't this amazing? We are about to vote on a bill that by some measure will cost at least $140 billion to somebody—I think a lot more—and there is a list that Goldman Sachs has. And we don't? I ain't for no deal I ain't in on. I ain't in on this deal. I am not for it. I am not for it.

I thank the Chair and thank my colleague.

Mr. DURBIN. Mr. President, I thank the Senator from Delaware.

I wish to add, we brought up this whole issue of this secret list last week, and Senator SPECTER came to the floor and he said he believes for a variety of reasons he cannot tell us, cannot disclose to the public, the contributors, the businesses that will contribute to this fund and how much they are going to be asked to give. So we are dealing with an amount, $140 billion, that many people question. Serious groups have analyzed it and said it is not nearly enough. And when it comes to the contributions from businesses to create the fund, we are dealing with a secret list.

This may be the first time in the history of the Senate we have spoken on the floor openly about how things are determined. Apparently this one company that has been mentioned on the floor created a list of businesses and decided how much, under the criteria, they would be paying in.

Mr. SPECTER. Will the Senator from Illinois yield for a question?

Mr. DURBIN. On your time I would be happy to yield.

Mr. SPECTER. I have no time.

The PRESIDING OFFICER. The Senator from Pennsylvania has no time.

Mr. DURBIN. How much time do I have remaining?

The PRESIDING OFFICER. Seven and one-half minutes.

Mr. DURBIN. I yield for a question, if it is pointed.

Mr. SPECTER. When you refer to the so-called secret list, as I pointed out to you on several occasions over the past several days, isn't it true you have seen the list?

Mr. DURBIN. No, I have not. And I thank the Senator for raising that point.

Mr. SPECTER. Isn't it true the list has been made available to you to see?

Mr. DURBIN. I would say to the Senator the same thing I said last week when we engaged in this conversation: For some reason, the Senator—whom I respect very much, and I have said this publicly, and it is not to be construed otherwise—has decided this list is confidential. So the list is made accessible to staff members and Members of the Senate to view but not to take notes or copies. Now, that is fact.

Mr. SPECTER. Mr. President, will the Senator yield——

Mr. DURBIN. And when I asked the Senator from Pennsylvania if he would make this list part of the RECORD, so we could see it right here in the CONGRESSIONAL RECORD, published for America to see, he said he would take it under advisement. He came back the next day and said for a variety of reasons, he could not do it. The fact remains——

Mr. SPECTER. Will the Senator yield for a question?

Mr. DURBIN. Not until I complete my thought. The fact remains that this list is secret to the public. If this is a public forum, if we are considering legislation that will impact the public, why, then, is the most fundamental

question about who will pay into this trust fund being kept confidential and secret?

It strikes me as straining credulity that this process is so open and transparent that we cannot tell the businesses of America how much they have to pay in or the victims of America how much they can expect to receive into this trust fund for their own payments. That is a fact. And because staff members or Senators can go to the hearing room and look through the report—not make a note, not make a copy—does not create a lot of confidence.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, will the Senator from Illinois at this point yield for a question?

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Five and one-half minutes.

Mr. DURBIN. I believe the Senator from New Jersey is coming to the floor and asked to speak. With only 5½ minutes remaining, I reserve the remainder of my time.

Mr. SPECTER. Will the Senator yield for 30 seconds?

Mr. DURBIN. To show the Senator from Pennsylvania how much I respect him, yes.

Mr. SPECTER. Would the Senator from Illinois be willing to accept, in open court, the list?

Mr. DURBIN. If I am allowed to put it in the RECORD.

Mr. SPECTER. The Senator from Illinois would be bound by the denomination on the list, which is law and Senate rules. It is not something ARLEN SPECTER has made up. But this is a list which you can have in your hand. It is not a secret list, but there are rules of confidentiality established by law and by Senate rule.

Mr. DURBIN. I would say to the Senator——

Mr. SPECTER. And if the Senator from Illinois declines, that is fine with me.

Mr. DURBIN. I would say to the Senator from Pennsylvania, I think he has constructed a situation here that isn't fair to this process. To think that we would be dealing with the lives and fortunes of so many hundreds of thousands of families, and that we are saying we cannot share with them the most fundamental information about how this trust fund is created, I think we could do better, we should do better in the Senate.

Mr. SPECTER. Would the Senator from Illinois accept my characterization of his position as ridiculous?

Mr. DURBIN. No. I would accept my characterization as challenging the Senator from Pennsylvania to accept the obvious. If this list has been created by some private company and cannot be shared with the people of America in the midst of the debate on this important bill, there is a serious flaw in this legislation, a flaw that cannot be overcome, even with the good feelings I have for the chairman of this committee.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I want to speak. We are debating a budget point of order. People in America are thinking this is some kind of a technical jargon that Senators are using. What does it mean?

A budget point of order is a parliamentary rule that can be used to make sure that the Senate carefully weighs whether we are putting undue burdens and obligations on future Congresses, which obviously means to future generations of Americans.

We are raising—and I have raised—this budget point of order today. I will be the first one to admit, it is a very technical budget point of order. But let me explain the reasons I believe it is a real budget point of order in its effect, stopping huge obligations by this Government in the future.

In the wisdom, I believe, of the Senate in last year's budget, we put in a budget point of order that would say beyond 10 years, if there is spending of more than $5 billion obligated, a bill would be subject to a budget point of order. It is because it had become practice around here to make things kind of ramp up, and, then, in the future spend the money so it did not look as though we were spending money now. It looked as though things were either budget neutral or had very little impact on the budget.

I said the other day on this very floor, talking about what is going to happen with Medicare, Medicaid, and Social Security, as the baby boomers retire in this country, it is a serious problem we are facing. If there is a problem with this trust fund—which many people believe there will be a huge problem with this trust fund, that it will be grossly underfunded—if the problem ends up coming back to the taxpayer, it will happen at a time when the baby boomers are starting to retire.

I know the Presiding Officer from South Carolina is one of the most fiscally responsible people in this body. I have followed his short record in the Senate and know how passionate he is about our entitlement programs. I feel the same way he does. But with that looming problem of the baby boomers coming up, the last thing we can afford to do is to enact a bill that potentially could have a major impact—literally, maybe with a number in the hundreds of billions of dollars—that could have a drain on our Government.

The Senator from Pennsylvania says there are no Federal revenues at stake here, the trust fund does not allow for that. Here is why I think it is a real budget point of order. I have been around this place long enough—I have only been here in the Senate 5 years, and in the House before that 4 years, but that is long enough to see how this town works. The Congress is creating this trust fund. If this trust fund runs out of money and there are still victims around, the people in this very body will stand up and say: Congress created the problem, Congress needs to fix the problem. Everybody will join in because there will be victims and people will have posters of victims out there. And there are real victims, people who are suffering, people who are not getting the help they need today. That is why I believe this is a real budget point of order because I think the Congress will act and will give the money to supplement the trust fund. It will not be their money; it will be the taxpayers' money. But they will give the money.

Now, I have heard a lot of people come down here and say why there is a problem. The fact is, we have a broken legal system that needs to be fixed. The trial lawyers in this country have discovered these class action lawsuits: Bring your Rolodex in and we will see who we can sue. And so many people who are not victims are clogging up the courts, who I believe are led there by unscrupulous lawyers. It is blocking real victims from receiving compensation.

It has been said that many businesses have gone out of business. The chairman of the Judiciary Committee has argued one of the reasons we need the trust fund is because a lot of businesses have gone out of business so there is nobody left to sue. Why did they go out of business in the first place? It is because of frivolous lawsuits, having to spend millions and millions of dollars defending themselves. In a lot of these cases, the businesses had nothing to do with asbestos.

I remember this one company that came in to visit me. They were an insurance company thinking of getting into insuring folks in the asbestos field. So they did a study. They came to the conclusion it was too risky, and they decided not to go into that business. I forget the exact figure, but I know since that time they have paid hundreds of millions of dollars out defending themselves because they did not release the study.

This was their own internal document they used to decide whether they were going to go into a certain business. But because they did not release the study, trial lawyers brought them in to the courts and sued them. In many cases, it is cheaper to settle than it is to defend yourself in court. So they paid out umpteen millions of dollars.

The problem with that is insurance companies are a passthrough. Americans are paying the bills. They are just a company that takes in premiums and pays out claims. They are there to make a profit. And if they have to pay things out, they have to raise the premiums, which we all pay.

So we know there is a serious problem. We know it has been caused because of a bad system, and we need to fix the system. I am the first one who wants to stand up here to fix the system. The alliance that has been formed here to try to support this budget point of order is a little strange. There are some fiscal conservatives. There are some people who support the trial lawyers. I have never been exactly claimed by the trial lawyers as being one of their friends, and I feel a little uncomfortable to be in this position, to be honest with you. But I am standing up for this budget point of order because I believe this bill is fiscally irresponsible to the taxpayers into the future.

Now, I want to address one other portion or one other thought no one has addressed on the floor of the Senate. I was in the House of Representatives for 4 years, and there I served on the Ways and Means Committee. The Constitution of the United States says something very clear. It is a very simple writing. That is the beauty of the Constitution, how simple the writing is. Section 7 of article I of the Constitution states:

All Bills for raising Revenue shall originate in the House of Representatives. . . .

That is a very simple statement. In the letter to the budget chairman, the Congressional Budget Office says:

CBO expects those sums—

Talking about the sums for the trust fund—

would be treated in the budget as Federal revenues.

Section 7:

All bills for raising revenue shall originate in the House of Representatives.

Any Member of the House of Representatives can raise this constitutional question. I cannot remember a time when somebody raised this constitutional question when the House of Representatives did not support it. It is called a blue slip. I raised one when I was there. It was on the nuclear waste bill that was up. I raised that budget point of order, and that was at a time when the vast majority of House Members supported the nuclear waste bill. Yet they supported me on that blue slip, that constitutional question, because they wanted to protect their rights as a body.

Well, beyond the budget point of order, we may be spinning our wheels because this trust fund raises revenues, and it is the prerogative of the House of Representatives to start a bill like that. So even beyond the budget point of order, we may be wasting our time with this bill because of the trust fund that has been set up.

So I encourage my colleagues, let's sustain this budget point of order and start over. Let's get a good medical criteria bill, work in a bipartisan fashion, get together and limit it.

Let's make sure that victims of asbestosis and mesothelioma are compensated. Let's get rid of all of the phony claims. It will quit clogging up our court system. We won't have all these lawyers getting rich over all these class action lawsuits. We will actually get the victims their just compensation.

If we join together and get something done and quit making partisan political points, I believe the actual victims will be better off, but so will those businesses that are threatened to go out of existence even as we speak.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Mr. President, I think I have been yielded time. I would like to check with the people at the desk to see whether that is the case. I heard the Senator from Illinois say I was expected on the floor. Is that noted in the RECORD in any way?

The PRESIDING OFFICER. We have no record of the Senator from Illinois yielding time.

Mr. LAUTENBERG. Mr. President, since I am on the floor and there is nobody else here on the Democratic side, I ask unanimous consent that I be permitted to speak for not more than 5 minutes or so.

Mr. ENSIGN. Whose time is that coming off of, Mr. President?

Mr. LAUTENBERG. I believe it is our time.

The PRESIDING OFFICER. There would be an additional 5 minutes, unless someone else yields time.

Mr. LEAHY. Mr. President, parliamentary inquiry: The opponents of the position of the Senator from Nevada, how much time do they have?

The PRESIDING OFFICER. The Senator from Nevada has 23 minutes. The Senator from Illinois has 3 minutes 22 seconds.

The Senator from Vermont has 15 minutes.

Mr. LEAHY. This is in opposition to the position. I will reserve my 15 minutes for the Senator from Pennsylvania and myself.

Mr. ENSIGN. Mr. President, before the Senator from New Jersey speaks, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from New Jersey made a unanimous consent request for 5 minutes. Is there objection to that?

Mr. LAUTENBERG. Mr. President, I would like to use Senator DURBIN's time. He has 3 minutes left. I ask unanimous consent that I be permitted to use Senator DURBIN's time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, since time is limited, I am going to get down to the nuts and bolts. I come from a State in which asbestos was prominent in manufacturing in many places. As a matter of fact, early in the 1950s, a doctor named Irving Selikoff, who was a researcher as well as a physician, discovered the lethality of asbestos. He is the one who raised the alarm about the dangers of that product.

He saw mesothelioma and asbestosis.

In my office in New Jersey, I had a man and his wife and his mature son, who was about 30 years old, come in to see me because they all had mesothelioma, but only the father worked in the manufacturing facility, the mill. His wife and child, his son, were made ill as a result of the mother washing her husband's clothes. That is how lethal, how dangerous asbestos is.

This bill is an abstract exercise. There are real people involved, people who are going to die as a result of the exposure. I have seen it up front and personal. A friend of mine who was a lawyer, after practicing 20 years, got a call from a member of a union one day that had asbestos workers, and he was told to get a chest x ray. He did. After 20 years of no illness, nothing, suddenly they found that he had a spot on his lung, and it turned into mesothelioma and he was dead soon thereafter.

I recently had a World War II vet—I am one as well—come into my office, sick from mesothelioma, from work he did 40 years ago. We have seen so many cases where the gestation period is so long, so that to suddenly close this out and say that is going to be enough money, $140 billion—it sounds like a lot, but it is not a lot when it comes to individuals who need help and who need to be able to continue to conduct their lives and do whatever they can to make life comfortable.

The Congressional Budget Office has stated that the fund will need $10 billion more. Other analysts put the figure as high as $300 billion. So it is fairly obvious that I am going to oppose this bill and support the point of order. I urge my colleagues to do the same because what we are doing is dismissing the suffering of people who have been exposed to this, even though the companies knew how dangerous the material was they were working with. They permitted people to work with it and did not do anything about it, except ultimately, in many cases, they went bankrupt as a result of their behavior.

I yield the floor, and I hope my colleagues will oppose this bill and support the point of order.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, first, I want to acknowledge the extraordinary amount of work that the chairman of the committee and the ranking member have put into this bill, and how much I admire the diligence they have brought to the task.

I rise today on the question of a budget point of order that has been raised by the Senator from Nevada. That budget point of order is clearly well taken. A number of months ago, my technical staff on the Budget Committee came to me and said they had

been reviewing this legislation and they wanted to alert me that they believed this legislation was underwater, that it was underfunded, that it would lead to severe consequences not only for taxpayers but also for those who were the victims; it might also lead to severe consequences to companies that thought they were escaping the court system.

Why is that? Well, it is true because the analysis that has been done demonstrates it is much more likely this fund will go insolvent than not. Why?

First, because claims and administrative expenses are likely to exceed the contributions to the asbestos trust fund.

Second, upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts, and that borrowing will come from the Federal Treasury, increasing the ultimate cost.

Third, small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund.

Finally, it is very unrealistic to assume that the trust fund, once initiated, will ever terminate.

Mr. President, CBO said in a letter today:

> CBO cannot estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation.

What are those features? Here are a number of things that CBO said they could not estimate. They said they made no provision for dormant claims. Dormant claims are cases that were brought previously but for which there is nobody to pay under the current system. No. 2, we also know there are trusts that are only paying cents on the dollar. Those dormant claims could come back against this fund.

Second, exceptional medical claims: Exceptional medical claims are claims that don't fit neatly into one of the nine categories provided for in this bill. CBO said they could not make an estimate for those.

Third, CBO made no estimates for family members' claims; that is, family members who have been affected because a loved one comes home with asbestos on their work clothes. I had a family come to me where both the mother and the daughter became ill because the husband brought asbestos home on his work clothes and that made them ill. They will have claims.

Then there was no provision for CT scans, which were omitted; that is, costs associated with using CT scans for plural abnormalities as evidence of asbestosis.

It also omitted the cost of compensating victims at other Libby-like sites. Libby is an unusual circumstance, but it is not the only one where an entire community has been badly hurt. That will increase the cost.

We have only found one area where there might be potential savings, and that is the medical studies area. That is a circumstance where there could preclude some tier VI cancer claims, and that could reduce costs. But it will affect fewer than 1 percent of claims.

There are additional areas of uncertainty in the CBO analysis: the number of future cancer claims. CBO estimated 78,000 new cancer claims. The Tilling-Hast study, financed by Johns Manville—so it is not financed by the trial bar or by labor unions, not financed by companies who are against this legislation. Instead, it was financed by the Johns Manville trust. The Tilling-Hast study did 14 different scenarios. They concluded, on average, there would be 133,000 new cancer claims, not the 78,000 provided for in the CBO analysis. If they are right, this bill is $295 billion underwater instead of the $150 billion we have assumed, based on increasing the cancer claims from the 78,000 in the CBO study to 90,000.

The percent of nonmalignant claims is another area we believe will increase costs. CBO says only 15 percent of the people will fall into tier II and tier III. Tier II gets $25,000 cash reimbursement. Tier III gets $100,000. They say only 15 percent of the claims will fall there. Other objective experts say it is more like 10 to 40 percent. We took the midrange of that estimate, 25 percent. We think that is a more prudent estimate of the amount of financing costs on fund borrowing.

We have heard over and over that this will only cost $120 billion to $140 billion or $120 billion to $150 billion, depending on the estimates, and that CBO has said there is an assumption that the claims will cost in that range: $120 billion to $150 billion. That leaves out something. That leaves out something pretty important. That leaves out the financing costs because everyone acknowledges that the early claims will be far in excess of the early revenue. The result is an enormous mismatch between funds going out and funds coming in. That borrowing is going to be made from the Federal Treasury. The interest cost on that money has not been calculated in the work of CBO. They acknowledge that. That is the biggest single difference we have identified. You have to include financing cost.

In addition to that, the amount of revenue in the trust fund may well reduce revenue. In fact, CBO notes that revenues will be, at most, $140 billion, and that revenues could be significantly less.

When we put all of these factors together, our analysis, using very conservative assumptions, including the asbestos trust fund, faces a shortfall of at least $150 billion over its lifetime or $50 billion in net present value.

Using what I believe is a more realistic estimate of future cancer claims, the 133,000 average in the Tillinghast study, the shortfall would grow to nearly $300 billion. That really shouldn't be a surprise because if we look at what has happened with other funds like this, what we have found is that very often the initial estimates are entirely wrong.

If we look at the original range of the Manville claims, this estimate was done back in the late 1980s, and they estimated there would be 50,000 to 200,000 claims. Already, there have been 690,000 claims. They now estimate there will be 1.4 million, for a final total of over 2.1 million claims. When they initially started, they said there would be 50,000 to 200,000. They were wrong by a country mile.

We looked at the black lung fund. Back in the late 1960s when it was initiated, they said the total cost would be $3 billion. We are at $41 billion today and counting.

The hard reality is that CBO has reaffirmed there is a significant likelihood that the asbestos funding is inadequate. Here is what they said in a letter today:

> CBO's analysis indicates that the proposed trust fund under Senate amendment 2746 might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

Let there be no doubt. This is what it says.

In the point of order which has been brought by the Senator from Nevada, it shall not be in order to consider any bill, joint resolution, amendment, motion, or conference report which would cause a net increase in direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 through 2055.

S. 852 creates an entitlement. The language could not be more clear. It says in section 131:

> An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under section (b).

Are these all just words? Are all these just numbers on a page? Or does this have some real-world consequence?

We can look to the Johns Manville trust for the answer to that question. Because they estimated incorrectly, because they dramatically underestimated the number of claims, claimants today are getting 5 cents on the dollar. Five cents on the dollar. That could happen to victims. The other possibility, of course, is that people will come to Congress and say: Look, you designed this fund. You said it was going to produce. You said it was going to work. Now it has failed. You have to pony up. You have to pay. What do my colleagues think is the most likely outcome in the years ahead?

CBO has also confirmed that the long-term spending point of order exists against this legislation. Here is what they said, and this was on February 13, yesterday:

> Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95, CBO estimates that enacting the bill as amended

would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

CBO also reaffirmed that the fund is governmental:

Operating the Asbestos Injury Claims Resolution Fund would be an entirely new governmental task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation.

CBO's estimate shows that the asbestos bill will worsen the Federal deficit by $7 billion over the first 10 years. We believe that is very conservative. We believe the amount of increase to the deficit will be far in excess of that when we adjust for the dormant claims, when we adjust for the debt service, when we adjust for the other expenses that have been left out.

There have been some who have said: Well, these really aren't Federal funds. Oh, yes, they are. These are Federal funds because the money, just as it is in all of these instances of trust funds, is considered Federal—in the airport and airway trust fund, in the black lung disability fund, in the hazardous substance Superfund, in the highway trust fund, and in the unemployment insurance fund. It doesn't matter that, yes, there are private funds here; without question, that is part of the picture, but it is not the whole picture. In every one of these cases where we have private funds being mixed with Government funds, the final result is considered governmental payments. The above trust funds receive ''private'' receipts that are designated for specific purposes. Spending from these trust funds is treated as Federal.

At the end of the day, we have to make a judgment. Some have said: The Federal Government's exposure is limited, it is restricted, because after $40 billion, it shuts down. I think we have to ask ourselves: Is that likely? Is that really likely to occur? Can we imagine the companies being told they owe $40 billion back to the Federal Treasury and they are exposed to going back to court? If we want a march on Washington, enact this legislation, because it will go insolvent in the second 10-year period, according to our estimates, and we will have a run on Washington unlike anything we have seen in the modern age.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, how much time is remaining to the various parties?

The PRESIDING OFFICER. The Senator from Vermont has 15 minutes, and the Senator from Nevada has 8 minutes. That is all the remaining time.

Mr. LEAHY. Mr. President, I am prepared to yield the remainder of my time to the Senator from Pennsylvania, but I would like to make just a couple of points, if he doesn't mind, before I do that.

Mr. President, with all of the talk, let us not lose sight of a couple of things. This bill does not violate 407(b), no matter what anybody says, because we specifically say the taxpayer funds will not be spent to compensate victims of asbestos exposure. That has been our position from day one, and that is what the bill says today: not a single dollar is spent. In fact, the CBO states that over the life of the fund, whether or not it sunsets, we would not expect the legislation to add to the aggregate Federal debt. It just doesn't add to debt. The Federal Government is involved only because it acts as a conduit for the private funding of $140 billion. All the parties said they wanted that in the Department of Labor because they had the experience and the infrastructure necessary to set up a quick start for the victims.

We have heard the figures about projection of interest rates. If we follow those projections, the interest rates would have to be at 25 percent. Twenty-five percent. Even with the recent increases by the Federal Reserve Board, we are still way in the low single digits.

The CBO considered all the estimates. They met with dozens of financial experts, economists, auditors, everybody. They say payments were raised from $120 billion to $150 billion, at most. They said $140 billion will cover all claims, payments, administrative costs, and borrowing costs. That is why we have the financial institutions, we have our veterans, we have labor. As this chart shows, labor organizations are strongly for it.

Then we ought to keep in mind that these are the people who are not going to recover unless this bill goes through, and 26 veterans organizations have come out to say they oppose this budget point of order. Twenty-six veterans organizations oppose it because they know they need this bill.

Mr. President, I yield the remainder of my time to the distinguished Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I would like to comment briefly on the disagreement I had with the Senator from Illinois, Mr. DURBIN. He has made the false representation that there is a secret list of who is going to provide the money. It is not a secret list. It has been made available, and I offered it to him on the floor. But under the law, when it contains confidential information, it is available for the Senators and their staffs and those preparing the legislation, but it is not available for the general public on trade secrets. When the bill is certified, then it goes into the public record and the public domain. But to say that it is a secret list is the purest form of demagoguery and a specious argument.

On to the essential point of this budget point of order, it does not have any substantive merit because there is no Federal money involved. The Federal Government is implicated only because the Department of Labor is a conduit. That is the only reason the Federal Government is involved.

The Congressional Budget Office has said flatly in the letter to me dated yesterday:

CBO concludes that the legislation would be deficit-neutral over the life of the fund.

CBO, in their letter today to Senator CONRAD, repeated:

CBO concluded in its February 13 letter to Senators Gregg and Specter that the proposed amendment would be deficit-neutral over the life of the fund.

So there is no Federal money involved, pure and simple, and there is no basis to say that the budget would be impacted, so that on the merits, there is no basis for this point of order.

The practical application is that if this point of order is sustained, this bill will die. This is an issue which has been before the Judiciary Committee for the better part of three decades, and it has been before the committee in the past 3 years on a very intense basis. The majority leader has set aside 2 weeks for the consideration of this bill. If this point of order is overruled, we will proceed to a cloture vote tomorrow, and we will proceed to take up amendments, and we have a realistic chance of concluding this bill yet this week. It is backed up against a recess period, and we have a chance to finish this bill.

If this point of order is sustained, then the work which Judge Becker has done in presiding over some 36 meetings, attended by 20 to 50 to 60 representatives, countless meetings, will be in vain. If the point of order is upheld, the bill is gone. If it is rejected, there will be ample opportunity for amendments to be presented and for the bill to be improved.

There are those who wish to offer an alternative of a medical criteria bill. I do not think a medical criteria bill is as good as the current bill because the medical criteria bill would not cover employees whose companies are bankrupt or veterans who have no one to sue. But at least that would be an alternative which would be preferable to the current system. I believe it is fair to say that the Presiding Officer might be attracted to a medical criteria bill, and certainly many who oppose the trust fund would prefer to have something such as a medical criteria bill rather than have nothing.

If the point of order is upheld and the bill is dropped, you can't do anything. There is a question as to whether it is germane, but that is a matter for the Parliamentarian and that is a matter for ingenuity and that may be worked out. If you do not go to a medical criteria bill, there are germane amendments which could be offered to change the medical criteria.

Here again, I am opposed to the modifications, but they could be made and the bill could be altered. The whole beauty about the Senate is that—when we have these complex issues and we have the synergism of 100 Senators and our staffs—with our experience, with our analysis of what we have done, we have a chance to establish public policy in the interests of Americans.

Everybody agrees. Not one person who has taken the floor has disagreed with the enormity of the problem. Everybody agrees that it is horrible that people are dying of deadly diseases from exposure to asbestos and have no one from whom to collect.

There is disagreement about how to handle it. There is no disagreement about the tremendous amount of work which has been done in this bill. On a strictly personal level, the committee, the staffs, and I have put in countless hours that ought not to go down the drain on a technicality. If we have this bill on the floor for 3 more days this week and if at the end of that time, or whatever time the bill is on the floor, there is a decision made that no bill is better than the bill we come to, then so be it. It is rejected. But to have it rejected on a technicality is a terrible waste of so much time and effort which has gone into bringing this bill to this position.

I have made a statement which I believe to be true—although I can't prove it—that there has never been a bill subjected to more analysis and scrutiny than this bill. Or in the alternative of accepting that assertion—I know it is a grandiose assertion—can anybody point to any bill which has had more analysis or more scrutiny? What a waste it would be to have it dismissed on a technicality when the consequences are that thousands of victims of asbestos will continue to die without compensation, the 77 companies now in bankruptcy will be multiplied, and the economy will withstand a $300 billion loss.

Let us take 3 more days, as we have taken the past 3 years, to see if we can produce a bill which will satisfy the critics of the present measure.

We have done a count as to how the Senators are going to vote. It is impossible to say with certainty exactly what is going to happen. There are too many people who are still undecided. So as I talk to my 99 colleagues, I ask you to weigh very heavily this vote because this is a measure, as many are, which might be decided by a single vote. Why let it all go down the drain on a technicality when we might be able, in the course of 3 more days, to produce something which would be satisfactory to a majority of this body?

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator has 3 minutes 15 seconds.

Mr. SPECTER. I am willing to yield back the remaining time if the Senator from Nevada is.

Mr. ENSIGN. Yes.

Mr. SPECTER. Mr. President, parliamentary inquiry: The pending motion is my motion to waive?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. No response having been made to the roll-call, the quorum call is in order.

The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I will use leader time, in that all time has expired.

Mr. President, I urge my colleagues to vote ''no'' on the motion to waive the valid budget point of order raised by my colleague, Senator JOHN ENSIGN. This is not a technicality, it is the absolute foundation of this flawed program, this trust fund. A vote on the budget point of order is the key vote on this bill.

Cloture was filed last night by the majority leader on both the bill and the Specter substitute amendment. The first cloture motion will ripen tomorrow morning. The effect of that action will be to ensure there will be no meaningful opportunity to amend this bill.

The chairman of the committee says we should not defeat the bill on a budget point of order and should instead attempt to improve the bill by amendment. Mr. President, please, that is not very sensible. The majority leader's decision to file cloture last night completely undercuts that argument. There is no serious chance this bill will be improved through amendment.

Why do I say that? After cloture is invoked on the substitute, only germane amendments will be in order, and after the substitute is adopted, no amendments at all will be in order. Many of the most important amendments to the bill are highly relevant but nongermane. There are lots of them.

How about the amendment of Senator LINDSEY GRAHAM to deal with environmental exposure to asbestos across the country? Senator GRAHAM's amendment, which he has talked about for months now, dealing with asbestos exposure around the rest of the country would not be in order. That is hard to accept. There are many other amendments of comparable significance to that of Lindsey Graham. Any Senator with concerns about the bill should vote to sustain the point of order because the only meaningful way to improve the legislation is by committing it back to the Judiciary Committee.

I have said that Senator DURBIN and I will work with Senator CORNYN and others to find an alternative approach along the lines of the Texas and Illinois State statutes. The pending bill may be well-intentioned, but it is ill-conceived. It would deprive asbestos victims of their right to obtain compensation for their injuries in court and throw them into an administrative system that is doomed to fail. It is doomed to fail.

If someone doesn't like the entitlement programs in this country, then you should hate this bill before us because it is another entitlement program, and it will make the black lung program look insignificant.

This program started at $3 billion; it is now $41 billion and on the rise still.

The trust fund is undercapitalized and structured in a way that will deprive seriously injured victims of fair treatment.

The bill is opposed by every major asbestos victims group, as well as numerous scientists and doctors and experts on asbestos-caused diseases, and nearly every labor union.

In addition, virtually the entire insurance industry and a large number of small- and medium-sized businesses oppose this bill. It is death to too many companies.

People stand on the floor of the Senate and talk about cases where they have had to file bankruptcy. When those companies went into bankruptcy, they did just fine. Victims did not get their money but others did. A lot of the companies have come out of bankruptcy.

Yesterday, Senator FRIST and I received a letter signed by more than 350 individual veterans and their families, representatives of large numbers of people around this country.

Among other things in this letter, they state:

> We are aware of the repeated claims by proponents of S. 852 that this legislation is good for veterans. We are also aware that several veterans' organization officials have endorsed the legislation. We, as individual veterans and families, want to make it clear that these officials and organizations do not represent the position, nor the complete position, of the veterans' community. We strongly oppose this legislation. We believe that a system as envisioned by S. 852 would exacerbate, not relieve, the suffering of veterans with asbestos-related diseases.

The budget point of order before us is significant and goes to the heart of the bill. In addition to being unfair to victims, the bill is unfair to the Federal taxpayer.

I repeat: I have received calls in recent days from Karl Rove saying: What are we going to do about entitlement programs in this country?

He, of course, is concerned.

We have a debt ceiling vote that is going to be coming up in the next several weeks. That is why he called me on behalf of the President.

If he is concerned about the entitlement programs that are now in existence, they should really be frightened about this one. This is open ended. Some have said it will be as much as $600 billion underwater.

The budget point of order raised by Senator ENSIGN is clearly valid. Yesterday, responding to an inquiry from

Chairman GREGG of the Senate Budget Committee, the Congressional Budget Office reaffirmed its conclusion from last August that the bill violates section 407 of the Budget Act. You can manipulate, twist, and try to say it doesn't say what it says, but they say it violates section 407 of the Budget Act. CBO estimates that enacting the bill as amended would cause an increase in net direct spending.

In the same letter, the Congressional Budget Office predicted that in the years 2006 through 2015, the cost of the fund will exceed industry contributions to it by at least $6 billion. The only way to make up that difference is to borrow it. Who do you borrow it from? From the Federal Treasury.

In a letter to Senator CONRAD today, the Congressional Budget Office highlighted the extraordinary uncertainties associated with the cost of this bill.

Senator CONRAD read parts of this into the RECORD today, as have others.

Senator CONRAD, of all people in this body, of all people in this body, is seen as a fair man. His main concern about what is going on in Government today is spending.

I remind everyone that when Senator CONRAD was elected in 1986, he took a vow. He said: If the budget is not reduced by the time I stand for reelection, I will not run for reelection. He fulfilled that commitment because the budget deficit had not gone down. He is a man of his word.

Unfortunately, the sitting Senator, Mr. Burdick, died, and as a result Senator CONRAD is back with us. But he gave up his Senate seat because he believed the deficit was not right.

I think those of you on the other side of the aisle who have worked with Senator CONRAD would have to acknowledge that when he deals with matters of fiscal responsibility of this country, he is fair. His own individual analysis indicates that this will be at least $150 billion and maybe as much as $290 billion in the red.

I remind my colleagues that this bill effectively creates an entitlement for asbestos victims and obligates the Federal Government to provide compensation to those victims. Throughout the fund's existence, the Federal Government is obligated to pay regardless of the actual amount raised by the fund through company contributions; thus this obligation remains so long as the fund is operational. Experts conclude that the amount of payouts will outpace the contributions to the fund not just in the near term but in the long term as well.

I say to my friends, Democrats and Republicans, read the Wall Street Journal of today. If there is ever a publication that is concerned about what is happening to the financial situation in this country, we all have to acknowledge it is the Wall Street Journal. I don't like a lot of their political editorials. But whenever they talk about money, I read and listen.

In an editorial this morning, that newspaper pointed out, for example, repeating what I said, that the black lung program ''which was initially supposed to cost $3 billion and was later supposed to be financed by the coal industry, it has since paid out more than $41 billion, borrowing some $9 billion from the Treasury.''

They acknowledge that the bill before us is bad.

There are alternatives to solving this difficult problem. My friend, the distinguished junior Senator from Texas, is on the Senate floor. I pledge to work with him on his proposal to establish a medical criteria system that will assure a more orderly resolution of the asbestos claims. That is the way it is going to be no matter what the outcome of this. The current bill is not the answer.

I urge my colleagues to establish a medical criteria system that will do what we think should be done.

I very much appreciate the work of Senator LEAHY and Senator SPECTER. I think these two Senators have done a wonderful job and are doing the best they can.

If my friend, Senator SPECTER, is on the floor, I would be happy to ask unanimous consent that he be allowed to speak to respond to anything I have said, if he believes that is appropriate.

No one on our side will object. I have finished using my leader time. I would be happy, if he feels so inclined, to ask unanimous consent that he be given whatever time he wants to respond to what I said.

Mr. SPECTER. Mr. President, I thank the Democratic leader for that. I shall accept it.

Mr. REID. How much time does the Senator need or want?

Mr. SPECTER. I didn't know there was a limitation on how much I want.

Mr. REID. As minority leader, I was entitled to 10 minutes. I think anything over that would be out of the ordinary.

Mr. SPECTER. I will take less than 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that Senator SPECTER be allowed to speak for up to 6 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, whatever arguments are advanced by skillful advocates and skillful Senators, the underlying question of this budget point of order is whether the budget will be impacted and hurt. The fact is, there is no Federal money. So there is no substantive merit to the point of order. The Federal Government is implicated only because the Department of Labor is involved as a conduit.

That is fact No. 1.

Fact No. 2 is if this budget point of order is upheld, this bill is killed after 3 intense years of work, with hundreds of meetings, with numerous conferences, and 36 meetings presided over by Judge Becker and myself. And there will be no opportunity to have amendments to improve it.

We may yet be able to pass a bill which will satisfy the critics.

So let us have 3 more days as we have worked 3 years. It has been a process by the committee for three decades. But let us have 3 more days with all the work that has been done to bring it to this point. Everyone agrees with the need for a bill.

Everyone agrees there are tens of thousands of asbestos victims who are dying without compensation because their companies are bankrupt, or because they are veterans who sustained their injuries in the service and have no one to sue. Everyone agrees it has a tremendous impact on the economy.

So let us take 3 more days. This vote is razor thin. Nobody knows how it is going to come out. It may well be decided by a single vote, as so many votes are in this body.

I ask each of my colleagues to ponder carefully—there are many, as last reported, undecided—and give us the benefit of the doubt. Give me the benefit of the doubt as chairman of the committee who has brought this forward. Give the Judiciary Committee the benefit of the doubt, and give the benefit of the doubt to substantially more than 50 Senators. We are at least in the high fifties—maybe higher. But give us the benefit of the doubt with 3 more days of the time of the Senate.

I thank the Chair. I thank the Senator from Nevada for yielding.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 58, nays 41, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—58

Alexander	Dodd	Lugar
Allard	Dole	Martinez
Allen	Domenici	McConnell
Baucus	Enzi	Murkowski
Bayh	Feinstein	Roberts
Bennett	Grassley	Santorum
Bond	Hagel	Sessions
Brownback	Harkin	Shelby
Burns	Hatch	Smith
Burr	Hutchison	Snowe
Carper	Isakson	Specter
Chafee	Jeffords	Stabenow
Chambliss	Kohl	Stevens
Coburn	Kyl	Talent
Cochran	Landrieu	Thomas
Coleman	Leahy	Vitter
Collins	Levin	Voinovich
Cornyn	Lieberman	Warner
Craig	Lincoln	
DeWine	Lott	

NAYS—41

Akaka	Conrad	Frist
Biden	Crapo	Graham
Bingaman	Dayton	Gregg
Boxer	DeMint	Inhofe
Bunning	Dorgan	Johnson
Byrd	Durbin	Kennedy
Cantwell	Ensign	Kerry
Clinton	Feingold	Lautenberg

McCain	Obama	Sarbanes
Menendez	Pryor	Schumer
Mikulski	Reed	Sununu
Murray	Reid	Thune
Nelson (FL)	Rockefeller	Wyden
Nelson (NE)	Salazar	

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the last vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. FRIST. Mr. President, I switched my vote from a ''yes'' to a ''no'' vote. Without my switching the vote, it would have been 59 to 40. We have one absentee tonight, and that may well have determined which way this particular vote had gone. Thus, I switched my vote from a yea to a nay, thus the vote was 58 to 41. That allows us to, at some point in the future, have the option to reconsider the motion. We will make a decision on that at some point in the future.

The PRESIDING OFFICER. The point of order against the bill is sustained. Pursuant to section 312(f) of the Budget Act, the bill is recommitted to the Judiciary Committee.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, in a few moments I will have a very brief statement about what went on with the vote on the asbestos bill, but for our colleagues, I wish to outline where we are going tonight and over the next several days.

Calendar No. 360, S. 2271, is the USA PATRIOT Act Additional Reauthorizing Amendments Act. This bill addresses some of the concerns of Members on both sides of the aisle as it relates to the PATRIOT Act. I believe that we strongly support it and we are prepared to consider this measure next.

Therefore, I now ask unanimous consent that the Senate proceed to the consideration of S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, on behalf of Senator FEINGOLD, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I had hoped we would at least be able to proceed to that bill tonight. As our colleagues know, this bill is ready to go. It is an important bill. It is important for the safety and security of the American people. It is a bill we have worked on for a long period of time, and we believe there is overwhelming support for this bill. The consent I asked for was for the Senate to begin consideration of that legislation. We had the objection from the other side of the aisle that was expressed.

I now move to proceed to S. 2271. The motion to proceed is now pending and is debatable. We have been told that there will be an effort to filibuster the motion to proceed. Therefore, I now send a cloture motion to the desk and ask for its consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, James Inhofe, Richard Burr, Christopher Bond, Chuck Hagel, Saxby Chambliss, John E. Sununu, Wayne Allard, Johnny Isakson, John Cornyn, Jim DeMint, Craig Thomas, Larry Craig, Ted Stevens, Lindsey Graham, Norm Coleman.

Mr. FRIST. Mr. President, again, the motion is pending, and if the Senators desire to debate the motion they should be prepared to do so. The Chair is obligated to put the question. I put Members on notice that they should remain on the floor if they feel the need to hold up this important legislation; otherwise, we will be proceeding to the underlying bill.

Mr. FRIST. Mr. President, with respect to the vote we took minutes ago on the asbestos legislation, it does mean that legislation is, in essence, off the floor now, and that we are proceeding with the consideration of the PATRIOT Act, although we have an obstruction underway and we have a threatened filibuster underway, and we will address that in the coming days.

The vote on the motion to waive the point of order on the asbestos bill was 59 to 40. In order to have the option to keep a heartbeat at least in this piece of legislation, because it is so important to victims, to our economy, to jobs, what I did, as an advocate for the Specter-Leahy bill, is I switched my vote from yes to no. From a procedural standpoint, what that allows me to do as leader is to bring that back to the floor at some appropriate time if there is indication to do so in the future.

We did have one absentee vote tonight that could have made the difference, and with that I switched my vote. I do want to make it very clear, because there is always misunderstanding in terms of when a Senator switches his vote, I strongly support the Specter-Leahy bill, and I switched my vote for procedural reasons.

So this vote did reflect 59 to 40 on the floor, although the actual vote is depicted as 58 to 41.

Let me also add, and I think I speak for the majority of my colleagues, that I am disappointed in the fact we are not able to proceed with this asbestos litigation bill. The consequence of this vote tonight is that victims who are in need are not going to receive fair and just compensation. They deserve it. They need it. The problem has been clearly spelled out on the floor of this body.

We have made progress over the last couple of weeks in that people recognize this is a serious problem that has gone on for too long, yet has to be addressed in a legislative way, that it denies justice to victims, that it hurts and punishes our economy and, unless it is addressed, will continue to destroy jobs in this country.

Unfortunately, by refusing to move forward on this bipartisan bill, a bipartisan bill, the Senate chose to protect special interest groups rather than the interests of those innocent victims who deserve more. The cost to our society will be felt unless it is addressed sometime in the future.

I do thank all of those who acknowledge there is a real and serious problem that Congress should debate, and it must be resolved at some point in the future.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to address the issue that was just considered before the Senate and say that I hope, now, that we can work together on a bipartisan basis to find some accommodation—not to create a trust fund, in an amount that has never been established, with contributions that have never been disclosed publicly but, rather, something that is much more open and transparent.

The starting point is obvious. Some States have already addressed this issue with significant changes in the existing tort system that make it more fair and quicker for victims to get compensation. I think that is the way to address this, and I hope that now we can have an effort by Members from both sides of the aisle on a bipartisan basis to establish this.

I do quarrel with the leader's conclusion that special interests defeated this legislation. Let's be very honest with the American people. This bill was a clash of the special-interest titans on both sides. Senator BENNETT of Utah, on the other side of the aisle, whom I respect very much, came to the floor

and listed 10 major corporations that, with the passage of this legislation, would have saved $20 billion in liability—$20 billion that they would otherwise have to pay to victims of asbestos exposure around America. To say that everyone opposing this bill was a special interest but 10 companies that were $20 billion ahead if this bill passed were not special interests defies a rational explanation.

I would also add that I think we have to consider the fact that when we come down to consider this bill, there is going to have to be give and take on both sides, and I hope we can reach that point. Those in the legal community, as well as those who represent the businesses and insurance companies who have stakes in this fight, have to be willing to give some ground and to work toward compromise.

I came to Congress years ago, and when I arrived the first issue with which I was confronted was asbestos. It is still here today and there are more victims today and we have to find a reasonable way to help those victims.

I am heartened by Senator CORNYN of Texas, who has been willing to come to this floor and talk about the medical criterion alternative. I don't know if we can reach an agreement, but I sure want to try. I have said to my colleagues on this side of the aisle who did not agree with the disposition on the last vote that we should put our heads together and see if we can come out with a reasonable answer to this challenge we face. I sincerely hope that can be done.

I do have to say I wish the first bill we were considering would not have been this so-called Armageddon of the special interest groups. Wouldn't it have been much better for us to have considered Medicare prescription drug Part D reform when we have millions of seniors across America struggling to understand this complicated system, wrestling with plans that may offer the drugs that they need for their life-and-death situations; wanting the pharmacies they have always trusted to be included; hoping that they can pay the price of this plan?

I hear from these people every day. You would think that Members on both sides of the aisle would be receiving these phone calls and, if they have, you wonder why that was not the first bill that was brought up. It would have been a reasonable thing. Some have even suggested we should have brought up ethics reform before we did anything else, and we have introduced a bill on the Democratic side that will try to move toward significant ethics reform. I hope those on the Republican side who feel the same way will join us and make their own suggestions. But shouldn't we move to that legislation? That may not be popular with some of the power brokers in this town, but if we want to restore the confidence of the American people in Congress and the people who work here, it certainly ought to be high on their agenda.

There again is another issue that we have not considered—ethics. Medicare; prescription drugs Part D; addressing the issue of LIHEAP—that's the Low Income Heating and Energy Assistance Program—are critically important across the Nation. We left that undone—underfunded from last Congress. I think there is bipartisan support—I know there is—for us to return to that issue, another one which will help a lot of needy families, vulnerable Americans across our Nation who are faced with staggering and record heating bills. That, again, is an issue that does not have a special interest constituency, but it is certainly one that families are concerned about across our country.

I know we are not ready to bring up the issue of health care because we need to do some work on it. For 5 years, we have done virtually nothing and the cost of health insurance has gone up, the coverage has gone down, people are more vulnerable today than they were a few years ago and more people are uninsured. We ought to be talking about reasonable bipartisan efforts to deal with health insurance and making it more affordable and more accessible for every American family. That is something that could be done.

When some come to the floor and say: This is the No. 1 issue facing Congress, the people I represent think there are other issues far more important, issues that relate to their everyday lives and the livelihoods of their families. I hope we can return to those issues.

We have expended a lot of effort and energy on this issue. Perhaps by working on a bipartisan basis we can find a way through this. But in the meantime, let's take up some of these equally important, if not more important, issues for families across America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SPECIALIST ALLEN KOKESH, JR.

Mr. JOHNSON. Mr. President, today I pay tribute to Specialist Allen Kokesh, Jr. who died on February 7, 2006, from injuries sustained while serving in Iraq. He was a member of Charlie Battery, First Battalion 147th Field Artillery Brigade of Yankton.

Specialist Kokesh was one of five South Dakota National Guard members involved in a roadside bomb attack on December 4, 2005, en route to Baghdad. Two soldiers were killed in the immediate aftermath, Sergeant First Class Richard Schild and Staff Sergeant Daniel Cuka. Specialist Kokesh suffered severe wounds, and after being medically evacuated out of Iraq, he was transferred to the Brook Army Medical Center at Fort Sam Houston in San Antonio, TX.

Sadly, Specialist Kokesh didn't recover from his wounds and died after developing severe complications. He was a graduate of Yankton High School and is remembered as a scholar athlete. In fact, he was a member of the Yankton High School championship football team that won the 2002 Class 11AA State title. The leadership skills Specialist Kokesh demonstrated during high school were clearly evident when he joined the South Dakota National Guard that same year. He even successfully convinced a fellow classmate, and member of his football team, to join the National Guard the following year.

While I am deeply saddened by the loss of any military member serving in defense of our great Nation, the loss of the brave soldiers in the 147th hits close to home. My oldest son, Brooks, served in that unit prior to joining the Army as an enlisted soldier with the 101st Airborne Division. On behalf of my entire family, I extend our heartfelt condolences to Specialist Kokesh's family and friends.

Specialist Kokesh's commitment to his fellow members of the South Dakota National Guard, as well as all those who served in uniform with him, is a testament to the strength of his character and the family that instilled in him these values. His dedicated service to our grateful Nation will never be forgotten.

DEFENSE AUTHORIZATION, 2006

Mr. LEVIN. Last week, Senator KYL placed a statement in the CONGRESSIONAL RECORD regarding the Graham-Levin amendment, which was enacted last year as section 1405 of the National Defense Authorization Act for Fiscal Year 2006 and as section 1005 of the Detainee Treatment Act of 2005, as included in the Department of Defense Appropriations Act, 2006. Senator KYL and Senator REID cosponsored the Graham-Levin amendment in the Senate.

Senator KYL argues that this provision was intended to retroactively strip the Federal courts, including the Supreme Court, of jurisdiction over pending cases. Senator KYL's statement attached a January 18, 2006, letter from Senator KYL and Senator GRAHAM to Attorney General Gonzales, which makes the same argument.

As I stated when the Graham-Levin amendment was before the Senate and

reiterated when the Senate adopted the conference report containing the legislation, this is not the case. The statute that we enacted does not retroactively strip the Supreme Court and other Federal courts of cases over which they had already assumed jurisdiction at the time the statute was passed.

I do not believe that the unexpressed intentions or after-the-fact statements of Senators—Senator KYL, myself, or anyone else—can change the facts or the legislative history that existed at the time Congress acted on a piece of legislation. The relevant considerations are the language of the law itself, the changes that were made to that law as it went through the drafting process, and what was clearly stated before the bill was voted on by the Senate. I make this statement today for the sole purpose of reiterating that history.

While section 1405(e)(1) provides that ''no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus,'' the applicability of this language to pending cases is addressed in a separate provision—section 1405(h)—the structure and history of which make it clear that the courts are not stripped of cases over which they have already assumed jurisdiction.

Section 1405(h) clearly provides that only one portion of the act applies to pending cases: sections (e)(2) and (e)(3), which govern direct appeals from final decisions by military commissions and CSRTs. The rest of the statute becomes effective ''on the date of enactment,'' which, as Justice Scalia has pointed out, ''is presumed to mean 'shall have prospective effect upon enactment,' '' Landgraf v. USI Films.

At CONGRESSIONAL RECORD page S970, Senator KYL argues that the original Graham amendment was never ''modified to carve out pending litigation.'' He is incorrect. In fact, the amendment was modified, and it was modified for the precise purpose of carving out pending litigation.

The original Graham amendment specified that all provisions—including the restrictions on habeas petitions—applied to pending cases. On November 10, 2005, the original Graham amendment was debated and adopted by the Senate by a vote of 49–42. At that time, I objected to the Graham amendment's provision stripping jurisdiction in pending cases. In fact, I explicitly urged at CONGRESSIONAL RECORD page S12,663 that we not adopt this amendment, in part, because ''It would eliminate the jurisdiction already accepted by the Supreme Court in Hamdan.''

Because of my concerns, after the original Graham amendment was adopted, I began working on a revised version of the amendment, which became known as the Graham-Levin amendment. This new version removed the language applying the habeas restrictions to pending cases, and instead limited its retroactive effect only to the standards applicable to direct appeals of final determinations that may have been made by CSRTs or military commissions.

On November 14, 2005, Senator GRAHAM and I introduced this new version to the Senate together. In introducing the new Graham-Levin amendment, Senator GRAHAM did not specifically address the issue of the amendment's effect on pending cases before yielding the floor to me. I did address the issue. In particular, I explained to the Senate that one of the principal reasons that so many of us voted against the prior version of the amendment was its effect on pending cases and that this problem had been addressed in the Graham-Levin amendment that was then before us. I stated at CONGRESSIONAL RECORD page S12,755:

> The other problem which I focused on last Thursday [November 10] with the first Graham amendment was that it would have stripped all the courts, including the Supreme Court, of jurisdiction over pending cases. What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not strip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected. . . . I cosponsored the Graham amendment with Senator Graham because I believe it is a significant improvement over the provision which the Senate approved last Thursday. . . . The direct review will provide for convictions by the military commissions, and because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to. However, it does not strip the courts of jurisdiction.

Senator GRAHAM took the floor again immediately after I concluded my explanation of what our new amendment accomplished. He did not disagree with my statement about the effect of the revised bill on pending cases anywhere in his remarks. Indeed, neither Senator GRAHAM nor Senator KYL said anything at that time to contest my very clear statement that the new amendment did not retroactively strip the courts of jurisdiction over pending cases.

When the Senate approved the Graham-Levin Amendment by a vote of 84 to 14 on November 15, 2005, I explained again at S12,802 that our amendment would not strip the courts of jurisdiction over pending cases:

> The Graham-Levin-Kyl amendment would not apply the habeas prohibition in paragraph (1) to pending cases. So, although the amendment would change the substantive law applicable to pending cases, it would not strip the courts of jurisdiction to hear them. Under the Graham-Levin-Kyl amendment, the habeas prohibition would take effect on the date of enactment of the legislation. Thus, this prohibition would apply only to new habeas cases filed after the date of enactment. The approach in this amendment preserves comity between the judiciary and legislative branches. It avoids repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

Again, neither Senator GRAHAM nor Senator KYL offered a contrary interpretation of the Graham-Levin amendment at that time.

The bill then went to a House–Senate conference. At this time, the inapplicability of the jurisdiction-stripping provision to pending cases was so clear that the administration's allies in the House tried in vain to alter the language of the effective date provision to make the jurisdiction-stripping provision apply retroactively to pending cases, as it had in the original Graham amendment. I objected to this language, and it was rejected by the Senate conferees.

At CONGRESSIONAL RECORD page S14,258, I explained this history when the Senate adopted the conference report on December 21, 2005:

> Under the Supreme Court's ruling in *Lindh* v. *Murphy*, 521 U.S. 320, the fact that Congress has chosen not to apply the habeas-stripping provision to pending cases means that the courts retain jurisdiction to consider these appeals. Again, the Senate voted affirmatively to remove language from the original Graham amendment that would have applied this provision to pending cases. The conference report retains the same effective date as the Senate bill, thereby adopting the Senate position that this provision will not strip the courts of jurisdiction in pending cases.
>
> Let me be specific.
>
> The original Graham amendment approved by the Senate contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act.' We objected to this language and it was not included in the Senate-passed bill.
>
> An early draft of the Graham-Levin-Kyl amendment contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act, except that the Supreme Court of the United States shall have jurisdiction to determine the lawfulness of the removal, pursuant to such amendment, of its jurisdiction to hear any case in which certiorari has been granted as of such date'. We objected to this language and it was not included in the Senate-passed bill.
>
> A House proposal during the conference contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of enactment of this Act.' We objected to this language and it was not included in the conference report.
>
> Rather, the conference report states that the provision ''shall take effect on the date of the enactment of this Act.'' These words have their ordinary meaning—that the provision is prospective in its application, and does not apply to pending cases. By taking this position, we preserve comity between the judicial and legislative branches and avoid repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

As a result, the language sought by the administration and its allies, which would have applied the jurisdiction-stripping provision to pending cases, was not included in the final version of the bill.

It was not until after we concluded the conference and the conference report passed the Senate on December 21,

2005, that Senator KYL placed a colloquy in the CONGRESSIONAL RECORD arguing that Section 1005 should be interpreted to retroactively strip the courts of jurisdiction over pending cases. At the same time, a number of other Senators placed statements in the CONGRESSIONAL RECORD stating their belief that the provision would not strip the courts of jurisdiction over pending cases.

Those statements, coming as they did after the conclusion of the conference and final action on the bill in both the House and the Senate, carry no more weight as legislative history than the statement that Senator KYL placed in the CONGRESSIONAL RECORD last week or any other after-the-fact statement in the CONGRESSIONAL RECORD. Both the contemporaneous legislative history and the language and structure of the Graham-Levin amendment itself demonstrate that this provision was not intended to, and did not, retroactively strip the Federal courts of jurisdiction over pending cases.

BLACK HISTORY MONTH

Ms. MIKULSKI. Mr. President, I rise today during Black History Month to celebrate and remember the rich history of the millions of African Americans who have made this country what it is today.

It is a time to honor leaders from across the country—some who are well known and others who are almost forgotten. It is a time to cherish the pioneers to give them the recognition they deserve and to preserve their names, faces, and stories for generations to come.

This Black History Month, we especially remember and mourn the recent loss of two of the key players in the civil rights movement Rosa Parks and Coretta Scott King.

In October, we said goodbye to the ''First Woman of Civil Rights,'' Rosa Parks. When Ms. Parks refused to give up her seat on a city bus in Montgomery, AL, in 1955, we know that a movement had already begun, but she poured fuel on the fire—inspiring the historic Montgomery bus boycott. She refused to give up her seat to a White man because she was tired—tired of being treated like a second-class citizen, tired of being forced to move because someone else decided they deserved to sit more than she did. And she became a model and a hero for me and generations of Americans looking to make our country truly the land of the free.

And then we just lost another icon. Not only was Coretta Scott King married to Dr. Martin Luther King Jr., but she was a pioneer with her own voice in the civil rights movement at a time when women were not often recognized for their own talents and merit. She was resolute, but she was feisty—someone after my own heart. She founded the King Center for Nonviolent Social Change and saw to it that the center became deeply involved with the issues that she believed breed violence—hunger, unemployment, voting rights and racism. And when her husband was tragically shot, she comforted a nation that was torn apart. She is the reason we have a national holiday that honors Dr. King.

While we remember the lives and deeds of Rosa Parks, Coretta Scott King, and countless others, we need to honor their memory not just with words, but with deeds. We need to reexamine what this country must still do to ensure equality every day. We need to evaluate the work we still need to do to guarantee that African Americans are not left behind when it comes to the issues that matter.

This Black History Month, I am still concerned and dedicated to fighting for the issues that matter to African Americans. We must make higher education more affordable for families. We must fight for adequate health care. We must fight to keep our neighborhoods and communities safe. We must fight to make sure the needs of Hurricanes Katrina survivors are not forgotten.

The cost of college tuition has been skyrocketing. It is putting stress on the families and students who have to struggle just to be able to pay their bills. That is why I have introduced legislation to create a tuition tax credit to families and to students who pay for their own tuition. This legislation would offer a tax credit of up to $4,000 a year per student to help them with the cost of the education they deserve. America needs our young people to know that they will not be limited by the size of their wallet to follow their big dreams.

I also want to assure African Americans that they are not limited in the health care they receive because of spartan or skimpy funding for the health issues that affect them most. That is why I teamed up with Congresswoman STEPHANIE TUBBS JONES in the Uterine Fibroids Research and Education Act of 2005, to double fibroid research funding and to launch an education campaign for patients and physicians. Uterine fibroids are a terrible, painful ailment that plague mostly African-American women. Fibroids affect the entire family—not only the woman who has to endure them but also those who love her and who hate to see the lady they love in so much pain. They have gone ignored for too long. We need to fight for the resources to find the cause, to find better treatments, and hopefully to find a cure for this devastating disease so that women and families don't have to deal with this pain in their lives.

Families also want to know the neighborhoods they live in are safe. The number of gangs nationwide and in my own home State of Maryland has been rising. Families don't want to have to worry about gang violence in their streets. That is why in Maryland I have helped launch a statewide antigang initiative that I hope can serve as a model for the country. This initiative will not only go after the bad guys through suppression and enforcement, but it will offer prevention and intervention efforts to help the good kids in the communities who are trying so hard. Mothers and fathers shouldn't have to worry about losing their children to gang violence in their neighborhoods, and that is why I am going to continue to give help to our communities to protect themselves.

We need to offer protection to the survivors of Hurricane Katrina in the gulf coast communities because the Federal Government really let them down. I know the African-American community feels very prickly about this and feels abandoned. They should know that even though President Bush hires cronies and doesn't have competent people working for him, the American people haven't abandoned them. We are going to work to rebuild the communities in Louisiana. We are going to get the survivors housing and jobs and health care. We are going to open the schools. We are going to stick with them, and we are going to fight for them.

So this year during Black History Month, I honor the memories of the great leaders who have come before us with my commitment to fighting for these important year-round issues. And I am going to do it not just with words, but with deeds. I urge you all to join me.

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. ROBERT W. GORE

• Mr. CARPER. Mr. President, today I rise to recognize the lifetime of accomplishments of Dr. Robert W. Gore, who was recently inducted into the National Inventors Hall of Fame.

In 1957, during his sophomore year at the University of Delaware, Bob Gore came up with the idea of using polytetraflouroethylene, PTFE, to insulate wire. Little did he know how this seemingly simple idea would impact everything from supercomputers to Arctic exploration.

In 1958, Bob's parent's, W.L. ''Bill'' Gore and his wife Genevieve, began W.L. Gore & Associates in the basement of their Delaware home. Bill was a research chemist at DuPont and, based on Robert's idea, developed and patented a process for insulating wire with PTFE.

Bob Gore went on to graduate from the University of Delaware 2 years later and joined his parents in developing and expanding their home business. After an order for 7½ miles of insulated cable from the city of Denver, W.L. Gore & Associates opened their first manufacturing plant in Newark, DE, in 1961.

In 1969, insulated cables from W.L. Gore & Associates were used during the

first moon landing, connecting seismic readers to the landing craft during Neil Armstrong's historic moonwalk. Also in 1969, Dr. Gore began manufacturing cables for use in high-tech supercomputers.

While many people would be satisfied with having one of the most successful and cutting-edge companies in America, Bob Gore and his parents continued to explore the possibilities of polytetraflouroethylene. In 1975, a spinoff of this compound, called expanded polytetraflouroethylene, ePTFE, was used to develop vascular grafts that heart surgeons around the world still rely on today. Recognized for exceptional performance and quality, they have earned the endorsement of renowned surgeons worldwide and are credited with saving countless lives.

In 1976, Bob Gore took the reigns as CEO of W.L. Gore & Associates. This same year, the company received its first order for GORE–TEX fabric, which was the first fabric that was both waterproof and breathable. Initially used to make rainwear, this groundbreaking fabric would revolutionize the clothing industry and forever change how people interacted with their environments.

In 1990, GORE–TEX proved its toughness in the wilds of Antarctica. An international team of explorers wore GORE–TEX outerwear while traversing the polar continent. After braving the wilds of this hostile environment, one member of the team credited the revolutionary fabric with saving his life.

Besides the cutting-edge innovation and consistent quality that W.L. Gore & Associates provides to its customers, the organization has consistently been ranked as one of the ''100 Best Companies to Work For'' by Fortune magazine. This honor is especially significant when you think about the impact that a good corporate environment has on the health and well-being of its employees. The morale and team structure that W.L. Gore & Associates uses in its day-to-day work environment helps ensure that their employees continue to provide the world with cutting-edge products that make our lives easier and better.

Bob Gore was named to the University of Delaware's College of Distinguished Alumni in 1990 and was inducted into the National Academy of Engineering in 1995. In 2005, Dr. Gore was awarded the Perkin Medal, which is considered to be one of the most prestigious awards for applied chemistry.

By fostering an environment where people are free to test the boundaries of innovation, Bob Gore has created a workplace that encourages energy, enthusiasm, and creativity. Whether it is extreme weather clothing, surgical components, or guitar strings, the employees of W.L. Gore & Associates never settle for second best. The leadership of Dr. Gore has made this possible, and all of Delaware is proud that he continues to make sure that the First State remains a leader in innovative products.●

IDAHO'S FRIEND IN THE IRS

● Mr. CRAPO. Mr. President, for the first time in many years, Idaho taxpayers and, congressional staff will face the season without a very special friend in the business. Merry Trudeau, local taxpayer advocate with the Internal Revenue Service, is retiring after 30 years of lending a compassionate ear and helpful hand to many Idaho taxpayers. Over three decades of working in different sections of the IRS but most notably as a taxpayer advocate, Merry distinguished herself on both sides of the phone. She helped many Idahoans through the mazes of Federal tax law and working out resolutions to different problems, and she was the person who fellow employees reached out to when they needed guidance. She is perhaps best known for her generosity and willingness to volunteer her time and resources with the Combined Federal Campaign and helping needy families and children enjoy beautiful and plentiful Christmases.

Merry's grandchildren and husband will certainly enjoy all the additional attention as she turns her time from work to family and friends in retirement. Still, people like Merry never truly retire from helping others, and I am positive that her generosity, compassion, and kindness will continue to leave an indelible mark on all the lives she touches. My congratulations go to Merry and her family as she opens the page to a new chapter in her life.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT PREPARED BY THE NATIONAL SCIENCE BOARD ENTITLED ''SCIENCE AND ENGINEERING INDICATORS—2006''—PM 40

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

To the Congress of the United States:

Consistent with 42 U.S.C. 1863(j)(1), I transmit herewith a report prepared for the Congress and the Administration by the National Science Board entitled, ''Science and Engineering Indicators—2006.'' This report represents the seventeenth in the series examining key aspects of the status of science and engineering in the United States.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 14, 2006*.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5714. A communication from the Deputy Director, Office of Protected Resources, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from Kodiak Island, AK'' (RIN0648-AP62) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5715. A communication from the Assistant Chief Counsel, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Requirements for Lighters and Lighter Refills'' (RIN2137-AD88) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5716. A communication from the Program Analyst, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Anthropomorphic Test Devices, Hybrid III 6-year-old Weighted Test Dummy'' (RIN2127-AJ79) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5717. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Project Authorization and Agreements'' (RIN2125-AF05) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5718. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska'' (I.D. No. 012506A) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5719. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-12 and PC-12/45 Airplanes'' ((RIN2120-AA64)(2005-CE-35)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5720. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Barsileira de Aeronautical S.A . Model EMB-135 Airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes'' ((RIN2120-AA64)(2002-NM-89)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5721. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model A300 C4-605R Variant F Airplanes; and Model A310-200 and -300 Series Airplanes'' ((RIN2120-AA64)(2004-NM-234)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5722. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH and CO KG Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G103C Twin III SL Sailplanes'' ((RIN2120-AA64)(2005-CE-19)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5723. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; American Champion Aircraft Corporation Models 7AC, 7ACA, S7AC, 7BCM, 7CCM, S7CCM, 7DC, S7DC, 7EC, S7EC, 7ECA, 7FC, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 8KCAB, and 8GCBC Airplanes'' ((RIN2120-AA64)(2005-CE-50)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5724. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 727 Airplanes'' ((RIN2120-AA64)(2005-NM-122)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5725. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Hamilton Sundstrand Power Systems Auxiliary Power Units Models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A'' ((RIN2120-AA64)(2005-NE-19)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5726. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—General Electric Company CF6-80E1A1, 80E1A2, 80E1A4, and 80E1A4/B Turbofan Engines'' ((RIN2120-AA64)(2005-NE-24)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5727. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Cessna Aircraft Company Models 208 and 208B Airplanes'' ((RIN2120-AA64)(2005-CE-28)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5728. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Frakes Aviation Model G 73 Series Airplanes and Model G 73 Airplanes That Have Been Converted to Have Turbine Engines'' ((RIN2120-AA64)(2005-NW-256)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5729. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Pacific Aerospace Corp Ltd Model 750XL Airplanes'' ((RIN2120-AA64)(2005-CE-54)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5730. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B2 Series Airplanes; A300 B4-103 and B4 203 Airplanes; and A310-203 Airplanes'' ((RIN2120-AA64)(2005-NM-04)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Dassault Model Falcon 2000 Airplanes'' ((RIN2120-AA64)(2005-NM-55)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Engine Components Incorporated Reciprocating Cylinder Assemblies'' ((RIN2120-AA64)(2005-NE-20)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—DG Flugzeugbau GmbH Models DG 800B, and DG 500B Sailplanes'' ((RIN2120-AA64)(2005-CE-45)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Burkhardt Grob Luft-und Raumfahrt Gmbh and Co. Kg Model Twin Astir Sailplanes'' ((RIN2120-AA64)(2005-CE-43)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 777-200 and 300 Series Airplanes'' ((RIN2120-AA64)(2005-NM-223)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 767-200, 300, and 300F Series Airplanes'' ((RIN2120-AA64)(2005-NM-080)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Dassault Model Falcon 2000 Airplanes Equipped with CFE Company CFE738-1-1B Turbofan Engines'' ((RIN2120-AA64)(2005-NM-061)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—BAE Systems Limited Model 4101 Airplanes'' ((RIN2120-AA64)(2005-NM-129)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Sabreliner Model NA 365, 265-20, 265-30, 265-40, 265-50, 265-60, 265-65, 265-70, and 265-80 Series Airplanes'' ((RIN2120-AA64)(2005-NM-133)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5740. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Empressa Brasileira de Aeronautica Model ERJ 170 Airplanes'' ((RIN2120-AA64)(2005-NM-136)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5741. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes, and C4–605R Variant F Airplanes; and Airbus Model A310–200 and A310–300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–033)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5742. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 737–600, 700, 700C, and 800 Series Airplanes'' ((RIN2120–AA64)(2005–NM–88)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5743. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Empressa Brasilira de Aeronautica SA Model DMB 135BJ, 135ER, 135KE, 135KL, and 135LR Airplanes; and Model EMB 145, 145ER, 145MR, 145LR, 145XR, 145MP, and 145EP Airplanes'' ((RIN2120–AA64)(2005–NM–149)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5744. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Pratt and Whitney PW400 Series Turbofan Engines'' ((RIN2120–AA64)(2005–ANE–66)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5745. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 767–200 and 300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–277)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5746. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B4 Series Airplanes, Model A310–200 Series Airplanes, Model 310–300 Series Airplanes, and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes'' ((RIN2120–

AA64)(2005–NM–131)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5747. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737 Airplanes'' ((RIN2120–AA64)(2005–NM–070)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5748. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–032)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5749. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes'' ((RIN2120–AA64)(2005–NM–082)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5750. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2002–NM–20)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5751. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Model EMB–120, –120ER, 120FC, –120QC, and –120RT Airplanes'' ((RIN2120–AA64)(2005–NM–183)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5752. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 767–300 Series Airplanes'' ((RIN2120–AA64)(2004–NM–266)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5753. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR , –145XR, –145MP, and –145EP Airplanes '' ((RIN2120–AA64)(2004–NM–218)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5754. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Airplanes Equipped with Rolls-Royce RB211 TRENT 700 Engines'' ((RIN2120–AA64)(2004–NM–146)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5755. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR Series Airplanes'' ((RIN2120–AA64)(2006–0020)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5756. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes'' ((RIN2120–AA64)(2006–0021)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation .

EC–5757. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A320–111 Airplanes'' ((RIN2120–AA64)(2006–0022)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5758. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Vertol Model 107–II Helicopters'' ((RIN2120–AA64)(2006–0023)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5759. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 Series Airplanes'' ((RIN2120–AA64)(2006–0024)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5760. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Areonautica S.A. Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes'' ((RIN2120–AA64)(2006–0026)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5761. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A319–100 Series Airplanes; Model A320–111 Airplanes; Model A320–200 Series Airplanes, and Model A321–100 and –200 Series Airplanes'' ((RIN2120–AA64)(2006–0027)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. STABENOW (for herself and Ms. MURKOWSKI):

S. 2278. A bill to amend the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diseases in women; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD (for himself and Mr. KYL):

S. 2279. A bill to make amendments to the Iran and Syria Nonproliferation Act; to the Committee on Foreign Relations.

By Mr. OBAMA (for himself, Mr. DURBIN, and Mr. MENENDEZ):

S. 2280. A bill to stop transactions which operate to promote fraud, risk, and underdevelopment, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SANTORUM:

S. 2281. A bill to amend the Internal Revenue Code of 1986 to allow Americans to age with respect and dignity by providing tax incentives to assist them in preparing for the financial impact of their long-term care needs; to the Committee on Finance.

By Mr. SANTORUM:

S. 2282. A bill to amend title XVIII of the Social Security Act to provide for access to telehealth services in the home; to the Committee on Finance.

By Mr. FRIST:

S. 2283. A bill to establish a congressional commemorative medal for organ donors and their families; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. MIKULSKI (for herself, Mr. WARNER, Mr. DAYTON, Mr. KERRY, Mr. JEFFORDS, Mr. SARBANES, Ms. SNOWE, Mr. ALLEN, Mr. LEVIN, Mr. GREGG, Ms. COLLINS, Mr. JOHNSON, Mr. SUNUNU, and Mr. DORGAN):

S. 2284. A bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers; to the Committee on the Judiciary.

By Mr. LAUTENBERG:

S. 2285. A bill to improve the protection of witnesses, victims, and informants; to the Committee on Homeland Security and Governmental Affairs.

By Mr. OBAMA (for himself and Mr. BAYH):

S. 2286. A bill to amend part A of title IV of the Social Security Act to eliminate the separate work participation rate for 2-parent families under the temporary assistance for needy families programs; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THOMAS (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. BURNS, Mr. ALLARD, Mr. JOHNSON, Mr. REID, Mr. MARTINEZ, Mr. INHOFE, Mr. SALAZAR, Mr. BAUCUS, Mr. CRAIG, Mr. ENZI, Mr. STEVENS, Mr. ALLEN, and Mr. ENSIGN):

S. Res. 371. A resolution designating July 22, 2006, as ''National Day of the American Cowboy''; to the Committee on the Judiciary.

By Mr. KERRY:

S. Res. 372. A resolution expressing the sense of the Senate that oil and gas companies should not be provided outer Continental Shelf royalty relief when energy prices are at historic highs; to the Committee on Energy and Natural Resources.

ADDITIONAL COSPONSORS

S. 424

At the request of Mr. BOND, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 1141

At the request of Mr. COCHRAN, the name of the Senator from Idaho (Mr.

CRAIG) was added as a cosponsor of S. 1141, a bill to authorize the Secretary of Homeland Security to regulate ammonium nitrate.

S. 1881

At the request of Mrs. FEINSTEIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the ''Granite Lady'', and for other purposes.

S. 1991

At the request of Mr. BURR, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 1991, a bill to amend title 38, United States Code, to establish a financial assistance program to facilitate the provision of supportive services for very low-income veteran families in permanent housing, and for other purposes.

S. 2178

At the request of Mr. SPECTER, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2197

At the request of Mr. DOMENICI, the names of the Senator from Delaware (Mr. CARPER), the Senator from Kentucky (Mr. BUNNING), the Senator from North Carolina (Mr. BURR) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

S. 2198

At the request of Mr. DOMENICI, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

S. 2199

At the request of Mr. DOMENICI, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education.

S. 2201

At the request of Mr. OBAMA, the names of the Senator from Colorado (Mr. SALAZAR) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. RES. 320

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 359

At the request of Ms. LANDRIEU, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. Res. 359, a resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. STABENOW (for herself and Ms. MURKOWSKI):

S. 2278. A bill to amend the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diseases in women; to the Committee on Health, Education, Labor, and Pensions.

Ms. STABENOW. Mr. President, I rise today to introduce the ''HEART for Women Act of 2006.'' I want to thank Senator LISA MURKOWSKI for joining me on this important legislation. I am also pleased that Congresswomen LOIS CAPPS and BARBARA CUBIN are introducing companion legislation in the House of Representatives.

We face an alarming situation in this country. While over the last 25 years we have made good progress in reducing the death rate for men with heart disease, stroke, and other cardiovascular diseases, the same does not hold true for women. Not only have we not lowered the cardiovascular disease mortality rate for women—the death rate has actually gone up for women during that same period.

A lot of people think of heart disease as a ''man's disease.'' But while heart disease is certainly a significant problem for men, it is an equally important problem for women.

Fact: Heart disease and stroke actually kill more women each year than men.

Fact: Heart disease, stroke, and other cardiovascular diseases are the number 1 killer in the United States and in my home State of Michigan. In Michigan, 43 percent of all deaths in women are due to cardiovascular disease.

Fact: 1 in 3 adult women has some form of cardiovascular disease.

Fact: Minority women, particularly African American, Hispanic and Native American women are at even greater risk from heart disease and stroke.

The first step in addressing any problem is acknowledging it—that's why efforts to educate women about their risk of heart disease are so important.

The good news is that we have made progress in educating women: nearly half of women can now identify heart disease as the leading cause of death in women. The bad news is that while women are now more aware of their risk of heart disease many of their doctors are not.

Astoundingly, 4 out of 5 doctors do not know that more women die of heart disease each year than men. Those numbers are alarming because doctors decide how aggressively to treat their patients based on the amount of risk they perceive for that patient.

I suspect we all know women who have been to their doctors or to emergency rooms exhibiting symptoms of a heart attack, only to be told they were suffering from ''stress'' or indigestion.

As a result, women don't get the same care that men do. Even though women make up 53 percent of all deaths from cardiovascular disease, they receive only 33 percent of coronary interventions such as angioplasties and stints.

Likewise, 61 percent of total stroke deaths are in women, but only 38 percent of the procedures to prevent stroke are performed on women.

And when women do receive treatment, it is often based on research that was solely done on men. For too many years, everyone has just assumed that treatments that are effective for men work equally well in women.

But now we know that gender really does make a difference. Diagnostic tests, prescription drugs, and medical devices may work differently in women than in men. When there is a difference, patients and their healthcare providers need and deserve to know this. And right now, all too often that kind of information simply isn't available to clinicians and researchers.

That is why Senator MURKOWSKI and I are introducing the ''HEART for Women Act'' to help to turn this problem around. This legislation takes a 3-pronged approach to reducing the heart disease death rate for women.

First, the bill would authorize grants to educate doctors on how to prevent, diagnose and treat heart disease and strokes in women. Doctors and other healthcare providers first and foremost need to know that heart disease is a major problem in women, so that they treat it accordingly.

The bill would also require that health information that is already

being reported to the federal government be gender-specific, and would require annual recommendations to Congress for improving the treatment of heart disease in women. Doctors need to know what medical treatments are safe and effective for their women patients.

Finally, the bill would also expand a current program run by the Centers for Disease Control and Prevention, CDC called WISEWOMAN, Well-Integrated Screening and Evaluation for Women Across the Nation.

The WISEWOMAN program provides free heart disease and stroke screening to low-income, uninsured women. While Michigan is fortunate to be one of the 14 States that has a WISEWOMAN program, every State should have this important program.

These are simple, cost-effective, but meaningful steps that Congress can take that will help get the death rate for women from heart disease and stroke going in the right direction—down.

Today is Valentine's Day, a day for showing our loved ones how much we love and appreciation them.

As women, we tend to be really great at taking care of everyone around us—our children, our husbands, our aging parents. Unfortunately, we're not nearly so good about taking care of ourselves.

So I hope that this Valentine's Day will also be a day to raise awareness about the risks of heart disease for women and to encourage our loved ones—our mothers, sisters, and friends—to take good care of themselves. I urge my colleagues to join me in passing this critical legislation.

Ms. MURKOWSKI. Mr. President, February is American Heart Month, and heart disease remains the Nation's leading cause of death.

Many women believe that heart disease is a man's disease and, unfortunately, do not view it as a serious health threat. Yet, in every year since 1984, cardiovascular disease claimed the lives of more women than men. In fact, cardiovascular disease death rates have declined in men since 1979, while the death rate for women during that same period has actually increased. The numbers are disturbing: cardiovascular diseases claim the lives of more than 480,000 women per year; that's nearly a death per minute among females and nearly 12 times as many lives as claimed by breast cancer. One in four females has some form of cardiovascular disease.

That is why I am pleased to join with my colleague from Michigan, Senator STABENOW, to introduce important legislation, the HEART for Women Act, or Heart disease Education, Analysis and Research, and Treatment for Women Act. This important bill improves the prevention, diagnosis and treatment of heart disease and stroke in women.

In Alaska, cardiovascular diseases are the leading cause of death, totaling nearly 800 deaths each year. Women in Alaska have higher death rates from stroke than do women nationally. Mortality among Native Alaskan women is dramatically on the rise, whereas, it is declining among Caucasian women in the Lower 48.

Despite being the number one killer, many women and their health care providers do not know that the biggest health care threat to women is heart disease. In fact, a recent survey found that 45 percent of women still don't know that heart disease is the number one killer of women.

Perhaps even more troubling is the lack of awareness among health care providers. According to American Heart Association figures, less than one in five physicians recognize that more women suffer from heart disease than men. Among primary care physicians, only 8 percent of primary care physicians—and even more astounding—only 17 percent of cardiologists recognize that more women die of heart disease than men. Additionally, studies show that women are less likely to receive aggressive treatment because heart disease often manifests itself differently in women than men.

This is why the HEART Act is so important. Our bill takes a three-pronged approach to reducing the heart disease death rate for women, through; 1. education; 2. research; and 3. screening.

First, the bill would authorize the Department of Health and Human Services to educate healthcare professionals and older women about unique aspects of care in the prevention, diagnosis and treatment of women with heart disease and stroke.

Second, the bill would require disclosure of gender-specific health information that is already being reported to the Federal Government. Many agencies already collect information based on gender, but do not disseminate or analyze the gender differences. This bill would release that information so that it could be studied, and important health trends in women could be detected.

Lastly, the bill would authorize the expansion of the Centers for Disease Control and Prevention's WISEWOMAN program, the Well-Integrated Screening and Evaluation for Women Across the Nation program. The WISEWOMAN program provides free heart disease and stroke screening to low-income uninsured women, but the program is currently limited to just 14 States.

My State of Alaska is fortunate to have two WISEWOMAN program sites. These programs screen for high blood pressure, cholesterol and glucose in Native Alaskan women and provide invaluable counseling on diet and exercise. One program in Alaska alone has successfully screened 1,437 Alaskan Native women and has provided them with a culturally appropriate intervention program that has produced lifesaving results.

Heart disease, stroke and other cardiovascular diseases cost Americans more than any other disease—an estimated $403 billion in 2006, including more than $250 billion in direct medical costs. We, as a nation, can control those costs—prevention through early detection is the most cost-effective way to combat this disease.

Today, as we celebrate Valentine's Day and see images of hearts just about everywhere, let us not forget that the heart is much more than a symbol—it is a vital organ that can't be taken for granted. Coronary disease can be effectively treated and sometimes even prevented—it does not have to be the number one cause of death in women. And, that is why I encourage my colleagues to support the HEART for Women Act.

By Mr. OBAMA (for himself, Mr. DURBIN, and Mr. MENENDEZ):

S. 2280. A bill to stop transactions which operate to promote fraud, risk, and under-development, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. OBAMA. Mr. President, today, I am introducing new legislation to address a growing problem in our country, one that is robbing thousands of Americans of their dream of homeownership, and costing the mortgage industry hundreds of millions of dollars each year.

I am talking about the problem of mortgage fraud—the practice of defrauding individuals of their rightful property, and using tricks and schemes to steal from banks and other financial institutions. Mortgage fraud comes in a variety of forms, from inflated appraisals to the use of straw buyers, but the net result is the same: financial institutions lose out to the tune of approximately $1.01 billion each year, and consumers lose their savings, their good credit, and their homes.

Although the data in this area is limited, mortgage fraud is clearly on the rise. According to the FBI, mortgage fraud cases were up 25 percent last year, and 400 percent since 2002. Further, in 2004, the mortgage industry noted 12,000 cases of suspicious activity, three times the amount reported in 2001. This is due largely to the housing boom which is driving up housing prices across the country. Nearly $2.5 trillion in mortgage loans were made during 2005, and the number is only expected to rise this year.

But mortgage fraud is about more than just dollars and statistics; it's about real people, real homes, and real lives. My hometown Chicago Tribune has featured a series of articles about mortgage fraud in Illinois, which, along with Georgia, South Carolina, Florida, Missouri, Michigan, California, Nevada, Colorado and Utah, is among the FBI's top-ten mortgage fraud 'hot spots.'

The stories highlight, for example, the plight of the good folks on May Street in Chicago, who saw a block's worth of homes go boarded up in the span of a just few years, as swindlers

racked up hundreds of thousands of dollars in bad loans, and left shells of houses behind. The Tribune stories highlighted the plight of 75-year-old Ruth Williams, who had to spend her personal funds to clear the title to her home after fraudsters secured $400,000 in loans on three buildings they didn't own. And two doors down from Ms. Williams, Corey Latimer can't sell his building or borrow against it, because a lending company hasn't released a phony mortgage that Corey didn't authorize.

Law enforcement, consumer groups and many in the mortgage industry are doing what they can to combat fraud, and I applaud their good work. Now, Congress needs to come to the table and do its part.

I, along with Senator DURBIN and Senator MENENDEZ, am introducing the STOP FRAUD Act today to address the critical problem of mortgage fraud. STOP FRAUD (Stopping Transactions which Operate to Promote Fraud, Risk and Under-Development) would provide the first Federal definition of mortgage fraud and authorize stiff criminal penalties against fraudulent actors. STOP FRAUD requires a wide range of mortgage professionals to report suspected fraudulent activity, and gives these same professionals safe harbor from liability when they report suspicious incidents. It also authorizes several grant programs to help State and local law enforcement fight fraud, provide the mortgage industry with updates on fraud trends, and further support the Departments of Treasury, Justice and Housing and Urban Development's fraud-fighting efforts.

The STOP FRAUD Act will build upon the good work of the FBI, the Treasury Department, HUD, consumer groups, many in the mortgage industry, and State and local law enforcement, giving them the tools they need to stop mortgage fraud in its tracks. The cost of this bill is well worth the benefit to American taxpayers and companies, and it has been endorsed by a range of law enforcement and consumer groups. The Illinois Attorney General's office and the Chicago Police Department have told me how valuable this bill would be to their enforcement efforts, and ACORN, the Center For Responsible Lending, the National Association of Consumer Advocates, the National Community Reinvestment Coalition, National Consumer Law Center, and U.S. PIRG said in a recent letter that this bill would ''help protect consumers from fraudulent and abusive practices in the mortgage industry.''

The STOP FRAUD Act is a tough, cost-effective, and balanced way to address the serious problem of mortgage fraud in our country. I urge my colleagues to join me in this important effort.

By Mr. FRIST:

S. 2283. A bill to establish a congressional commemorative medal for organ donors and their families; to the Committee on Banking, Housing, and Urban Affairs.

Mr. FRIST. Mr. President, each day, 74 people receive an organ transplant. And each day, another 18 patients die waiting.

While it doesn't get a lot of public attention, for every family who struggles with the pain and uncertainty of waiting for that life saving gift, the organ donation shortage is an urgent crisis.

Right now, over 97,000 people are on the waiting list. Fewer than half of them will get the transplant they need. Almost 2,000 of the patients on the list are from my home state of Tennessee.

As a heart and lung transplant surgeon, I have direct and intimate experience with this issue. I've devoted two decades of my life to giving others a second chance through transplantation.

I have sat next to the hospital bed and looked into eyes of patients and their families and seen the frustration, desperation and fear they feel as they wait and hope for the miraculous gift that can reverse a fatal diagnosis.

I've personally shared in the elation when the donation came through. I also know very well the tragedy when a patient dies before they could receive a transplant—a direct result of a large and growing shortage of organ donors.

The medical community is trying to raise public awareness. I'm proud to say that four Tennessee hospitals are participating in the nationwide, ''Organ Donation Breakthrough Collaborative Gift of Life Initiative.''

Led by the Department of Health and Human Services, this is a multiphase national collaboration designed to increase access to transplantable organs and promote organ donation among the public.

In Tennessee, we have two active organ procurement organizations, the Tennessee Donor Services and the Mid South Transplant Foundation. There are also 10 transplant centers throughout the state.

As a transplant surgeon and a Tennessean, I am proud of these path breaking efforts. But, the sobering fact remains, we still have far too few donors to meet the urgent demand.

I understand that it's a difficult and emotional decision to, literally, give part of oneself away. Many people, understandably, feel squeamish about choosing donation. But by giving the gift of life, miracles can come from tragedy, and a whole family can be saved.

I bring all of this up because there is something we can do here in the Senate.

Today, I am proposing that we create a congressional commemorative medal to honor organ donors and their families under the Gift of Life Congressional Medal Act of 2006.

At no cost to the Government, we can recognize the extraordinary generosity of a donor's gift and send a message to the broader public about how vitally important organ donation is to thousands of people desperately waiting for that precious gift.

Congressman PETE STARK of California has introduced companion legislation in the House. He shares my belief that organ donation is one of the most precious gifts an individual can give to a fellow human being.

I urge my colleagues to join me in this simple and sincere gesture of support. By honoring our fellow citizens in this way, we, too, can help give the gift of life.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2283

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gift of Life Congressional Medal Act of 2006''.

SEC. 2. CONGRESSIONAL MEDAL.

The Secretary of the Treasury shall design and strike a bronze medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary of the Treasury, to commemorate organ donors and their families.

SEC. 3. ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Any organ donor, or the family or family member of any organ donor, shall be eligible for a medal described in section 2.

(b) DOCUMENTATION.—The Secretary of Health and Human Services shall direct the entity holding the Organ Procurement and Transplantation Network (hereafter in this Act referred to as ''OPTN'') to contract to—

(1) establish an application procedure requiring the relevant organ procurement organization, as described in section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)), through which an individual or their family made an organ donation, to submit to the OPTN contractor documentation supporting the eligibility of that individual or their family to receive a medal described in section 2; and

(2) determine, through the documentation provided, and, if necessary, independent investigation, whether the individual or family is eligible to receive a medal described in section 2.

SEC. 4. PRESENTATION.

(a) DELIVERY TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary of the Treasury shall deliver medals struck pursuant to this Act to the Secretary of Health and Human Services.

(b) DELIVERY TO ELIGIBLE RECIPIENTS.—The Secretary of Health and Human Services shall direct the OPTN contractor to arrange for the presentation to the relevant organ procurement organization all medals struck pursuant to this Act to individuals or families that, in accordance with section 3, the OPTN contractor has determined to be eligible to receive medals under this Act.

(c) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), only 1 medal may be presented to a family under subsection (b). Such medal shall be presented to the donating family member, or in the case of a deceased donor, the family member who signed the consent form authorizing, or who otherwise authorized, the donation of the organ involved.

(2) EXCEPTION.—In the case of a family in which more than 1 member is an organ

donor, the OPTN contractor may present an additional medal to each such organ donor or their family.

SEC. 5. DUPLICATE MEDALS.

(a) IN GENERAL.—The Secretary of Health and Human Services or the OPTN contractor may provide duplicates of the medal described in section 2 to any recipient of a medal under section 4(b), under such regulations as the Secretary of Health and Human Services may issue.

(b) LIMITATION.—The price of a duplicate medal shall be sufficient to cover the cost of such duplicates.

SEC. 6. NATIONAL MEDALS.

The medals struck pursuant to this Act are national medals for purposes of section 5111 of title 31, United States Code.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this Act.

SEC. 8. SOLICITATION OF DONATIONS.

(a) IN GENERAL.—The Secretary of the Treasury may enter into an agreement with the OPTN contractor to collect funds to offset expenditures relating to the issuance of medals authorized under this Act.

(b) PAYMENT OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), all funds received by the Organ Procurement and Transplantation Network under subsection (a) shall be promptly paid by the Organ Procurement and Transplantation Network to the Secretary of the Treasury.

(2) LIMITATION.—Not more than 5 percent of any funds received under subsection (a) shall be used to pay administrative costs incurred by the OPTN contractor as a result of an agreement established under this section.

(c) NUMISMATIC PUBLIC ENTERPRISE FUND.—Notwithstanding any other provision of law—

(1) all amounts received by the Secretary of the Treasury under subsection (b)(1) shall be deposited in the Numismatic Public Enterprise Fund, as described in section 5134 of title 31, United States Code; and

(2) the Secretary of the Treasury shall charge such fund with all expenditures relating to the issuance of medals authorized under this Act.

(d) START-UP COSTS.—A 1-time amount not to exceed $55,000 shall be provided to the OPTN contractor to cover initial start-up costs. The amount will be paid back in full within 3 years of the date of the enactment of this Act from funds received under subsection (a).

(e) NO NET COST TO THE GOVERNMENT.—The Secretary of the Treasury shall take all actions necessary to ensure that the issuance of medals authorized under section 2 results in no net cost to the Government.

SEC. 9. DEFINITIONS.

In this Act:

(1) ORGAN.—The term ''organ'' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by regulation of the Secretary of Health and Human Services or the OPTN contractor.

(2) ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.—The term ''Organ Procurement and Transplantation Network'' means the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act (42 U.S.C. 274).

SEC. 10. SUNSET PROVISION.

This Act shall be effective during the 5-year period beginning on the date of the enactment of this Act.

By Mr. OBAMA (for himself and Mr. BAYH):

S. 2286. A bill to amend part A of title IV of the Social Security Act to eliminate the separate work participation rate for 2–parent families under the temporary assistance for needy families programs; to the Committee on Finance.

Mr. OBAMA. Mr. President, I rise today to speak about the ''Equality for Two-Parent Families Act of 2006'' that I am introducing with Senator BAYH. When Congress reauthorized the Temporary Assistance for Needy Families program as part of the Spending Reconciliation bill two weeks ago, we failed to eliminate a pernicious disincentive to marriage that was contained in that bill. The Equality for Two-Parent Families Act will correct that unfortunate error.

Republicans and Democrats often have different ideas about how best to promote self sufficiency and economic mobility for low-income families. But one thing on which we all can agree is that children are better off when they grow up with two responsible parents.

The evidence shows that, on average, children in two-parent families do better in school and are more likely to lead successful, independent lives. That is why recent TANF legislation, including the bipartisan PRIDE Act in the Senate and H.R. 240 in the House, and Administration proposals have recognized that the separate two-parent work participation standard, which introduces an anti-marriage bias in TANF, should be eliminated.

Unfortunately, the recent TANF reauthorization failed to reflect this long-standing consensus. Instead, the new law compels States to meet an unequal work participation standard with their own State-funded programs. Whereas States must ensure that 50 percent of their single parents satisfy the work requirements, they will be penalized if fewer than 90 percent of their two-parent families meet what are even greater work requirements.

As a result, many States, including Illinois which until now has successfully served two-parent families in its state program, may now face an unfortunate choice: stop serving two-parent families or face a penalty. I even heard one welfare official joke that States may be better off paying couples to split up in order to avoid possible penalties. What kind of incentive is that?

Requiring States to treat two-parent families differently undermines efforts on both the state and federal level to promote and strengthen two-parent families. It is especially ironic that the policy is part of a bill that includes funding for marriage promotion and fatherhood programs.

The remedy for this contradiction is clear; we must eliminate the separate two-parent work participation standard. Senator BAYH and I have introduced the ''Equality for Two-Parent Families Act of 2006'' to eliminate this standard and rectify the inequity in current TANF policy. Our bill does not change two-parent work requirements or interfere with State efforts to promote employment and reduce caseloads. Instead, our bill reinforces State efforts to support two-parent families in the ways that they know best.

I urge my colleagues to support this legislation and join us in promoting stronger families. Thank you for your attention to this important matter.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 371—DESIGNATING JULY 22, 2006 AS ''NATIONAL DAY OF THE AMERICAN COWBOY''

Mr. THOMAS (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. BURNS, Mr. ALLARD, Mr. JOHNSON, Mr. REID, Mr. MARTINEZ, Mr. INHOFE, Mr. SALAZAR, Mr. BAUCUS, Mr. CRAIG, Mr. ENZI, Mr. STEVENS, Mr. ALLEN, and Mr. ENSIGN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 371

Whereas pioneering men and women, recognized as cowboys, helped establish the American West;

Whereas that cowboy spirit continues to infuse this country with its solid character, sound family values, and good common sense;

Whereas the cowboy embodies honesty, integrity, courage, compassion, respect, a strong work ethic, and patriotism;

Whereas the cowboy loves, lives off of, and depends on the land and its creatures, and is an excellent steward, protecting and enhancing the environment;

Whereas the cowboy continues to play a significant role in the culture and economy of the United States;

Whereas approximately 800,000 ranchers are conducting business in all 50 States and are contributing to the economic well being of nearly every county in the Nation;

Whereas rodeo is the sixth most-watched sport in the United States;

Whereas membership in rodeo and other organizations encompassing the livelihood of a cowboy transcends race and sex and spans every generation;

Whereas the cowboy is an American icon;

Whereas to recognize the American cowboy is to acknowledge the ongoing commitment of the United States to an esteemed and enduring code of conduct; and

Whereas the ongoing contributions made by cowboys to their communities should be recognized and encouraged: Now, therefore, be it

Resolved, That the Senate—

(1) designates July 22, 2006, as ''National Day of the American Cowboy''; and

(2) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

Mr. THOMAS. Mr. President, I rise today to submit a resolution designating July 22, 2006, as ''National Day of the American Cowboy.''

The cowboy has influenced American culture in literature, music, art, fashion, theater, and sport. What's more, these folks contribute substantially to the economic well-being of our country. In 2005 alone, United States cash receipts from the sale of cattle and calves exceeded $48 billion, accounting

for nearly 40 percent of all livestock sales and nearly half of all farm receipts. Clearly, the cowboy is not merely a romantic figure, but an integral part of our Nation's economy.

As many Americans know, last year's celebration was a great success. The first observance of the National Day of the American Cowboy was commemorated across the country with various festivities and events. In Wyoming, the day fell within Cheyenne Frontier Days, one of the world's largest outdoor rodeos and our State's premier cowboy competition.

Cheyenne Frontier Days can be traced as far back as 1896 when a group of cowboys from the Two Bar Ranch put on an impromptu cowboy contest in Cheyenne. Frontier Days has come a long way since that time, incorporating Indian war dances, artillery drills, a full carnival, rowdy street dances, country and western entertainers, and renown musical performances. However, Frontier Days stays true to its roots, showcasing cowboys and cowgirls in sports such as saddle bronc riding, wild horse racing, bull dogging, steer wrestling, calf roping, and bareback riding, events which truly demonstrate their cowboy skills.

While in Wyoming for the 2005 Cheyenne Frontier Days celebration, I had the distinct honor of delivering a statement from President Bush supporting the National Day of the American Cowboy. His statement outlined the importance of the cowboy, ''as a symbol of the grand history of the American West,'' and recognized the Cowboy's love of land and country as character traits which should be revered by all Americans. I could not agree more.

Although the National Day of the American Cowboy came and went in 2005, the celebration has continued throughout the United States and across the world. For example, Arizona's Governor recently issued an official proclamation declaring July 22, 2006 as the Second Annual National Day of the Cowboy in Arizona. T.J. Casey, a country musician and cowboy poet from Montana, is helping to promote the National Day of the Cowboy by carrying his flag on tour with him, and Pro Rodeo Hall of Fame Executive Director Larry McCormack and his staff are planning a National Day of the Cowboy flag presentation during their upcoming annual induction ceremony on July 15, 2006.

Support for the National Day of the American Cowboy is not confined to our Nation's borders. The Desert Cowboys, a group of men and women in the United States Military and Department of Defense civilians who have been serving our country in Iraq since December of 2005, planted their National Day of the Cowboy flag prominently in their camp shortly after their arrival. Some of these folks are in Iraq for their, third, fourth and even fifth rotations. This touching display of support by those completing dangerous missions so far from home certainly tugs at my heart strings. It also serves to illustrate how important this day is to the American people and those who support American ideals.

I call on the Senate to once again recognize our country's cowboys and cowgirls and their significant contributions through designation of the second annual National Day of the American Cowboy.

SENATE RESOLUTION 372—EXPRESSING THE SENSE OF THE SENATE THAT OIL AND GAS COMPANIES SHOULD NOT BE PROVIDED OUTER CONTINENTAL SHELF ROYALTY RELIEF WHEN ENERGY PRICES ARE AT HISTORIC HIGHS

Mr. KERRY submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 372

Whereas the Federal Government is on the verge of one of the biggest oil and gas giveaways in American history, costing American taxpayers at least $7,000,000,000 in lost revenue over the next 5 years;

Whereas according to the budget plan of the Department of the Interior, it is projected that the Government will allow companies to pump approximately $65,000,000,000 worth of oil and natural gas from Federal territory over the next 5 years without paying any royalties to the Government;

Whereas the Minerals Management Service of the Department of the Interior, which oversees the leases and collects the royalties, estimates that the amount of royalty-free oil will quadruple by 2011, to 112,000,000 barrels;

Whereas the volume of royalty-free natural gas is expected to climb by almost half, to about 1,200,000,000,000 cubic feet by 2011;

Whereas approximately 30 percent of all oil and over 20 percent of all gas produced in the United States comes from the outer Continental Shelf;

Whereas it was the intent of Congress to provide royalty relief to promote exploration and production in deep waters of the outer Continental Shelf only at a time when oil and gas prices were comparatively low;

Whereas the Department of the Interior has always insisted that companies should not be entitled to royalty relief if market prices for oil and gas climbed above certain trigger points;

Whereas the 12 United States oil companies in the Standard & Poor's 500 that have reported fourth-quarter results have seen an average 48 percent rise in earnings and are expected to see full-year earnings of $96,500,000,000;

Whereas the profit growth for oil companies is not nearing an end, with energy analysts expecting 15 percent growth in earnings at those companies in 2006;

Whereas, at the same time oil and gas companies are posting record profits, families in the United States are struggling with record energy costs including a 48 percent increase in the cost of natural gas for this heating season and a projected 7.3 percent increase in gasoline price from the previous year;

Whereas the Energy Information Administration projects that these prices will hold steady or increase over the course of the next 2 years; and

Whereas royalty revenues benefit 38 States, 41 Indian tribes, and fund the National Historic Preservation Fund, and the Land and Water Conservation Fund: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Minerals Management Service should suspend all future royalty relief until the Secretary can ensure that the citizens of the United States receive a fair return from oil and gas resources from the outer Continental Shelf; and

(2) Congress must take steps to ensure that the oil and gas industry does not receive a windfall and is not unjustly enriched at the expense of the citizens of the United States.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2767. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2768. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2769. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2770. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2771. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2772. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2773. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2774. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2775. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2776. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2777. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2778. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2779. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2780. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2781. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2782. Mr. COBURN submitted an amendment intended to be proposed by him

to the bill S. 852, supra; which was ordered to lie on the table.

SA 2783. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2784. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2786. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2787. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2788. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2789. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2790. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2791. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2792. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2793. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2794. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2795. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2796. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2797. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2798. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2799. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2800. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2801. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2802. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2803. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2804. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2805. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2806. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2807. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2808. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2809. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2810. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2811. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2812. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2813. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2814. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2815. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2816. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2817. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2818. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2819. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2820. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2821. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2822. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2823. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2824. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2825. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2826. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2827. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2828. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2829. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2830. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2831. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2832. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2833. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2834. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2835. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2836. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2837. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2838. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2839. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2840. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2841. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2842. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2843. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2844. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2845. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2846. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2847. Mr. ISAKSON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2848. Mr. THUNE (for himself, Mr. COLEMAN, and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2849. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2850. Mr. KYL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2851. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2852. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2853. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2854. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2855. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2856. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2857. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2858. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2859. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2860. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2861. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2862. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2863. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2864. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2865. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2866. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2867. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2868. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2869. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2870. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2871. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr.

LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2767. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

SA 2768. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. WAIVER FOR VETERANS.

Notwithstanding any other provision of this Act, because of the unique, short-term nature of the asbestos exposure related to service in the United States military, the Administrator shall waive the exposure requirements of this subtitle for individuals who are veterans of any service of the United States military. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

SA 2769. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 111, line 2.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data

safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2770. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, line 14, strike ''(f)(8)'' and insert ''(g)(8)''.

On page 111, strike line 3 and all that follows through page 112, line 14.

On page 115, line 23, strike ''(g)'' and insert ''(h)''.

On page 116, between lines 23 and 24, insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON LUNG CANCER.—

(1) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

On page 116, line 24, strike ''(f)'' and insert ''(g)''.

On page 118, line 7, strike ''(g)'' and insert ''(h)''.

On page 125, line 23, strike ''(h)'' and insert ''(i)''.

SA 2771. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDIES.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(3) STUDY CRITERIA.—In conducting any study required under paragraph (1) or (2), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(4) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation for each study described under paragraph (1) or (2), each such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (3) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (3), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2772. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 126, between lines 6 and 7, insert the following:

(i) GUIDELINES FOR CT SCANS.—

(1) IN GENERAL.—Not later than _____, 2006, the Administrator shall commission the American College of Radiology to develop standard guidelines and a methodology for the use of CT

scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(2) LIMITATION ON USE OF CT SCANS.—No CT scans may be used for diagnostic purposes under the Fund unless the standard guidelines and methodology developed by the American College of Radiology under paragraph (1) are followed.

SA 2773. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 105, line 14, strike ''or'' and insert ''and''.

SA 2774. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, line 8, strike all after ''pathology'' through line 10 and insert ''with a College of American Pathologists National Institute for Occupational Safety and Health level of 3 or 4;''.

On page 106, line 14, strike all after ''percent'' through ''spirometry'' on line 18.

SA 2775. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 107, line 13, strike all beginning with the comma through ''greater'' on line 15.

SA 2776. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 108, line 13, strike all beginning with the comma through ''greater'' on line 15.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, line 22, strike ''(iii)'' and insert ''(ii)''.

SA 2777. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, line 13, strike all through page 111, line 2.

SA 2778. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 3, strike all through page 112, line 14.

SA 2779. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

SA 2780. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 92, strike lines 1 through 6.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, strike ''(iii)'' and insert ''(ii)''.

SA 2781. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, line 19, insert ''and'' after the semicolon.

On page 113, line 20, strike all through page 114, line 2.

On page 120, strike lines 10 through 11 and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2782. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, lines 19 and 20, strike ''; or'' and insert ''; and''.

On page 113, strike line 21 and all that follows through page 114, line 2.

On page 116, strike line 24 and all that follows through page 118, line 6, and insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

On page 120, strike lines 10 through 11, and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2783. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, strike lines 12 through 14 and insert a semicolon.

On page 111, line 17, strike ''and''.

On page 111, line 24, strike the period and insert ''; and''.

On page 111, add after line 24 the following:

(v) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

On page 114, line 2, strike ''and''.

On page 114, line 11, strike the period and insert ''; and''.

On page 114, between lines 11 and 12 insert the following:

(iv) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

SA 2784. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 116, strike line 1 and all that follows through page 118, line 6, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(ii) AFFECT ON MALIGNANT LEVEL VI .—If the report required under subparagraph (A) is not based on a study conducted in accordance with the requirements described in paragraph (2), subsection (d)(6) shall cease to have force or effect for any purpose under this Act.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor under subsection (d)(6)(B).

(ii) AFFECT ON MALIGNANT LEVEL VI.—If the report required under subparagraph (A) determines that asbestos exposure is not a substantial contributing factor under subsection (d)(6), such subsection shall cease to have force or effect for any purpose under this Act.

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, line 6, strike ''⅙'' and insert ''¼''.

On page 106, line 4, strike ''⅙'' and insert ''¼''.

On page 112, line 24, strike ''⅙'' and insert ''¼''.

SA 2786. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 87, after line 25, add the following:

(5) Any B-reader who has received compensation before the date of enactment of this Act for assigning an ILO grade level to an x-ray, where the amount of compensation depended on the assigned ILO grade level, is disqualified from inclusion on the Administrator's list.

SA 2787. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 181, between lines 21 and 22, insert the following:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2788. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after ''**SECTION 1. SHORT TITLE;**'' in the bill and insert the following: This Act may be cited as the ''Asbestos and Silica Claims Priorities Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as ''an elephantine mass'' that ''calls for national legislation'' (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the ''ABA Standard for Non-Malignant Asbestos-Related Disease Claims'' and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

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

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term '''asbestos''' means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

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

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

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

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume

loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed

medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or

silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2789. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, between lines 17 and 18, insert the following and re-number accordingly:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2790. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, strike all after line 5 until ''(5) Bankruptcy Relief'' and insert the following and renumber accordingly:

(c) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(l)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, Ill, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW.—A defendant participant who is aggrieved by the denial by the Administrator of its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.-In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.''

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exception 25 ally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a

payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 16 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 10 year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not be limited.

SA 2791. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after "SECTION 1. SHORT TITLE;" in the amendment and insert the following:

This Act may be cited as the "Asbestos and Silica Claims Priorities Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as "an elephantine mass" that "calls for national legislation" (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the "ABA Standard for Non-Malignant Asbestos-Related Disease Claims" and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

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

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term ''asbestos'' means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

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

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a

quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

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

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related

disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of

the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2792. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 121, lines 25 through page 122, line 1, strike ''substantially equivalent to those of Libby, Montana'' and insert ''greater than the standard non-occupationally exposed population''.

SA 2793. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 37, between lines 22 and 23, insert the following:

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

(i) the percentage limitation otherwise applicable under this subsection would result in unreasonably high compensation to representatives of claimants in such cases; and

(ii) such limitation would not unduly limit the availability of representatives to claimants.

(c) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to paragraph (A), a representative of an individual may not receive a fee, unless—

(A) the representative submits to the Administrator appropriately detailed billing documentation for the work actually performed in the course of representation of the claimant; and

(B) the Administrator finds, based on the amount of the award made to a claimant under this Act and on billing documentation submitted by such claimant's representative, that the fee to be awarded for the work actually performed on behalf of the claimant

does not exceed 200 percent of a reasonable hourly fee for such work.

On page 37, line 23, strike ''(3)'' and insert ''(D)''.

SA 2794. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 277, line 6, strike ''$600,000,000'' and insert ''$150,000,000''.

SA 2795. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 22, strike ''5 years'' and insert ''2 years, and in no case shall such total borrowing at any 1 time exceed $10,000,000,000.''.

SA 2796. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 11, strike ''(A) IN GENERAL.—''

On page 69, line 19, strike all through page 70, line 22.

On page 118, line 6, strike all through page 120, line 4.

SA 2797. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 16, strike all through page 243, line 22, and insert the following:

(2) FEDERAL SOURCES OF BORROWING.—The Administrator may not borrow from the Federal Financing Bank or any other financing source of the Federal Government.

SA 2798. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike ''monetary''.

On page 316, line 4, strike ''substantial contributing factor'' and insert ''contributing factor, in whole or in part,''.

SA 2799. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 365, between lines 8 and 9, insert the following:

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

SA 2800. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2801. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 271, line 4, strike ''SCREENING,''.

On page 271, line 7, strike all beginning with ''medical'' through the comma on page 271, line 8.

On page 272, line 10, strike all through page 277, line 6.

On page 277, line 7, strike ''(e)'' and insert ''(c)''.

On page 279, line 7, strike ''(f)'' and insert ''(d)''.

On page 279, lines 9 and 10, strike ''medical screening''.

On page 279, line 13, strike ''(g)'' and insert ''(e)''.

SA 2802. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents of 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—Asbestos Injury Claims Resolution Corporation

Sec. 101. Establishment of Asbestos Injury Claims Resolution Corporation.
Sec. 102. Advisory Committee on Asbestos Disease Compensation.
Sec. 103. Medical Advisory Committee.
Sec. 104. Claimant assistance.
Sec. 105. Program startup.
Sec. 106. Authority of the Chief Executive Officer.
Sec. 107. Establishment of Corporation.
Sec. 108. Board of Directors; officers and employees; conflicts.
Sec. 109. Powers; offices; tax laws; audit; annual report.

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. Reimbursable medical monitoring.
Sec. 133. Payment.
Sec. 134. Reduction in benefit payments for collateral sources.
Sec. 135. State lien laws.

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.
Sec. 205. Stepdowns and funding holidays.
Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Committee

Sec. 210. Definition.
Sec. 211. Establishment of Asbestos Insurers Committee.
Sec. 212. Duties of Asbestos Insurers Committee.
Sec. 213. Powers of Asbestos Insurers Committee.
Sec. 214. Personnel matters.
Sec. 215. Termination of Asbestos Insurers Committee.
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.
Sec. 225. Education, consultation, and monitoring.
Sec. 226. Oversight by the Secretary of the Treasury.
Sec. 227. Administrative funding.

TITLE III—JUDICIAL REVIEW

Sec. 301. Judicial review of procedures.
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.
Sec. 306. Representations to court.

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. Additional funding or return to court.
Sec. 406. Rules of construction relating to liability of the United States Government.
Sec. 407. Violations of environmental health and safety requirements.
Sec. 408. Nondiscrimination of health insurance.
Sec. 409. Corporate responsibility for annual and financial reports.
Sec. 410. Opt-out rights of certain trusts and effect of opt-out.

TITLE V—EXPEDITED CONGRESSIONAL ACTION

Sec. 501. Congressional action regarding modifications of the Fund.
Sec. 502. Congressional approval procedure.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

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

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

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

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

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

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

(1) create a privately funded administrative scheme to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsen;

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;
(B) amosite;
(C) crocidolite;
(D) tremolite asbestos;
(E) winchite asbestos;
(F) richterite asbestos;
(G) anthophyllite asbestos;
(H) actinolite asbestos;
(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and
(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(2) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims alleging damage or injury to tangible property, or claims for benefits under a workers' compensation law or veterans' benefits program.

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

(4) CHIEF EXECUTIVE OFFICER.—The term ''Chief Executive Officer'' means the Chief Executive Officer for the Asbestos Injury Claims Resolution Corporation appointed under sections 101(b) and 109(b).

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis, severe asbestosis disease, disabling asbestosis disease, mesothelioma, and lung cancer.

(8) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(9) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(10) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(11) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed

by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(12) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(13) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(14) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(15) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title II, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(16) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(17) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

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

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Asbestos Injury Claims Resolution Corporation

SEC. 101. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION CORPORATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established an Asbestos Injury Claims Resolution Corporation (referred to in this Act as the ''Corporation'') to undertake a program on compensation for injuries suffered by exposure to asbestos. The Corporation shall undertake the performance of the duties in this Act.

(2) PURPOSE.—The purpose of the Corporation 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. Compensation amounts provided by the Corporation shall be subject to the availability of funds in the Asbestos Injury Claims Resolution Fund.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Chief Executive Officer sums reasonably necessary for the administrative and legal expenses of the Corporation, not to exceed $100,000,000 for the first 6 years, $50,000,000 for the following 10 years, and $25,000,000 thereafter.

(b) APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer shall be appointed by the Board of Directors of the Asbestos Injury Claims Resolution Corporation, to serve for a term of 5 years.

(2) REMOVAL.—The Chief Executive Officer may be removed at any time by the Board of Directors for any reason the Board determines sufficient.

(c) DUTIES OF CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer shall be responsible for—

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

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Corporation, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with non-governmental entities;

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

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

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

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

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

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) adopting such written procedures as may be necessary and appropriate to implement the provisions of this Act.

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

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Chief Executive Officer determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Corporation.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Chief Executive Officer also refers such matters to the Attorney General who may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Attorney General shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY CHIEF EXECUTIVE OFFICERS.—The Chief Executive Officer shall select a Deputy Chief Executive Officer for Claims Administration to carry out the Chief Executive Officer's responsibilities under this title and a Deputy Chief Executive Officer for Fund Management to carry out the Chief Executive Officer's responsibilities under title II of this Act. The Deputy Chief Executive Officers shall report directly to the Chief Executive Officer.

(d) EXPEDITIOUS DETERMINATIONS.—The Chief Executive Officer shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Chief Executive Officer shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) PRIVACY OF RECORDS.—

(1) IN GENERAL.—The Corporation shall adopt written procedures that are at least as protective of the privacy of records under section 522a of title 5, United States Code (commonly referred to as the Privacy Act of 1974), that shall govern the availability of records to claimants, participants, and the public of the Corporation, including the Asbestos Insurers Committee within 180 days after the date of enactment of this Act.

(g) PUBLICATION OF WRITTEN PROCEDURES.—The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet any written procedures or rules promulgated or adopted under this Act.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Chief Executive Officer shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows:

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 2 members. Of the 2—

(i) 1 shall be selected to represent the interests of claimants; and

(ii) 1 shall be selected to represent the interests of participants.

(B) The Chief Executive Officer shall appoint 16 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Chief Executive Officer on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

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

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

(7) such other matters related to the implementation of this Act as the Chief Executive Officer considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

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

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

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

(C) 8 shall be appointed for a term of 3 years, as determined by the Chief Executive Officer at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Chief Executive Officer shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

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

(5) The Chief Executive Officer shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Chief Executive Officer may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section.

(6) The Chief Executive Officer shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Chief Executive Officer, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Chief Executive Officer shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

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

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Chief Executive Officer shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

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

(c) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Chief Executive Officer shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Chief Executive Officer shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Chief Executive Officer. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(d) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an asbestos claim or the claim of an individual under this Act, more than 5 percent of a final award made (whether by the Chief Executive Officer initially or as a result of administrative or appellate review) under this Act on such claim.

(2) EXCEPTION.—The Chief Executive Officer may by rule adopt a lower percentage limitation for particular classes of cases if the Chief Executive Officer finds that—

(A) the percentage limitation otherwise applicable under this paragraph would result in unreasonably high compensation to claimants' representatives in such cases; and

(B) such limitation would not unduly limit the availability of representatives to claimants.

(3) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the provisions specified in paragraphs (1) and (2), a representative of an individual may not receive a fee unless—

(A) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(B) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

(4) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PROGRAM STARTUP.

(a) INTERIM WRITTEN PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Chief Executive Officer shall adopt interim written procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of exigent claims.

(b) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Chief Executive Officer shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending adoption of final written procedures, adoption of interim written procedures as needed for the processing of exigent claims.

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

(A) documentation that a physician has diagnosed the claimant as having mesothelioma; or

(B) a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.

(3) SPECIAL EXPEDITED PROCEDURES FOR PENDING MALIGNANT MESOTHELIOMA ASBESTOS CLAIMS.—

(A) IN GENERAL.—An individual who has an asbestos claim pending in any Federal or State court on the enactment date of this Act and who has documentation from a board certified pathologist that the pathologist has diagnosed the claimant with malignant mesothelioma may file a claim for compensation under the special expedited provisions of subparagraph (B).

(B) EXPEDITED CLAIMS.—An exigent claim filed under subparagraph (A) shall be processed for expedited decision if the individual—

(i) provides the documentation required by subparagraph (A);

(ii) attests that he has not received an award from any source for malignant mesothelioma or, if he has, the specifics of that award; and

(iii) attests that he had an asbestos claim for malignant mesothelioma pending in a Federal or State court on the date of enactment of this Act and provides documentation of that pending asbestos claim, including any response to that claim by a defendant and any court orders.

(C) DECISION.—Within 90 days after the receipt of the information required by subparagraphs (A) and (B), the Chief Executive Officer shall determine if that information is sufficient to meet the medical criteria of section 121(d)(10), ''Malignant Level 10'', and shall issue a decision to the claimant. If the information is insufficient, the Chief Executive Officer shall state the reasons with particularity and offer assistance to the claimant of the type provided under section 104, ''Claimant Assistance'', to cure the insufficiency in an expeditious manner.

(D) AVAILABILITY OF PROCEDURE.—The expedited procedures of this paragraph shall be available for malignant mesothelioma claims filed within 1 year of the date of enactment of this Act.

(4) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Chief Executive Officer may, in final written procedures issued under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(c) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Chief Executive Officer shall, in final written procedures issued under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(d) INTERIM CHIEF EXECUTIVE OFFICER.—Until a Chief Executive Officer is appointed by the Board of Directors, the President shall appoint an Interim Chief Executive Officer who shall have all the authority conferred by this Act on the Chief Executive Officer and who shall be deemed to be the Chief Executive Officer for the purposes of this Act. Before final written procedures are promulgated relating to claims processing, the Interim Chief Executive Officer may prioritize claims processing, without regard to the time requirements under subtitle B, based on severity of illness and likelihood that the illness in question was exposed by exposure to asbestos.

(e)TRANSFER OF JURISDICTION OF CLAIMS.—

(1) IN GENERAL.—

(A) TRANSFER OF JURISDICTION.—Notwithstanding any other provision of this Act, exclusive jurisdiction for the resolution of any asbestos claim pending as of the date of enactment of this Act or of any subsequently filed asbestos claim, shall be transferred to the Asbestos Claims Resolution Corporation, other than a claim for which a verdict or final order or judgment has been entered by a court before the date of enactment of this Act. The procedures under section 113 shall be followed in order to effectuate the transfer.

(B) PENDING COURT PROCEEDINGS.—In order to effectuate the transfer of jurisdiction, any Federal or State court with a pending or subsequently filed asbestos claim is required to enter a judgment of dismissal on any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss such action on its own motion.

(2) PURSUAL OF MESOTHELIOMA CLAIMS IN FEDERAL COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 1 year after the date of enactment of this Act, the Chief Executive Officer cannot certify to Congress that the Fund is operational and procedures are in place to review and pay mesothelioma claims at a reasonable rate, each person that has filed a mesothelioma claim stayed under paragraph (1)(A), or with such a claim arising after the date of enactment of this Act, may pursue that claim under the conditions described in paragraph (3) in a Federal district court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 Federal district the trial court shall determine which Federal district is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134. If the Chief Executive Officer subsequently certifies to Congress that the Fund has become operational and the procedures are in place to review and pay asbestos claims at a reasonable rate, any claim in a civil action in Federal court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void. If the Chief Executive Officer tenders an award to a claimant, any claim in a civil action in Federal court that has not yet resulted in a final judgment and award for the plaintiff shall be deemed a reinstated claim and the civil action before the Federal court shall be null and void.

(3) LIMITS ON CASES.—In any action permitted under paragraph (2), the following restrictions shall apply:

(A) AWARD VALUES.—Relief awarded in an action permitted under paragraph (2) shall not exceed the amount of compensation authorized to be awarded under this Fund to a claimant under Malignant Level VII.

(B) ATTORNEYS' FEES.—

(i) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under paragraph (2), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(II) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

(C) PENALTY.—Any representative of an asbestos claimant who violates this paragraph shall be fined not more than the greater of—

(i) $5,000; or

(ii) twice the amount received by the representative for services rendered in connection with each such violation.

(4) OFFSET.—

(A) DEFINITION.—In this paragraph, the term ''asbestos expenditure'' has the same meaning given the term ''prior asbestos expenditure'' in paragraph (7) of section 201, but without regard to the limit on the date of payment expressed in that paragraph.

(B) OFFSET ON OBLIGATION.—Asbestos expenditures incurred by a participant as a result of this subsection shall be offset from the participant's obligations to the Fund and from defendant or insurance participants' total obligations to the Fund.

SEC. 106. AUTHORITY OF THE CHIEF EXECUTIVE OFFICER.

The Chief Executive Officer on any matter within the jurisdiction of the Chief Executive Officer under this Act may subpoena persons to compel testimony, records, and other information relevant to the responsibilities of the Chief Executive Officer under this section. The subpoena may be enforced in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

SEC. 107. ESTABLISHMENT OF CORPORATION.

(a) FEDERAL CHARTER.—There is established a corporation to be known as the Asbestos Injury Claims Resolution Corporation (''Corporation'').

(b) NATURE OF CORPORATION.—The Corporation is a nonprofit corporation and shall have no capital stock. The Corporation is not an agency or establishment of the United States Government.

(c) TERMINATION OF CORPORATION.—The Corporation shall dissolve 40 years after the date of enactment of this Act, unless dissolved sooner by the Board. All remaining funds held by the Corporation shall be distributed to the defendant participants and insurer participants in proportion to the percentage of assessments paid into the Corporation.

SEC. 108. BOARD OF DIRECTORS; OFFICERS AND EMPLOYEES; CONFLICTS.

(a) BOARD OF DIRECTORS.—There shall be in the Corporation a Board of Directors. The Board shall appoint the Chief Executive Officer and formulate the policies of the Corporation.

(b) APPOINTMENT.—The Corporation shall have a Board of Directors (''Board''), consisting of 7 members. The Board shall be appointed as follows:

(1) DESIGNATED MEMBERS.—The Secretary of the Treasury, the Attorney General, and the Secretary of Labor shall serve as members of the Board.

(2) APPOINTED MEMBERS.—The remaining 4 members of the Board shall be appointed by the President. The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States.

(3) INELIGIBILITY.—None of the Directors shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(c) OPERATION OF THE BOARD.—

(1) CHAIR.—The Board shall be chaired by a member elected by the Board, but the Chairperson may not be a full-time Federal employee.

(2) MEETINGS.—Meetings of the Board may be convened by the Chairperson upon reasonable notice, but the Board shall meet at least once per year.

(3) QUORUM.—A quorum shall consist of all of the Directors or their representatives.

(4) COMPENSATION.—The compensation of each member of the Board shall be paid by the Corporation as current expenses. Each member other than members serving by virtue of their Federal office shall be compensated at the daily equivalent of the highest rate payable under section 5332 of title 1, for each day (including travel time) during which the member is engaged in the actual performance of duties as a member of the Board. Members of the Board shall be reimbursed by the Corporation for actual, reasonable, and necessary expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the Board by this Act.

(e) OFFICERS AND EMPLOYEES.—

(1) STATUS.—Officers and employees of the Corporation are not employees of the Federal Government as a result of their service with the Corporation.

(2) CHIEF EXECUTIVE OFFICER.—There shall be in the Corporation a Chief Executive Officer who shall be responsible for carrying out the functions of the Corporation as described in section 101(c) and in accordance with policies established by the Board. The Chief Executive Officer shall be appointed by the Board of Directors under section 101(b) and on such additional terms as the Board may determine and may be removed by the Board of Directors in accordance with section 101(b)(2). The Chief Executive Officer shall receive compensation at the rate provided by law for the Vice President of the United States.

(3) APPOINTMENT.—The Chief Executive Officer shall appoint, remove, and fix compensation for all subordinate officers and employees of the Corporation as determined necessary.

(4) COMPENSATION.—No officer or employee of the Corporation, other than the Chief Executive Officer, may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect for level I of the Executive Schedule under section 5312 of title 5, United States Code.

(f) CONFLICTS OF INTEREST.—No part of the Corporation's revenue, income, or property shall inure to the benefit of its directors, officers, and employees, and such revenue, earnings, or other income, or property shall be used for the carrying out of the corporate purposes set forth in this Act. No director, officer, or employee of the corporation shall in any manner directly or indirectly participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested.

(g) REGULATIONS.—

(1) AUTHORITY.—The Attorney General, after consultation with the Secretaries of the Treasury and of Labor, shall issue regulations imposing on the Chief Executive Officer, the Deputy Chief Executive Officers, and the Board a fiduciary duty to manage the affairs of the Corporation with prudence in order to provide timely compensation to eligible claimants, giving appropriate priority to those most ill, while also preserving the funds available to the Corporation in order to compensate all eligible claimants.

(2) SUNSET.—Effective 2 years after the enactment of this Act, all authority to issue and revise regulations under this section shall terminate.

(h) PERSONAL LIABILITY.—The Chief Executive Officer, Deputy Chief Executive Officers, and members of the Board shall be exempt from civil liability for any act or omission committed within the scope of their employment with the Corporation, except for acts that constitute gross negligence or intentional wrongdoing.

(i) CORPORATE COMPLIANCE OFFICER.—

(1) IN GENERAL.—The Board of Directors shall establish within the Corporation a Corporate Compliance Office headed by a Chief Compliance Officer selected by the President on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(2) INDEPENDENCE.—Neither the Board nor the Chief Executive Officer shall prevent or prohibit the Chief Compliance Officer from initiating, carrying out, or completing any audit or investigation during the course of any audit or investigation.

(3) STAFF.—The Board shall authorize the Chief Compliance Officer to obtain sufficient staff and other resources to carry out the function of the position.

(4) DUTIES.—It shall be the duty and responsibility of the Chief Compliance Officer to—

(A) provide policy direction for, and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation;

(B) recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Corporation for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(C) recommend policies for promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Corporation, or the identification and prosecution of participants in such fraud or abuse;

(D) keep the Chief Executive Officer, the Board, and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Corporation; and

(E) recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.

(5) CRIMINAL VIOLATIONS.—In carrying out the duties and responsibilities established under this section, the Chief Compliance Officer shall file a criminal complaint with the Attorney General whenever the Chief Compliance Officer has reasonable grounds to believe there has been a violation of Federal criminal law.

SEC. 109. POWERS; OFFICES; TAX LAWS; AUDIT; ANNUAL REPORT.

(a) POWERS.—In furtherance of the purposes of the Corporation, the Corporation may—

(1) adopt bylaws consistent with law;

(2) adopt, alter, use, and destroy a corporate seal;

(3) sue and be sued, complain and defend, in its corporate name and through its own counsel, in courts of competent jurisdiction;

(4) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Corporation is a party or in which the Corporation has an interest;

(5) make advance, progress, or other payments;

(6) own and dispose of property;

(7) issue written policies and statements; and

(8) exercise any and all powers established under this Act and such incidental powers as are necessary to carry out its powers, duties, and functions under section 101 and other provisions of this Act.

(b) PRINCIPAL AND BRANCH OFFICES.—The Corporation shall maintain its principal office in the metropolitan Washington, DC, area. The Corporation may establish offices in any place or places in which the Corporation may carry on all or any of its operations and business.

(c) TAX LAWS.—The Corporation, including its franchise and income, shall be exempt from the tax laws and from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

(d) AUDIT.—The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by an independent certified public accounting firm under generally accepted accounting principles that would apply to a private not-for-profit corporation. The auditing firm shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the auditing firm to the Board of Directors, to the Secretary of the Treasury, and to Congress.

(e) ANNUAL REPORT.—Within 6 months after the close of each fiscal year, the Corporation shall submit to the President and to the Committees on the Judiciary of the Senate and the House of Representatives the report on the activities of the Corporation during the prior fiscal year required under section 405 of this Act.

(f) ANNUAL REPORT CERTIFICATION.—Before submission of the annual report required under section 405 of this Act, the Chief Executive Officer and the Deputy Chief Executive Officers, in regard to their particular areas of responsibility, shall certify that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the Corporation is made known to such officers by others within the Corporation, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the Corporation's internal controls as of a date within 90 days before the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the Comptroller General and to the independent auditing firm—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the Corporation's ability to record, process, summarize, and report financial data and have identified any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Corporation's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the estate of that individual, if the individual is deceased or incompetent) may file a claim with the Corporation for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

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

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if an individual fails to file a claim with the Corporation under this section within 2 years after the date on which—

(A) the individual first received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C;

(B) the individual first discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition; or

(C) the Chief Executive Officer certifies the Fund is operational, any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EXCEPTION.—The statute of limitations in paragraph (1) does not apply to the progression of non-malignant diseases once the initial claim has been filed.

(3) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is pending—

(i) in a Federal or State court; or

(ii) with a trust established under title 11, United States Code,

such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

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

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Chief Executive Officer shall by written procedures prescribe. At a minimum, a claim shall include—

(1) the name, social security number, sex, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a complete employment history sufficient to establish required asbestos exposure, accompanied by Social Security records;

(4) a complete description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

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

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim, including any claim under a workers' compensation law, brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise;

(8) for any claimant who has made a claim for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction under a workers' compensation law, a certification that the claimant has notified the workers' compensation insurer or self-insured employer of the claim made under this Act; and

(9) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

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

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Chief Executive Officer shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Chief Executive Officer shall, in accordance with this section, determine whether each claim filed under this Act satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Chief Executive Officer shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, and the results of such investigation as the Chief Executive Officer may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Chief Executive Officer may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be paid by the Corporation in accordance with CPT codes at medicare rates by region, at the time of provision of services.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Chief Executive Officer shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Chief Executive Officer under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Chief Executive Officer. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Chief Executive Officer shall not be

bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Chief Executive Officer shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Chief Executive Officer. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which he or she believes relevant.

(d) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Chief Executive Officer shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (c).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Chief Executive Officer shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

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

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Chief Executive Officer shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Chief Executive Officer may develop additional methods for auditing and evaluating other types of evidence or information received by the Chief Executive Officer.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Chief Executive Officer determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Chief Executive Officer under subparagraph (A), the Chief Executive Officer shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Chief Executive Officer.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) EVALUATION.—At a minimum, the Chief Executive Officer shall prescribe procedures to randomly assign a statistically significant sample of claims for evaluation by independent certified B-readers of x-rays submitted in support of a claim, the cost of which shall be paid by the Corporation.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Chief Executive Officer shall require a review of such x-rays by a second independent certified B-reader.

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

(4) CERTIFIED B-READERS.—The Chief Executive Officer shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Chief Executive Officer shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, the Chief Executive Officer shall have the authority, notwithstanding any other provision of law, to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Chief Executive Officer to obtain such records and documents where required.

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

(3) CONSENT.—

(A) IN GENERAL.—The Chief Executive Officer may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(B) SERUM COTININE SCREENING.—The Chief Executive Officer shall require the performance of serum cotinine screening of all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(4) PENALTY FOR FALSE STATEMENTS.—

(A) IN GENERAL.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(B) NO COMPENSATION.—Any claimant penalized as described under subparagraph (A) shall not be entitled to compensation under the Fund.

(d) PULMONARY FUNCTION TESTING.—The Chief Executive Officer shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT REACTION.—The term ''bilateral asbestos-related nonmalignant reaction'' means a diagnosis of bilateral asbestos-related nonmalignant reaction based on—

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL REACTION OF B2.—The term ''bilateral pleural reaction of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(7) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

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

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

(10) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(11) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(12) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(13) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to significant amounts of asbestos fibers; or

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

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

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

(15) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of significant amounts of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to significant amounts of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to significant amounts of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented.

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

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

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

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

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

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

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

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

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

(A) a minimum exposure to asbestos or asbestos-containing products;

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

(C) any additional asbestos exposure requirement under this section.

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

(A) by an affidavit of the claimant;

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

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

(D) any other credible evidence.

(d) ASBESTOS DISEASE LEVELS.—

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

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

(B) evidence of 5 years cumulative occupational exposure to asbestos.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

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

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology with a college of American Pathologists National Institution for Occupational Safety and Health level of 3 or 4;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

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

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

(A) diagnosis of bilateral asbestos-related nonmalignant reaction with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

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

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

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

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

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and

present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(ii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

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

(6) MALIGNANT LEVEL VI.—To receive Level VI compensation, a claimant shall provide—

(A) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(B)(i) a diagnosis by a board-certified pathologist of asbestosis, based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones evidence of 10 or more weighted years of substantial occupational exposure to asbestos;

(ii) a diagnosis by a board-certified pathologist of asbestosis, based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones and evidence of 8 or more weighted years of substantial occupational exposure to asbestos; or

(iii) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(C) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(7) MALIGNANT LEVEL VII.—To receive Level VII compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(e) SMOKING HISTORY.—In considering a claim with respect to Level VI, the Corporation shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Reaction A.	Medical Monitoring
II	Mixed Disease With Impairment.	$20,000
III	Asbestosis/Pleural Reaction B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VI	Lung Cancer With Asbestosis.	mokers, $575,000; ex-smokers, $950,000; nonsmokers, $1,100,000
VII	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(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. REIMBURSABLE MEDICAL MONITORING.

(a) RECIPIENTS.—Reimbursable Medical Monitoring is only available to persons who have been approved for Level I compensation under section 131.

(b) 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 that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(c) PROVIDER CHARGES.—All medical monitoring costs shall be reimbursed in accordance with CPT codes at medicare rates by region, at the time of the provision of services.

(d) PROCEDURES.—The Chief Executive Officer shall issue written procedures applicable to asbestos claimants under this section.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Chief Executive Officer shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Chief Executive Officer shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Chief Executive Officer receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Chief Executive Officer shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

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

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

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

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

SEC. 135. STATE LIEN LAWS.

(a) IN GENERAL.—Any award of compensation under this Act shall be deemed a third-

party judgment or settlement for purposes of any Federal or State workers' compensation lien law.

(b) WORKERS' COMPENSATION.—

(1) BENEFITS BEFORE ENACTMENT.—To the extent any workers' compensation insurer, self-insured employer, or Federal workers' compensation Chief Executive Officer elects to assert any State statutory lien rights against any award of compensation under this Act, it may not seek recovery from any awards made to a claimant by the Fund for any workers' compensation benefits paid before the date of enactment of this Act.

(2) BENEFITS ON OR AFTER ENACTMENT.—

(A) IN GENERAL.—Upon acceptance or compromise of a workers' compensation claim first made after the date of enactment of this Act, or for any claim accepted or compromised before the date of enactment of this Act where future workers' compensation payments are due to be paid on or after such date, a workers' compensation insurer or self-insured employer's obligation to make any further payments shall not arise until such amount further due and owing exceeds the total amount of the award paid to the claimant.

(B) ANNUAL AMOUNTS.—In the event the annual workers' compensation benefits further due and owing exceed the annual amount of the award paid to the claimant from the Fund, then the workers' compensation insurer or self-insured employer shall be obligated to pay the claimant the difference between such annual workers' compensation benefit and the annual Fund payment.

(C) OTHER RULES.—No workers' compensation insurer or self-insured employer shall seek recovery from any such award paid to the claimant by the Fund. This subsection explicitly preempts any Federal or State workers' compensation lien law that is inconsistent with this subsection.

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 beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

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

(2) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

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

(3) DEBTOR.—The term ''debtor''—

(A) means—

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

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Chief Executive Officer shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

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

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other

information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

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

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

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

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

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

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

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

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

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

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

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

(f) SUPERSEDING PROVISIONS.—

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

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

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

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

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

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

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

(2) SUBTIER 1.—

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

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Chief Executive Officer, at the sole discretion of the Chief Executive Officer, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Chief Executive Officer determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Chief Executive Officer shall have the right to seek payment of all or any portion of the entire

amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222(c), and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

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

(4) SUBTIER 3.—

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

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

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $27,500,000.

(B) Subtier 2: $24,750,000.

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

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(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 affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (d) and (m), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Chief Executive Officer shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Chief Executive Officer determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Chief Executive Officer may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Chief Executive Officer's determination under this subsection under the procedures prescribed in subsection (i)(10). The Chief Executive Officer may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Chief Executive Officer.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

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

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Chief Executive Officer shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Chief Executive Officer shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Chief Executive Officer may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Chief Executive Officer.

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Chief Executive Officer shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Chief Executive Officer has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 or has revenues as determined under section 203 that are less than $15,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Chief Executive Officer.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Chief Executive Officer, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Chief Executive Officer shall pay not less than 10 percent of the amount the participant is scheduled to pay under section 202.

(5) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that—

(A) additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A); or

(B) the Chief Executive Officer determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Chief Executive Officer with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Chief Executive Officer under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Chief Executive Officer grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

(7) ADVISORY PANELS.—

(A) APPOINTMENT.—The Chief Executive Officer shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Chief Executive Officer in carrying out this subsection.

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

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

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

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

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

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Chief Executive Officer and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Chief Executive Officer shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Chief Executive Officer's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Chief Executive Officer shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

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

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

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

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the

Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Chief Executive Officer shall unless the Chief Executive Officer implements a funding holiday under section 205(b), assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Chief Executive Officer—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

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

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

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Chief Executive Officer shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Chief Executive Officer's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Chief Executive Officer—

(A) a statement identifying all bankruptcy cases associated with the debtor;

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

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

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

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Chief Executive Officer—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Chief Executive Officer shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Chief Executive Officer in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Chief Executive Officer under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Chief Executive Officer with an address to send any notice from the Chief Executive Officer in accordance with this Act and all the information required by the Chief Executive Officer in accordance with this subsection no later than the earlier of—

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

(ii) 30 days after the publication in a newspaper with a circulation of at least 500,000 and on the Internet.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Chief Executive Officer's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Chief Executive Officer shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Chief Executive Officer and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Chief Executive Officer.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Chief Executive Officer the amount required by the 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 Chief Executive Officer 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 Chief Executive Officer'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.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Chief Executive Officer shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Chief Executive Officer, at any time, receives information that an additional person may qualify as a defendant participant, the Chief Executive Officer shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Chief Executive Officer with respect to such person.

(9) SUBPOENAS.—The Chief Executive Officer may request the Attorney General to

subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Chief Executive Officer's determination under this subsection of the applicable tier or subtier, of the Chief Executive Officer's determination under subsection (d) of a financial hardship or inequity adjustment, and of the Chief Executive Officer's determination under subsection (m) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Chief Executive Officer of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Chief Executive Officer.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Chief Executive Officer does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Chief Executive Officer for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Chief Executive Officer, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Chief Executive Officer.

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

(A) to ensure the minimum aggregate annual payment required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment required under subsection (h) in any given year, the Chief Executive Officer shall, unless the Chief Executive Officer implements a funding holiday under section 205(b), impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment required under subsection (h) as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section).

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Chief Executive Officer impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Chief Executive Officer shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Chief Executive Officer shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Chief Executive Officer shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Chief Executive Officer under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Chief Executive Officer for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Chief Executive Officer shall promulgate by rule. Once the Chief Executive Officer designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Chief Executive Officer is made under this subsection. Such payments may not be stayed pending any appeal. The Chief Executive Officer shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Chief Executive Officer has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Chief Executive Officer as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Chief Executive Officer's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant

participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Chief Executive Officer shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Chief Executive Officer finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Chief Executive Officer determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Chief Executive Officer shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Chief Executive Officer shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Chief Executive Officer determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Chief Executive Officer determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Chief Executive Officer shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Chief Executive Officer shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Chief Executive Officer shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Committee

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

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

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMITTEE.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Committee (referred to in this subtitle as the ''Committee'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

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

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Committee shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Committee appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Committee shall be a shareholder of any insurer participant. No member of the Committee shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Committee.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Committee may not be an officer or employee of the Federal Government, except by reason of membership on the Committee.

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

(4) VACANCIES.—Any vacancy in the Committee shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Committee.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Committee shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Committee.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMITTEE.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Committee shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Committee shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Committee's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(e) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Committee shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Committee or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Committee, the Committee 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 Committee may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Committee shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Committee 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 Committee's and Chief Executive Officer'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 participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Committee's and Chief Executive Officer's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Chief Executive Officer. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Committee shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Committee shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

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

(ii) DETERMINATION OF RESERVES.—The Committee 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 participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—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 Committee's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Committee's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

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

(III) other exceptional circumstances.

The Committee may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(e), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Chief Executive Officer that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Chief Executive Officer determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Chief Executive Officer shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Chief Executive Officer shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Chief Executive Officer determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Chief Executive Officer determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Chief Executive Officer shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Committee shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Committee under subparagraph (A), and provides for 30 days

for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Committee with all the information requested in the notice under a schedule or by a date established by the Committee.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Committee shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Committee's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Committee shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Committee.

(4) COMMITTEE REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Committee, an insurer participant may provide the Committee with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Committee, the Committee receives information that an additional person may qualify as an insurer participant, the Committee shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Committee shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Committee may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Committee for purposes of determining participant payments.

(B) SUBPOENAS.—The Committee may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

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

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

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Committee proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Committee.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Committee shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Committee under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Committee certifies such agreement. Under subsection (f), the Chief Executive Officer shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMITTEE REPORT.—

(1) RECIPIENTS.—Until the work of the Committee has been completed and the Committee terminated, the Committee shall submit an annual report, containing the information described under paragraph (2), to—

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

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

(C) the Chief Executive Officer.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Chief Executive Officer a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Chief Executive Officer shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Chief Executive Officer in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Committee. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Chief Executive Officer. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Chief Executive Officer to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMITTEE TO THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—Upon termination of the Committee under section 215, the Chief Executive Officer shall assume all the responsibilities and authority of the Committee, except that the Chief Executive Officer shall not have the power to modify the allocation methodology established by the Committee or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Committee under section 215, the Chief Executive Officer shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Chief Executive Officer

shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Chief Executive Officer shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Chief Executive Officer shall not grant a credit for shortfall assessments imposed under section 405(e).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Chief Executive Officer shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Chief Executive Officer; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Committee's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMITTEE.

(a) RULEMAKING.—The Committee shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act. The Committee shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Committee's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Committee may secure directly from any Federal or State department or agency such information as the Committee considers necessary to carry out this Act. Upon request of the Chairman of the Committee, the head of such department or agency shall furnish such information to the Committee.

(d) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Committee may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Committee may enter into such contracts and agreements as the Committee determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(b) TRAVEL EXPENSES.—The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Committee may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Committee to perform its duties. The employment of an executive director shall be subject to confirmation by the Committee.

(2) COMPENSATION.—The Chairman of the Committee may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

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

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Committee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMITTEE.

The Committee shall terminate 90 days after the last date on which the Committee makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Committee is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMITTEE.

All expenses of the Committee shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

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

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

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Chief Executive Officer is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Chief Executive Officer may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Chief Executive Officer may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Chief Executive Officer's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Chief Executive Officer under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Chief Executive Officer shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Chief Executive Officer shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Chief Executive Officer shall determine an appropriate

amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Chief Executive Officer is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Chief Executive Officer may determine proper, to appear before the Chief Executive Officer at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Chief Executive Officer determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Chief Executive Officer or to the Asbestos Insurers Committee or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Chief Executive Officer may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Chief Executive Officer shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Chief Executive Officer—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Chief Executive Officer information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Chief Executive Officer shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Chief Executive Officer shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Chief Executive Officer shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a final notice and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Chief Executive Officer publishes the final notice in a newspaper with a circulation of at least 500,000 and on the Internet and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Chief Executive Officer exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Chief Executive Officer determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Chief Executive Officer may rely on any information reasonably available, and may request, and use subpoena authority of the Chief Executive Officer if necessary to obtain, relevant information from any such trust or its trustees.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Chief Executive Officer shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Chief Executive Officer shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Chief Executive Officer, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Chief Executive Officer may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Chief Executive Officer may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Chief Executive Officer may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Chief Executive Officer shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Chief Executive Officer may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Chief Executive Officer is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Chief Executive Officer's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Chief Executive Officer in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Chief Executive Officer shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Chief Executive Officer shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Chief Executive Officer, the Chief Executive Officer may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Chief Executive Officer determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Chief Executive Officer may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Chief Executive Officer's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Chief Executive Officer or the Asbestos Insurers Committee regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Chief Executive Officer of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Chief Executive Officer shall not commence any action under paragraph (6), the Chief Executive Officer shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Chief Executive Officer a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Chief Executive Officer shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Chief Executive Officer shall not consider any notice given under paragraph (1) as given until such time as the Chief Executive Officer receives

substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Chief Executive Officer to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Chief Executive Officer of such notice, unless the Chief Executive Officer shall earlier terminate the notice period. The Chief Executive Officer shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Chief Executive Officer or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Chief Executive Officer or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property, or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Chief Executive Officer or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Chief Executive Officer or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Chief Executive Officer may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, AND MONITORING.

(a) IN GENERAL.—The Chief Executive Officer shall establish a program for the education, consultation, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Chief Executive Officer shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(c) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Chief Executive Officer shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(d) CONTRACTS.—The Chief Executive Officer may enter into contracts with qualified program providers that would permit the program providers to undertake medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(e) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Chief Executive Officer shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. OVERSIGHT BY THE SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall have authority to serve as the Federal Government's safety and soundness regulator for the Corporation, and may promulgate such regulations and exercise such authority as necessary to ensure the fiscal safety and soundness of the Corporation.

SEC. 227. ADMINISTRATIVE FUNDING.

The Corporation and Asbestos Insurers Committee shall each establish a budget for

each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 6 months before the commencement of the fiscal year to which the budget pertains. The budgets shall be subject to approval by the Secretary of the Treasury.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF PROCEDURES.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any action to review written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act.

(b) REVIEW.—Any party adversely affected or aggrieved by any provision of the written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act shall file a petition for review not later than 60 days after the date of issuance of such procedures.

(c) STANDARD OF REVIEW.—The court shall uphold the provision of the written procedures being challenged unless the court determines that issuance of such procedure is arbitrary and capricious or contrary to law.

(d) EXPEDITED TREATMENT.—The United States Court of Appeals for the Federal Circuit shall provide expedited treatment for actions filed under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Chief Executive Officer awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Chief Executive Officer.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the Federal Circuit.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Chief Executive Officer unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any action to review a final determination by the Chief Executive Officer or the Asbestos Insurers Committee regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Chief Executive Officer or the Asbestos Insurers Committee giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Chief Executive Officer or the Asbestos Insurers Committee giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) EXCLUSIVITY OF REVIEW.—An action of the Chief Executive Officer or the Asbestos Insurers Committee for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

SEC. 306. REPRESENTATIONS TO COURT.

(a) REPRESENTATIONS TO THE REVIEWING JUDICIAL BODY.—By presenting a request for judicial review under this title, a participant in the Fund, or a person acting on behalf of a participant in the Fund, certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support; and

(4) the denials of factual contentions are warranted on the evidence.

(b) SANCTIONS.—

(1) IN GENERAL.—If, after notice and a reasonable opportunity to respond, the reviewing judicial body determines that subsection (a) has been violated, the reviewing judicial body may, subject to the provisions of this subsection, impose an appropriate sanction upon the requesting participant, or parties that have violated subsection (a) or are responsible for the violation.

(2) SHOW CAUSE ORDER.—The reviewing judicial body may enter an order describing the specific conduct that appears to violate subsection (a) and directing a party to show cause why it has not violated subsection (a) with respect thereto.

(3) SANCTIONS.—

(A) IN GENERAL.—A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to subparagraph (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty of up to $500,000, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable expenses incurred as a direct result of the violation.

(B) MONETARY SANCTIONS.—Monetary sanctions may not be awarded unless the reviewing judicial body issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is to be sanctioned.

(4) ORDER.—When imposing sanctions, the reviewing judicial body shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) CRIMINAL LIABILITY.—

(1) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

"(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Committee under title II of the Fairness in Asbestos Injury Resolution Act of 2006 shall be fined under this title or imprisoned not more than 20 years, or both.

"(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—

"(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Committee, to knowingly and willfully—

"(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

"(B) make any materially false, fictitious, or fraudulent statement or representation; or

"(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award

of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2006.

''(2) PENALTY.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.''.

(b) FURTHER LIABILITY.—

(1) DEFINITION.—In this section, the term ''knowingly'' means that a person, with respect to information—

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information.

(2) LIABILITY.—Any defendant participant or insurer participant that knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Corporation shall be liable under the standards of section 3729 of title 31, United States Code.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

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

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

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

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Chief Executive Officer (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

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

''(i) PARTICIPANT DEBTORS.—

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

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

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

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

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

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006—

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Chief Executive Officer of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Chief Executive Officer of the Fund may refuse to accept any asset that the Chief Executive Officer determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Chief Executive Officer, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Chief Executive Officer of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Chief Executive Officer of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

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

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

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

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Chief Executive Officer shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Chief Executive Officer to return property seized to satisfy obligations to the Fund.

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

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON NON-ASBESTOS CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to airborne minerals, dusts, or fibers other than asbestos as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to 1 or more airborne minerals, dusts, or fibers other than asbestos;

(bb) asbestos exposure was not a significant contributing factor to such functional impairment; and

(cc) the functional impairment is materially different than that for which the exposed person (or another claiming on behalf of or through the exposed person) has obtained or is eligible to obtain an award under this Act; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to airborne minerals, dusts, or fibers other than asbestos that fail to meet the requirements of subparagraph (a) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 30 days after such date), shall plead with particularity the elements of subparagraph (A)(i) (I) or (II) of paragraph (1) and shall be accompanied by the information described in subparagraphs (A) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(II) of paragraph (1) and by the information described in subparagraphs (B) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(I) of paragraph (1)—

(A) admissible evidence, including at a minimum, a certified B-reader's report, the underlying x-ray film, and such other evidence sufficient to establish a prima facie showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement Chief Executive Officer, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, including any required court approval of the settlement, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(d) EXCLUSIVE REMEDY.—The remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except for enforcement of claims for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except for any action for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

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

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except—

(i) as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act; and

(ii) orders to remand removed actions shall be immediately appealable.

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

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim, including a claim described under paragraph (2), for which, as of the date of enactment of this Act, there had been no verdict or final order or final judgment entered by a court, is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment. The Chief Executive Officer shall require participants seeking credit under this section to demonstrate that the participant timely pursued all available remedies, including remedies available under this section to obtain dismissal of the claim, and that the participant notified the Chief Executive Officer at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section. The Chief Executive Officer may require such participant to furnish such further information as is necessary and appropriate to establish eligibility for and the amount of the credits. The Chief Executive Officer may intervene in any action in which a credit may be due under this section.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
10	70.78
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

(C) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(D) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Chief Executive Officer shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 59.64 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 59.64 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 59.64 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the

defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(5) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1996, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—No participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a contract specifically providing insurance or reinsurance for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the effective date, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before the effective date, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ADDITIONAL FUNDING OR RETURN TO COURT.

(a) VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the number of claims that qualify for compensation under a claim level exceed 115 percent of the number of claims expected to qualify for compensation under that claim level or designation in the 2004 Congressional Budget Office estimate of asbestos-injury claims, or the Fund otherwise is projected to be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—

(A) IN GENERAL.—The Chief Executive Officer's review shall examine the best available medical evidence in order to determine which one of the following is true:

(i) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease that was caused by occupational exposure to asbestos.

(ii) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease that was caused by occupational exposure to asbestos.

(B) FUTURE CLAIMS.—If the Chief Executive Officer projects that the Fund will be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall also determine whether the Fund lacks the resources to pay all qualified claimants over the life of the Fund.

(C) FINAL DETERMINATION.—The final determination of the Chief Executive Officer under this paragraph shall be made in accordance with notice and comment under subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act).

(b) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER VERIFICATION OF CLAIMS.—The Chief Executive Officer's determination that either subparagraph (A) or (B) in paragraph (2) of subsection (a) is true shall be subject to judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted in accordance with the standards and procedures of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), except that all findings based on medical science shall be reviewed de novo.

(c) ADDITIONAL TRUST-FUND ASSESSMENTS OR RETURN TO COURT.—

(1) ADDITIONAL ASSESSMENTS AGAINST DEFENDANT PARTICIPANTS.—

(A) DEFINITION.—In this paragraph the term ''nonbankruptcy defendant participant'' means a defendant participant that has not entered into a final confirmed plan

of reorganization under section 524(g) of title 11, United States Code.

(B) ADDITIONAL ASSESSMENTS.—

(i) IN GENERAL.—The Chief Executive Officer shall make a recommendation under clause (ii), if the United States Court of Appeals finds as a result of its review under subsection (b) that—

(I) without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation under review suffer from an injury or disease that is caused by occupational exposure to asbestos; or

(II) the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer projects that the Fund will remain unable to pay all qualified claimants over the life of the Fund.

(ii) RECOMMENDATIONS.—If the United States Court of Appeals makes a finding under subclause (I) or (II) of clause (i), the Chief Executive Officer shall recommend to Congress that it enact—

(I) additional assessments against all nonbankruptcy defendant participants, in accordance with each nonbankruptcy defendant participant's relative prior assessments (taking into account hardship and inequity reductions), in an amount necessary to allow the Fund to compensate all qualified claimants; or

(II) an expansion of the Fund's borrowing authority, by an amount necessary to allow the Fund to compensate all qualified claimants.

(2) EXPEDITED CONGRESSIONAL ACTION ON LIMITED ADDITIONAL ASSESSMENTS OR BORROWING.—Either of the following shall constitute a modification of the Fund that shall be submitted by the Chief Executive Officer to Congress in the appropriate form for expedited action under title V:

(A) A recommendation of additional assessments that does not exceed a defendant participant's original assessment obligation by more than 10 percent, if no additional assessment has been imposed by Congress within the previous 5 years.

(B) A recommendation to expand borrowing authority by no more than $5,000,000,000.

(3) RETURN TO COURT.—

(A) IN GENERAL.—If Congress declines to enact within 1 year after the date of the recommendation made by the Chief Executive Officer under paragraph (1)(B), and the Chief Executive Officer again determines that the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer continues to project that the Fund will remain unable to pay all qualified claimants over the life of the Fund, any individual who qualifies for compensation under the Fund may file a civil action in United States District Court against any defendant participant to obtain relief for injuries suffered as a result of exposure to asbestos.

(B) EXCLUSIVE REMEDY AND LIMITATIONS.—

(i) IN GENERAL.—As of the effective date of a return to court authorized by this paragraph, an action under this paragraph shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the effective date of this Act or of the return to court, except that claims against the Fund that have qualified for compensation and remain eligible for compensation under subparagraph (F) may be paid by the Fund. The applicable statute of limitations for a claim brought under this paragraph is 2 years after the asbestos injury or disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, except that claimants who filed a claim against the Fund under this Act before the return to court shall have 2 years after the date of the return to court to file an action under this paragraph, whichever is longer.

(ii) LIMITATION.—An individual who has received or is entitled to receive an award from the Fund may not bring an action under this paragraph, except—

(I) an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a malignant disease under this paragraph, unless the malignancy was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant claim was settled; and

(II) an individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VI) from the Fund may assert a claim for mesothelioma under this paragraph, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was settled.

(C) LIMITS ON ATTORNEYS' FEES.—

(i) IN GENERAL.—In any action permitted under subparagraph (B), notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under subparagraph (A), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the court appropriately detailed billing documentation for the work actually performed in the course of representation of the individual; and

(II) the court finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant does not exceed 200 percent of a reasonable hourly fee for such work.

(D) CONTINUED FUNDING.—If asbestos claims are returned to court under subparagraph (A), participants shall remain required to make payments as provided under subtitles A and B of title II. The Fund shall pay all claims under Levels VI, and VII, that were found to qualify for compensation before the date of a return to court under subparagraph (A). If the full amount of payments required under title II is not necessary for the Fund to pay claims that remain entitled to compensation, pay the Fund's debt, and support the Fund's continued operation as needed to pay such claims and debt, the Chief Executive Officer may reduce such payments. Any such reductions shall be allocated among participants in the same proportion as the liability under subtitles A and B of title II.

(d) CORRECTION OF INAPPROPRIATE CLAIMS CRITERIA.—If the United States Court of Appeals finds as a result of its review under subsection (b) that a significant number the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease that was caused by occupational exposure to asbestos, the Chief Executive Officer shall correct the compensation criteria in order to exclude from eligibility for compensation all such claims.

(e) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER CORRECTIONS.—The Chief Executive Officer's correction of compensation criteria under subsection (d) shall become effective upon the conclusion of final, unappealable judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted under the standards and procedures of chapter 5 of title 5, United States Code, except that all findings based on medical science shall be reviewed de novo, and the Chief Executive Officer's corrections shall be reviewed to determine that the corrections are reasonably tailored to achieve the result required by this section. The Court may order such relief as is necessary to achieve the results required by this section.

(f) TEMPORARY STAY OF UNANTICIPATED CLAIMS.—The Chief Executive Officer shall stay payment of claims for a claim level that results in or is subject to review under subsection (a) pending such review and the collection of additional assessments or the correction of compensation criteria.

(g) REPORT.—The Chief Executive Officer shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(h) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Corporation and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Corporation and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Corporation under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund; and

(4) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government including the coverage of any costs associated with borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 408. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party Chief Executive Officer, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(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 end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SEC. 409. CORPORATE RESPONSIBILITY FOR ANNUAL AND FINANCIAL REPORTS.

(a) IN GENERAL.—Each periodic report, including the annual report of the Chief Executive Officer filed by the Chief Executive Officer in connection with this Act, shall be accompanied by a written statement by the Chief Executive Officer and Chief Financial Officer (or equivalent thereof) of the Corporation.

(b) CONTENTS.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of this Act and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

(c) CRIMINAL PENALTIES.—Whoever—

(1) certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth under this section, shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

(2) willfully certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section, shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Chief Executive Officer not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

TITLE V—EXPEDITED CONGRESSIONAL ACTION

SEC. 501. CONGRESSIONAL ACTION REGARDING MODIFICATIONS OF THE FUND.

(a) IN GENERAL.—A modification of the Fund that is subject to action under the procedures of this title shall be submitted by the Chief Executive Officer to the chairman and ranking member of the Committees on the Judiciary of the United States Senate and the House of Representatives. The modification shall take effect only if Congress enacts a joint resolution of approval, described under section 602, regarding the modification. A modification that does not take effect as a result of Congress's failure to approve a joint resolution, or Congress's failure to override the President's veto of a joint resolution, may not be resubmitted to Congress in the same form.

(b) END-OF-SESSION SUBMISSIONS.—

(1) IN GENERAL.—In addition to the opportunity for approval otherwise provided under this title, in the case of a modification that was submitted to Congress—

(A) in the case of the Senate, 60 session days; or

(B) in the case of the House of Representatives, 60 legislative days;

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 602 shall apply to such modification in the succeeding session of Congress.

(2) TREATMENT.—In applying section 602 for purposes of such additional review, a modification described under paragraph (1) shall be treated as though such modification were submitted to Congress—

(A) in the case of the Senate, the 15th session day; or

(B) in the case of the House of Representatives, on the 15th legislative day, after the succeeding session of Congress first convenes.

SEC. 502. CONGRESSIONAL APPROVAL PROCEDURE.

(a) JOINT RESOLUTION.—For purposes of this section, the term ''joint resolution'' means only a joint resolution introduced in the period beginning on the date on which the modification was submitted by the Chief Executive Officer to Congress (i.e., to the chairmen and ranking members of the Committees on the Judiciary of the Senate and the House of Representatives) and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ''The Fairness in Asbestos Injury Resolution Act of 2006 is modified as follows: _____ ''. (The blank spaces being filled in with the Chief Executive Officer's proposed change to the Fund that requires congressional approval.)

(b) REFERRAL.—A joint resolution described in subsection (a) shall be referred to the Committees on the Judiciary of the Senate and House of Representatives.

(c) SENATE REPORT OR DISCHARGE.—In the Senate, if a joint resolution described in subsection (a) (or an identical joint resolution) has not been reported by the Judiciary Committee at the end of 20 calendar days after the committee received the resolution, the committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 5 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d) PROCEDURES.—(1) In the Senate, when the Judiciary Committee has reported, or when the committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION AFTER EXPIRATION OF TIME.—In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a modification of the Fund after the expiration of the 60 session days beginning with the submission of the modification by the Chief Executive Officer to Congress.

(f) PREVIOUS ACTION.—If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution, the procedure in that House shall be the same as if no joint resolution had been received from the other House, except the vote on final passage shall be on the joint resolution of the other House.

(g) RULEMAKING.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supercedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SA 2803. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

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

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

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

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

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

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

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, one of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported study concluded that ore shipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire

community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authority beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

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

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsen;

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

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

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

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

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

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

(20) DEBTOR.—The term ''debtor''—

(A) means—

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

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE 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) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

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

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

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

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

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

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

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

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

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

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

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities

under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed by the President.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

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

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

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

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

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 10 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

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

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

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

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

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

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

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

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

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative

under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

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

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

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

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

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

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust

or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(4) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

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

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

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

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery on any such claim shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

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

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

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

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

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

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

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

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative 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 such documents 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 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

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

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

SEC. 115. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

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

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

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

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

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

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

(3) CONSENT.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

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

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

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

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers; or

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

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

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

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

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

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

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

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

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

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

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

(A) a minimum exposure to asbestos or asbestos-containing products;

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

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

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

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

(B) evidence of 5 years cumulative occupational exposure to asbestos.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and

present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

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

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the pulmonary condition in question.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

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

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

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

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

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(8) MALIGNANT LEVEL VIII.—

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

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

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

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

(II) of—

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

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

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(g) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

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

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

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

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award

determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$25,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VIII	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that

would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(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 that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

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

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

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

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

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

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

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

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

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

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 beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

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

(2) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense,

debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(h);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

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

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

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

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

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

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

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

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

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

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their

prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(j)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

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

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

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

(f) SUPERSEDING PROVISIONS.—

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

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

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

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

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

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

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

(2) SUBTIER 1.—

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

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

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

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

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

(4) SUBTIER 3.—

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

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

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $27,500,000.

(B) Subtier 2: $24,750,000.

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

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(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 affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (e) and (n), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to

the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, III, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW. A defendant participant who is aggrieved by the denial by the Administrator or its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Funds remains outstanding any may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately proceeding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments or extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall be granted a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant inequity adjustment account established under subsection (k), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not be limited.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

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

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

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

(g) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (j), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

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

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (j) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(h) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

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

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

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

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

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

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(i) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (g);

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

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

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant

participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

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

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

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

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

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

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

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

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the 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.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(k) DEFENDANT INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

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

(A) to ensure the minimum aggregate annual payment required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in

the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

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

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

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

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

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

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

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

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

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. 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 participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities 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 participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—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.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

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

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from

that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

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

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

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

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

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

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

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

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

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

(c) STAFF.—

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

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

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

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

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

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

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(g)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(j)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the

Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $5,000,000 but not more than $10,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $100,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a

jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

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

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

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

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

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

''(i) PARTICIPANT DEBTORS.—

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

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

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

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

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

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006.

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

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

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

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

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

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is

not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under section 524(j)(3) of title 11, United States Code, as amended by this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

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

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 30 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 180 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 180-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 30 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except

for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the

number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or

as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(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 end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SA 2804. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2805. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. SUBSTANTIAL WEIGHTED EXPOSURE FOR EXPOSURE OCCURRING AFTER 1975.

Notwithstanding section 121(a)(16)(E), for purposes of the calculations to be made under subparagraphs (B), (C), and (D) of paragraph (16) of section 121, each year of asbestos exposure that occurred after 1975 shall be counted as ½ of its full value.

SA 2806. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2807. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF MESOTHELIOMA AND TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Notwithstanding section 106(f)(2) or any other provision of this Act, each person who has filed a mesothelioma or terminal health claim before the date of enactment of this Act may continue their mesothelioma or terminal health claim in the court where the case was pending on the date of enactment of this Act. For mesothelioma or terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their mesothelioma or terminal health claims where the case is filed.

SA 2808. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(3) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2809. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(3) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2810. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 10, strike ''personal injury claim'' and insert ''civil action in Federal or State court seeking damages for personal injury''.

On page 315, line 25 and page 316, line 1, strike ''a functional impairment'' and insert ''from a disease or condition''.

On page 316, line 5, strike ''functional impairment'' and insert ''disease or condition''.

On page 316, line 7, strike ''(2) .'' and insert ''(2).''.

On page 316, line 18, strike ''Claims'' and insert ''Civil actions seeking damages for personal injury''.

On page 316, line 14, strike ''initial pleading'' and insert ''complaint''.

On page 316, line 18, strike the comma and insert a parenthesis.

On page 316, line 8, strike ''plead with'' and all that follows through ''shall'' on line 20.

On page 316, line 20, strike ''the information'' and all that follows through the end of page 317, line 2.

On page 317, line 4, strike ''report,'' and insert ''report, and''.

On page 317, line 5, strike ''and such other evidence''.

On page 318, between lines 2 and 3, insert the following:

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)(A)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2811. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 135, between lines 12 and 13, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2812. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2813. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 15, insert ''an exigent health claim to which section 106(f)(2) applies or'' after ''than''.

On page 52, line 16, insert ''or an exigent health claim'' after ''applies''.

On page 53, line 22, strike all through line 25.

On page 60, lines 3 and 4, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, lines 8 through 10, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, line 16, beginning with ''Fund'' strike all through ''the'' on line 18, and insert ''Fund. The''.

On page 64, line 24, strike all through page 65, line 11, and insert the following:

(B) CONTINUANCE OF CLAIMS.—Each person who has filed an exigent health claim before the date of enactment of this Act may continue their exigent health claim in the court where the case was pending on the date of enactment of this Act. For exigent health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their exigent health claims where the case is filed.

SA 2814. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 73, line 7, strike ''IX'' and insert ''X''.

On page 78, line 23, strike ''or''.

On page 78, line 24, insert after the comma ''or Malignant Level IX''.

On page 88, line 8, strike ''or Malignant Level VIII'' and insert ''Malignant Level VIII, or Malignant Level IX''.

On page 89, line 18, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''.

On page 90, line 1, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''

On page 98, line 17, strike ''IX'' and insert ''X''.

On page 99, line 3, strike ''IX'' and insert ''X''.

On page 102, line 2, strike ''IX'' and insert ''X''.

On page 111, between lines 2 and 3, insert the following:

(7) MALIGNANT LEVEL VII.—

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

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

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

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—All claims filed relating to Level VII under this paragraph

shall be referred to a Physicians Panel for a determination on the amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

On page 111, strike lines 3 and 4, and insert the following:

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII

On page 112, line 2, strike ''Level VII'' and insert ''Level VIII''.

On page 112, strike lines 15 and 16, and insert the following:

(9) MALIGNANT LEVEL IX.—

(A) IN GENERAL.—To receive Level IX

On page 114, line 13, strike ''Level VIII'' and insert ''Level IX''.

On page 115, strike lines 1 and 2, and insert the following:

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

On page 126, beginning with the matter following line 20, strike all through the matter on page 127 before line 1 and insert the following:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$32,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease.	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

On page 127, line 13, strike ''IX'' and insert ''X''.

On page 127, line 18, strike ''IX'' and insert ''X''.

On page 128, line 1, strike ''IX'' and insert ''X''.

On page 128, line 3, strike ''IX'' and insert ''X''.

On page 141, line 26, strike ''IX'' and insert ''X''.

On page 250, line 10, strike ''IX'' and insert ''X''.

On page 250, line 14, strike ''VIII'' and insert ''IX''.

On page 361, line 24, strike ''VIII'' and insert ''IX''.

SA 2815. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 16, insert ''or (3)'' after ''section 403(d)(2)''.

On page 321, line 14, strike ''paragraph (2),'' and insert ''paragraphs (2) and (3),''.

On page 322, between lines 14 and 15, insert the following:

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

SA 2816. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, line 21, strike ''substantial''.

On page 72, line 22, strike ''substantial''.

On page 105, line 23, strike ''substantial''.

On page 107, line 2, strike ''substantial''.

On page 108, line 2, strike ''substantial''.

On page 109, line 9, strike ''substantial''.

On page 110, line 6, strike ''substantial''.

On page 110, lines 12 and 13, strike ''substantial''.

On page 111, line 23, strike ''substantial''.

On page 114, line 8, strike ''substantial''.

On page 116, line 15, strike ''substantial''.

On page 116, line 18, strike ''substantial''.

On page 123, lines 6 and 7, strike ''substantial''.

On page 316, line 4, strike ''substantial''.

On page 347, line 3, strike ''substantial''.

On page 349, line 12, strike ''substantial''.

On page 349, lines 17 and 18, strike ''substantial''.

On page 349, lines 22 and 23, strike ''substantial''.

On page 350, lines 2 and 3, strike ''substantial''.

On page 350, line 9, strike ''substantial''.

On page 350, line 13, strike ''substantial''.

On page 350, line 18, strike ''substantial''.

On page 350, line 21, strike ''substantial''.

SA 2817. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2818. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 321, strike line 6 and all that follows through page 322, line 13, and insert the following:

(1) IN GENERAL.—Except as provided under paragraphs (2) and (3) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impaneling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) with respect to which a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

(B) RELATION TO STAYS.—Notwithstanding any other provision of this Act, section 106(f)(1) shall not apply to a claim described in subparagraph (A).

SA 2819. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

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

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any civil action in Federal or State court seeking damages for personal injury attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and

the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial) shall be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2820. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, add after line 21 the following:

Subtitle E—Controlling Level and Awards Provisions

SEC. 141. LEVEL AND AWARDS PROVISIONS.

(a) REFERENCES TO LEVELS.—Notwithstanding any other provision of this Act, any reference to Level VII, VIII, or IX in this Act (other than this subtitle) shall be deemed a reference to Level VIII, IX, or X, respectively, as provided under this subtitle.

(b) MALIGNANT LEVEL VII.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, to receive Level VII compensation a claimant shall provide—

(A) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

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

(C) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(2) PHYSICIANS PANEL.—Notwithstanding any other provision of this Act, all claims filed relating to Level VII under this paragraph shall be referred to a Physicians Panel for a determination on the amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(c) AWARDS.—Notwithstanding section 131 of this Act (or any other provision of this Act) the benefits table under subsection (b)(1) of that section shall be administered as follows:

Level	Scheduled condition or disease	Scheduled value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$32,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

SA 2821. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2822. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2823. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

On page 120, strike line 5 and all that follows through page 122, line 13.

SA 2824. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

TITLE VI—PROTECTIVE ORDERS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Sunshine in Litigation Act of 2006''.

SEC. 602. RESTRICTIONS ON PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

''§ 1660. Restrictions on protective orders and sealing of cases and settlements

''(a) ORDERS RESTRICTING DISCLOSURE OF INFORMATION.—

''(1) IN GENERAL.—A court shall not enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case unless the court finds—

''(A) that such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B) that—

''(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) PERIOD OF EFFECT.—No order entered under paragraph (1), other than an order approving a settlement agreement, shall continue in effect after the entry of final judgment, unless at the time of, or after, such entry the court finds that the requirements of paragraph (1) have been met.

''(3) BURDEN OF PROOF.—The party who is the proponent for the entry of an order under paragraph (1) shall have the burden of proof in obtaining such an order.

''(4) NOT WAIVABLE.—This section shall apply if an order under paragraph (1) is requested—

''(A) by motion pursuant to rule 26(c) of the Federal Rules of Civil Procedure; or

''(B) by application pursuant to the stipulation of the parties.

''(5) EFFECT ON DISCOVERY.—

''(A) IN GENERAL.—The provisions of this section shall not constitute grounds for the withholding of information in discovery that is otherwise discoverable under rule 26 of the Federal Rules of Civil Procedure.

''(B) LIMIT ON REQUESTS.—No party shall request, as a condition for the production of discovery, that another party stipulate to an order that would violate this section.

''(b) DISCLOSURE TO GOVERNMENT AGENCIES.—

''(1) IN GENERAL.—A court shall not approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order under subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) SCOPE OF CONFIDENTIALITY.—Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.

''(c) SETTLEMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a court shall not enforce any provision of a settlement agreement between or among parties that prohibits 1 or more parties from—

''(A) disclosing that a settlement was reached or the terms of such settlement, other than the amount of money paid; or

''(B) discussing a case, or evidence produced in the case, that involves matters related to public health or safety.

''(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Restrictions on protective orders and sealing of cases and settlements.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) apply only to orders entered in civil actions or agreements entered into on or after the date described in paragraph (1).

SA 2825. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.

(a) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(b) ELIGIBLE VETERANS HEALTH CLAIMS.—

(1) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(A) is living;

(B) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(C) contracted such asbestos-related disease or condition during the claimant's service—

(i) in the Armed Forces of the United States;

(ii) as an employee of the Department of Defense; or

(iii) as an employee performing official duties relating to national defense matters; and

(D) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(2) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(c) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(d) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(e) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(f) RULES OF CONSTRUCTION.—

(1) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(2) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

SA 2826. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 39, between lines 3 and 4, insert the following:

(C) CLAIMS FROM FORMER CIVIL ACTIONS.—

(i) IN GENERAL.—The Administrator may, in instances where the attorney or attorneys for the plaintiffs in a pending tort case have spent such a substantial amount of time and resources prior to April 19, 2005 that a 5% attorney fee limitation would be manifestly unfair, increase the attorney limitation fee.

SA 2827. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

If the consolidation of the existing asbestos trust funds into this trust fund is ruled unconstitutional by a final ruling of the U.S. Supreme Court, this bill shall be non-severable, unless Congress acts within six months to strike this provision.

SA 2828. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR CLAIMANTS AGAINST NONPARTICIPANT ENTITIES.

(a) DEFINITION.—In this section, the term ''covered claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any covered claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2829. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR NATURALLY OCCURRING ASBESTOS CLAIMANTS.

(a) DEFINITION.—In this section, the term ''naturally occurring asbestos claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition caused by exposure to naturally occurring asbestos; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any naturally occurring asbestos claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2830. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2831. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for

individuals who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2832. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF MINING AND MILLING OPERATIONS AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the asbestos mining and milling operations in the areas of Coalinga, New Idria, and King City, in the State of California, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at such a mining or milling operation, or lived or worked within a 20 mile radius of such an operation, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) MISCELLANEOUS.—Notwithstanding section (2)(a)(9), the Congress finds that among the communities hardest hit by this crisis have been those in or near the locations where asbestos fiber was mined and milled, where for years the air and ground was contaminated and residents, as well as mine and mill workers, were exposed, and where citizens continue to be taking ill even though mining operations ceased years ago.

SA 2833. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 322, between lines 13 and 14, insert the following:

(C) SMALL BUSINESS CONCERNS.—

(i) DEFINITION.—In this subparagraph, the term ''small business concern'' has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632)).

(ii) TREATMENT OF CLAIMS.—Except as provided in clause (iv), in any civil action described under subparagraph (A), the court shall dismiss any asbestos claim against a small business concern, if such small business concern proves that it was not involved in a business involving, and did not use contractors performing duties involving—

(I) handling raw asbestos;

(II) fabricating asbestos-containing products that could lead to exposure to raw asbestos; or

(III) altering, repairing, or otherwise working with asbestos-containing products that could lead to exposure to asbestos fibers.

(iii) PRIOR JUDGMENT.—In a civil action described under subparagraph (A) involving a small business concern, the court may consider the fact that another asbestos claim against such small business concern was dismissed in determining whether such small business concern was not involved in a business involving, and did not use contractors performing duties involving the materials described in subclause (I), (II), or (III) of clause (ii).

(iv) EXCEPTIONS.—Clause (ii) and (iii) of this subparagraph shall not apply to—

(I) a claim against an insurance company; or

(II) a claim against a small business concern by a current or former employee of such small business concern.

(v) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—Notwithstanding any other provision of this Act, the settlement requirements under section 106(f)(2) shall not apply to any terminal health claim, as provided under section 106(c)(2), against a small business concern filed before, on, or after the date of enactment of this Act seeking a judgment or order for monetary damages in any Federal or State court.

SA 2834. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 122, between lines 17 and 18, insert the following:

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—

(A) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund if such claimant has been exposed to asbestos in any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; or

(ii) Hurricane Katrina and Hurricane Rita of 2005 in the Gulf Region of the United States.

(B) REVIEW OF EVIDENCE.—In reviewing medical evidence submitted by a claimant under subparagraph (A)(i) or (ii), the Physicians Panel shall take into consideration the unique nature of these disasters and the potential for asbestos exposure resulting from these disasters.

SA 2835. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

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

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any civil action in Federal or State court seeking damages for personal injury attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial) shall be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2836. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2837. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 18, strike all through page 62, line 8, and insert the following:

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a terminal health claim to which paragraph (2) of this subsection applies, a claim to which section 403(d)(2) applies, a terminal health claim, or as otherwise provided in section 402(f), is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would

receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiv) FAILURE TO MAKE OFFER.—If participants fail to make a settlement offer within the 30-day period described under clause (ix) or make amended offers within the 10 business day cure period described under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund.

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund. If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(c) CONTINUANCE OF TERMINAL HEALTH CLAIMS.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2838. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for MR. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 102, between lines 17 and 18, insert the following:

(5) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

On page 102, line 18, strike ''(5)'' and insert ''(6)''.

On page 104, line 14, strike ''(6)'' and insert ''(7)''.

On page 123, between lines 10 and 11, insert the following:

(9) NEW JERSEY PROCESSING SITES.—The claims procedures described under paragraph (8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (c)(5), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

On page 123, line 11, strike ''(9)'' and insert ''(10)''.

On page 125, line 19, strike ''(10)'' and insert ''(11)''.

On page 366, between line 11 and 12, insert the following:

(b) NEW JERSEY PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site.

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

On page 366, line 12, strike ''(b)'' and insert ''(c)''.

SA 2839. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related diseases for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2840. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.''.

On page 301, line 24, insert ''or for electing to opt out under section 410 of the Fairness in Asbestos Injury Resolution Act of 2006 '' before the period.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—Neither this Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2841. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2842. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(iii) currently or subsequently have been identified by any Governmental agency as having processed vermiculite from the Libby, Montana, mine that caused risk from asbestos exposure; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

(e) DEFINITION.—For purposes of this section, the term ''Governmental agency'' means any regulatory or administrative unit responsible for evaluating sites that received and processed vermiculite ore mined in Libby, Montana.

SA 2843. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Notwithstanding section 121(c)(4), because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under subtitle II for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance

with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

SA 2844. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. LIBBY, MONTANA CLAIMANTS.

Notwithstanding any other provision of this Act, any Libby, Montana claimant shall be treated in the same manner and to the same extent as any other claimant under this Act, including for provisions relating to—

(1) eligibility under the Fund;

(2) the filing of claims; and

(3) awards under the Fund.

SA 2845. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2846. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

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

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

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

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

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . . . The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

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

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported sutdy concluded that oreshipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby . . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly

provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authroity beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

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

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

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

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

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

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages

recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

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

(20) DEBTOR.—The term ''debtor''—

(A) means—

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

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE 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) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

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

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

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

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

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

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

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

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

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

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

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed by the President.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related

diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

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

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

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

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

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 10 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

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

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

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

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

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

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

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

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

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

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

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

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

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

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

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim

meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(3) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

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

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

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

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery on any such claim shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

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

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

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

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

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

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

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

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative 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 such documents 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 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

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

(f) REPRESENTATION.—A claimant may authorize an attorney or other individual to

represent him or her in any proceeding under this Act.

SEC. 115. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

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

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

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

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

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

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

(3) CONSENT.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

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

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

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

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers; or

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

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

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

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that

occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

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

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

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

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

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

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

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

(A) a minimum exposure to asbestos or asbestos-containing products;

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

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

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

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

(B) evidence of 5 years cumulative occupational exposure to asbestos.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

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

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the pulmonary condition in question.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

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

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

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

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

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(8) MALIGNANT LEVEL VIII.—

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

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

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

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

(II) of—

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

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

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(g) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

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

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

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

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$25,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VIII	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(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 that the claimant has discovered facts that would otherwise commence the period applicable

for purposes of the statute of limitations under section 113(b).

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

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

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

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

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

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

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

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

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

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 beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

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

(2) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(h);

(C) shall not include any payment made by a person in connection with or as a result of

changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

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

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

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

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

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

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

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

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

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

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(j)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

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

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

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

(f) SUPERSEDING PROVISIONS.—

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

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

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

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

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

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

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

(2) SUBTIER 1.—

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

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

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

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

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

(4) SUBTIER 3.—

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

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

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers

shall each contain 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 remaining 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: $27,500,000.

(B) Subtier 2: $24,750,000.

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

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(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 affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (e) and (n), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed pay'ment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient infonnation to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(d) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(e) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (j)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (k) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101 (31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(B) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(C) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall be granted a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant inequity adjustment account established under subsection (k), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (k)(3) or as a result of monies being made available in that year under subsection (l)(1)(A).

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

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

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

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

(g) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (j), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

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

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (j) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(h) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

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

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

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

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

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

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(i) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (g);

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

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

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

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

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

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

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

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

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

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

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the 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.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(k) DEFENDANT INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

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

(A) to ensure the minimum aggregate annual payment required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as

the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligations shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c0 or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

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

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

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

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No

member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

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

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

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

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

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. 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 participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities 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 participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—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.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

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

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

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

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

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the

United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

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

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

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

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

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

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

(c) STAFF.—

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

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate

of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

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

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

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

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

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(g)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United

States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(j)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government,

with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $5,000,000 but not more than $10,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $100,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

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

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

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

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of

that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

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

''(i) PARTICIPANT DEBTORS.—

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

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

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

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

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

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The

court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006.

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

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

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

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

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

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

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

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 30 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 180 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 180-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 30 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold

expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(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 end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SA 2847. Mr. ISAKSON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 223(j) and insert the following:

Section 223

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or (ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term 'significant portion of the assets, properties or business of a participant' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant for purposes of this Act, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant for purposes of this Act; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SA 2848. Mr. THUNE (for himself, Mr. COLEMAN, and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 144, between lines 6 and 7, insert the following:

(9) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANT.—The term ''safety equipment manufacturer defendant participant'' means any defendant participant that—

(A) has continuously manufactured respiratory protection equipment in the United States on and after December 31, 1972; and

(B) based upon the portion of its prior asbestos expenditures attributable to asbestos claims relating to respiratory protection products being treated as total prior asbestos expenditures would result in that participant being assigned to the same tier to which that participant is assigned under section 202(d) based on its total prior asbestos expenditures.

On page 151, between lines 16 and 17, insert the following:

(7) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—A safety equipment manufacturer defendant participant that would be included in Tier II, III, IV, or V according to that defendant participant's prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that—

(i) a safety equipment manufacturer defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) a safety equipment manufacturer defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) a safety equipment manufacturer defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) a safety equipment manufacturer defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—

(i) CESSATION OF MANUFACTURING.—The Administrator shall return a safety equipment manufacturer defendant participant to that participant's original tier, on a yearly basis, if the Administrator determines that the safety equipment manufacturer defendant has ceased manufacturing respiratory protection equipment in the United States.

(ii) SOLVENCY OF FUND.—The Administrator may return all safety equipment manufacturer defendant participants to their original tiers, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

SA 2849. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury

caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 12 and 13, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; and

(2) release as the case may be, as per the provisions of 33 U.S.C. Section 933; provided, however, that such employers, insurers, employees and other persons entitled to the compensation or medical benefits under that Act may not bring actions under Section 933 against third parties who are protected under this Act.

SA 2850. Mr. KYL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 1. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows, the subsection references assume that the required renumbering has occurred:

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the administrator, in accordance with procedures prescribed by the administrator, sufficient information to allow the administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''.

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''.

At page 160, line 21, replace ''204(1)'' with ''204(m)''.

At page 167, line 24, replace ''204(d)'' with ''204(e)''.

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''.

At page 172, line 3, replace ''(j)'' with ''(k)''.

At page 177, line 12, replace ''(j) with ''(k)''.

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''.

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''.

At page 182, line 16, replace ''(i) with ''(j)''.

At page 183, line 6, replace ''(i)'' with ''(j)''.

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 23, replace ''(l)'' with ''(m)''.

At page 187, line 8, replace ''(f)'' with ''(g)''.

At page 196, line 20, replace ''(d)'' with ''(e)''.

At page 196, line 22, replace ''(m)'' with ''(n)''.

At page 197, line 13, replace ''(h)'' with ''(i)''.

At page 198, line 11, replace ''(d)'' with ''(e)''.

At page 198, line 16, replace ''(h)'' with ''(i)''.

At page 198, line 17, replace ''(j)'' with ''(k)''.

At page 198, line 23, replace ''(d)'' with ''(e)''.

At page 199, line 10, replace ''(h)'' with ''(i)''.

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 199, line 20, replace ''(k)'' with ''(l)''.

At page 199, line 22, replace ''(h)'' with ''(i)''.

At page 200, line 3, replace ''(h)'' with ''(i)''.

At page 200, line 7, replace ''(d), (t), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 200, line 22, replace ''(d), (t), and (g)'' with ''(e), (g), and (h)''.

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''.

At page 203, line 6, replace ''204(i)'' with ''204(j)''.

At page 204, line 23, replace ''204(d)'' with ''204(e)''.

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''.

At page 205, line 16, replace ''204(h)'' with ''204(i)''.

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''.

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 266, line 14, replace ''204(f)'' with ''204(g)''.

At page 289, line 9, replace ''204(i)'' with ''204(j)''.

At page 289, line 11, replace ''204(d)'' with ''204(e)''.

At page 289, line 12, replace ''204(m)'' with ''204(n)''.

At page 289, line 19, replace ''204(i)'' with ''204(j)''.

At page 289, line 20, replace ''204(d)'' with ''204(e)''.

At page 289, line 21, replace ''204(m)'' with ''204(n)''.

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 334, line 8, replace ''204(f)'' with ''204(g)''.

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

(2) FINANCIAL HARDSHIP ADJUSTMENTS.

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the administrator determines at the time of the renewed adjustment that a shorter or longer

period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this subparagraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the administrator were made in good faith and are reasonable and attainable.

(b) CONFORMING CHANGES.—

At page 177, line 10, strike ''hardship and''.

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''.

At page 178, lines 22–23, strike ''—(A).''.

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete '';or''.

At pages 179–181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''.

At page 181, line 5: Strike ''shall'' and insert ''may''.

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''.

At page 197, line 8, strike ''HARDSHIP AND''.

At page 197, line 15, strike ''hardship and''.

At page 197, line 19, strike ''hardship and''.

At page 197, lines 24 and 25, strike ''severe financial hardship or''.

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS.

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

SEC. 4. ECONOMICALLY DISTRESSED INDUSTRIES.

(a) On page 145, between lines 8 and 9, insert the following:

''(4) ECONOMICALLY DISTRESSED INDUSTRY.—The term ''economically distressed industry'' means an industry, defined by a primary 5–digit NAICS code, wherein two or more defendant participants are in Subtier of Tier II, under sections 202 and 203, and at least two-thirds of such Tier II defendant participants suffered net operating losses in their U.S. manufacturing business in 2005.''

(b) On page 204, line 3, insert ''— (i)'' before ''impose''.

On page 204, line 6, strike the period and insert ''; or''.

On page 204, insert between lines 6 and 7 the following:

''(ii) notwithstanding paragraph (1), impose in any year a surcharge under this subsection on any defendant participant in an economically distressed industry in excess of 15 percent of the amount set forth for Tier II, Subtier 1 defendant participants under section 203(c)(2)(A).''

SA 2851. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 310, lines 15–16, strike ''effect'' and insert the following: '';provided, however, that any provision of such an injunction channeling asbestos claims to such a trust for resolution shall be of no force and effect.''

On page 312, line 18, strike ''Notwithstanding'' and all that follows through ''retain such jurisdiction.''

On pages 359–60, strike subparagraphs (7) and (8) of subsection 405(g) and insert the following:

''(7) ESTABLISHMENT OF MASTER ASBESTOS TRUST.—

(A) CREATION.—Within 120 days after the determination of the Administrator under paragraph (1), the Administrator shall create a trust to be the successor to the asbestos trusts and any class action trust, to receive funds equal to the amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B), and to use such funds for the exclusive purpose of providing benefits in accordance with the terms of this [master trust section?] to persons who would have held valid asbestos claims against the asbestos trusts or any class action trust had the Fairness in Asbestos Resolution Act of [2006] not been enacted and to otherwise defray the reasonable expenses of administering the master trust.

(B) JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction, without regard to amount in controversy, over the master trust and all civil actions involving the application and construction of this subparagraph and the trust documents, including any action for the payment of benefits due under the terms of this subparagraph after exhaustion of trust remedies and any action for breach of fiduciary duty on the part of any fiduciary of the master trust.

(C) TRUSTEES.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, three trustees to administer the master trust. Each trustee, and any successor to each trustee, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section.

(D) TRUST ADVISORY COMMITTEE.—The Administrator, in consultation with the Advisory Committee, shall appoint three persons to represent the interests of trust beneficiaries as members of a trust advisory committee to consult with and advise the trustees respecting the administration of the master trust and resolution of asbestos claims. At least one of the members of the trust advisory committee shall be selected from among individuals recommended by recognized national labor federations, and at least one of the members of the trust advisory committee shall be experienced in representing the interests of trust beneficiaries.

(E) LEGAL REPRESENTATIVE.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, a legal representative of persons who may in the future have claims against the master trust for the purpose of protecting the rights of such persons respecting the master trust and consulting with and advising the trustees respecting the administration of the master trust and resolution of asbestos claims. The legal representative,

and any successor to the legal representative, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section. The legal representative shall have standing to appear and be heard as a representative of the future asbestos claimants in any civil action before the district court relating to the master trust. The legal representative shall not represent the interests of any person who has filed a claim for benefits against the master trust with respect to such claim.

(F) TRUST DOCUMENTS.—The Administrator, in consultation with the Advisory Committee, shall create such trust documents as may be necessary to create and govern the operations of the master trust. The trust documents shall contain provisions that (i) address the payment of compensation to and reimbursement of necessary and reasonable expenses of the trustees, trust advisory committee members and legal representative, and appointment of successors to such persons, subject to approval by the district court in the case of successors to the trustees and legal representative, and (ii) provide for the master trust's obligation to defend and indemnify the Administrator, trustees, members of the trust advisory committee, legal representative and their respective successors against and from legal actions and related losses to the extent that a corporation is permitted under the laws of Delaware to defend and indemnify its officers and directors.

(G) DUTY OF TRUSTEES.—The trustees shall administer the master trust in accordance with the terms of this subparagraph and the Trust Documents for the exclusive purpose of providing benefits to persons with valid claims against the master trust and otherwise defraying the reasonable expenses of administering the master trust, and shall manage and invest the assets of the trust with the care, skill, prudence, and diligence, under like circumstances prevailing at the time, that a prudent person acting in like capacity and manner would use.

(H) CLAIMS RESOLUTION PROCEDURES.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt claims resolution procedures that provide for fair and expeditious payment of benefits to all persons described in subpart A of this subparagraph. The claims resolution procedures adopted and implemented by the trustees shall contain the following features:

(i) pro rata distributions of award amounts that are subject to adjustment, if necessary, based on periodic evaluations of the value of the master trust's assets and estimates of the numbers and values of present and future asbestos claims for benefits that may be awarded by the master trust and other mechanisms that provide reasonable assurance that the master trust will value, and be in a financial position to pay, similarly situated asbestos claims presented to it that involve similar diseases in substantially the same manner;

(ii) proof requirements, claim submission procedures, and claim evaluation and allowance procedures that provide for expeditious filing and evaluation of all asbestos claims submitted to the master trust;

(iii) provisions for priority review and payment of claimants whose circumstances require expedited evaluation and compensation;

(iv) exposure requirements for asbestos claimants to qualify for a remedy that fairly reflect the legal responsibility of at least one entity whose liabilities were channeled to an asbestos trust or any class action trust; and

(v) review and dispute resolution procedures for disputes regarding the master trust's disallowance or other treatment of claims for benefits.

(I) MEDICAL CRITERIA.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt and maintain uniform medical criteria that fairly reflect a current state of applicable law and scientific and medical knowledge. The trustees may adopt the medical criteria of section 121.

(J) AWARD AMOUNTS.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt a matrix of award amounts for disease categories that applies to all claimants who qualify for payment under the medical criteria and claims resolution procedures. The trustees may adopt the matrix of award amounts of section 131 or such other matrix that the trustees determine provides similar benefits for similar claims and fairly reflects the liability of the entities whose liabilities were channeled to the asbestos trusts and any class action trust.

(K) PAYMENTS TO CLAIMANTS.—The trustees shall pay each qualifying claimant a benefit equal to the product of the master trust payment percentage and the award amount to such claimant. The master trust payment percentage at any given time shall be determined by the trustees based on their periodic evaluation of the master trust's assets and projected claims as described in subpart (H)(i) of this subparagraph.

(L) AMENDMENTS.—The trustees, in consultation with the trust advisory committee and legal representative, may amend the trust documents, the claims resolution procedures, the medical criteria and the award matrix to the extent necessary to more effectively and efficiently carry out the purpose of the master trust. Further, if the substantive consolidation of the asbestos trusts and any class action trust effected by this subsection is held to be unconstitutional, the trustees shall adopt amendments to the trust documents, claims resolution procedures, medical criteria and award matrix as may be necessary to bring the master trust in compliance with the Constitution, including if necessary amendments requiring, for each such trust, separate claims resolution procedures, award amounts and accounting of assets and liabilities.

(8) PAYMENT TO MASTER TRUST.—The amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B) shall be transferred to the master trust within 90 days of termination under this subsection. Any individual with a valid asbestos claim against any asbestos trust or class action trust shall be entitled to seek relief on account of such claim from the master trust described in subparagraph (7) in accordance with the provisions of such subparagraph.''

On page 357, strike lines 12 through 24 and insert the following:

''(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii)(II), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by multiplying the amount of assets transferred to the Fund by such debtor or class action trust by the applicable percentage set forth in the following schedule depending on the year in which a termination shall take effect under paragraph (2). The applicable percentage shall be adjusted between years by quarter-annual increments.

Year after Enactment in Which the Termination is Effective	Applicable Percentage
1	100.00
2	93.95
3	87.98
4	82.40
5	76.97
6	71.66
7	66.50
8	61.48
9	56.61
10	52.01
11	47.65
12	43.52
13	39.62
14	35.96
15	32.55
16	29.36
17	26.39
18	23.65
19	21.11
20	18.76
21	16.62
22	14.66
23	12.86
24	11.24
25	9.78
26	8.48
27	7.32
28	6.29
29	5.37
30	4.55
31	3.83
32	3.20
33	2.66
34	2.18
35	1.77
36	1.42
37	1.13
38	0.89
39	0.70
40	0.54
41	0.40
42	0.29
43	0.19
44	0.12
45	0.05
46 and thereafter	0.00''

On page 360, line 21, strike the period and insert the following:

''; provided, however, that any individual who would have held a valid asbestos claim against any asbestos trust or class action trust had the Fairness in Asbestos Resolution Act not been enacted may obtain relief on account of such claim only from the master trust described in subparagraph (g)(7) in accordance with the provisions of such subparagraph.''

On page 364, line 4, strike ''; and'' and insert a period.

On page 364, strike lines 5–14.

SA 2852. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22.

SA 2853. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike line 6 and all that follows through page 244, line 14, and insert the following:

(b) BORROWING AUTHORITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2854. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22 and insert the following:

(2) FEDERAL FINANCING BANK.—

(A) IN GENERAL.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285) in an amount not to exceed $5,000,000,000 for performance of the Administrator's duties under this Act for the first 5 years.

(B) INTEREST TO BE CHARGED.—

(i) IN GENERAL.—Any funds borrowed under subparagraph (A) shall be charged interest at the private market prime lending rate and repaid not later than 18 months after the date on which such funds were borrowed.

(ii) SURCHARGE.—The Administrator shall impose a surcharge on defendants and insurers to meet the repayment obligations under clause (i) and paragraph (4).

SA 2855. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, between lines 4 and 5, insert the following:

(2) INSUFFICIENT FUNDS IN YEARS 1 THOUGH 6.—

(A) IN GENERAL.—Notwithstanding any provision of sections 202 or 203 or this section, during the 6-year period beginning on the date of enactment of this Act, if at any time during such period the Administrator determines that there are insufficient funds available to pay all qualifying claims that have been received and to satisfy all other obligations of the Fund, the Administrator shall impose on each defendant participant in Tier I and Tier II a surcharge in such amounts as necessary to meet the cost of paying such claims and satisfying such other obligations.

(B) PRO RATA BASIS.—Any surcharge imposed under subparagraph (A) shall be imposed on a prorated basis in accordance with the liability of each defendant participant established under sections 202 and 203.

On page 186, line 5, strike ''(2)'' and insert ''(3)''.

On page 186, line 15, strike ''(3)'' and insert ''(4)''.

On page 243, strike lines 7 through 15, and insert the following:

(3) BORROWING CAPACITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2856. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2857. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 183, between lines 17 and 18, insert the following:

(4) CERTAIN CONSOLIDATIONS PROHIBITED.—Notwithstanding paragraphs (1) through (3), the following consolidations are prohibited:

(A) Any consolidation, including a consolidation involving intra-company or intercompany affiliates, that would lessen the amount that otherwise would be collected by the Administrator under Title II.

(B) Any consolidation, including a consolidation involving intra-company or intercompany affiliates, that would reduce the payment amount of any participating defendant in a consolidation that has greater liabilities than another participating defendant in the same consolidation.

SA 2858. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 14, strike line 19 and all that follows through page 15, line 2, and insert the following:

(6) COLLATERAL SOURCE COMPENSATION.—

(A) IN GENERAL.—The term ''collateral source compensation'' means the net compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(B) NET COMPENSATION.—Amounts paid or incurred by the claimant for legal or related expenses in connection with the asbestos-related injury shall be excluded in computing the reduction under this paragraph. Such legal or related expenses may be evidenced by an award, written agreement, or court order in a State or Federal proceeding or by such other evidence as the Administrator may require.

SA 2859. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. EXTENSION OF CERTAIN BENEFITS TO OTHERS SUBJECT TO COMMUNITY EXPOSURE TO ASBESTOS.

(a) WAIVER FOR RESIDENTS OF WEST CHICAGO, ILLINOIS.—The Administrator shall waive the exposure requirements under this subtitle for individuals who lived or worked within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois, for at least 12 consecutive months before December 31, 2004. Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) CLAIMS PROCEDURES FOR WEST CHICAGO, ILLINOIS.—The claims procedures described under section 121(g)(8) relating to Libby, Montana, claimants shall also apply to any eligible claimants who resided within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois.

(c) WEST CHICAGO, ILLINOIS CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who reside, or resided, within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois. The payment of any such medical expenses shall not be collateral source compensation, as defined under section 134(a).

SA 2860. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. INTERSTATE COMPACTS AND CAPTIVE INSURANCE COMPANY.

(a) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

(b) DEFINITION OF STATE.—The term State as defined in section 3(14) shall include entities created by interstate compact.

SA 2861. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 199, line 25, insert ''in Tier II'' after ''participant''.

SA 2862. Mr. FEINGOLD submitted an amendment intended to be proposed

to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. NON-SEVERABILITY.

Notwithstanding section 226(f), if any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall have no force and effect.

SA 2863. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 325, strike line 17 and all that follows through page 326, line 2, and insert the following:

(4) DISMISSAL.—

(A) IN GENERAL.—Except as provided under subsection (d)(2), no judgment other than a judgment for dismissal may be entered in any action asserting an asbestos claim (including any claim described in paragraph (2)) in any Federal or State court on or after the date of enactment of this Act.

(B) DISMISSAL ON MOTION.—A court may dismiss any action asserting an asbestos claim (including any claim described in paragraph (2)) on—

(i) motion by any party to such action; or

(ii) its own motion.

(C) DENIAL OF MOTION.—If a court denies a motion to dismiss under subparagraph (B)(i), it shall stay further proceedings in any such action until final disposition of any appeal taken under this Act.

(D) EXCEPTION FOR PENDING CLAIMS IN COURT.—

(i) IN GENERAL.—Except as provided under subsection (d)(2) and clause (ii) of this subparagraph, an action asserting an asbestos claim that is pending on the date of enactment of this Act in any Federal or State court may not be dismissed under subparagraph (A), but any stay shall continue in effect, if the plaintiff (or the personal representative of the plaintiff, if the plaintiff is deceased or incompetent) in such action has filed a claim, or is still entitled under section 113(b) to file a claim, with the Fund with respect to the disease, condition, or injury forming the basis of such action.

(ii) DISMISSAL ALLOWED IF CLAIM IS ADJUDICATED.—An action exempt from dismissal under clause (i) shall be dismissed if—

(I) the plaintiff's claim under the Fund has been finally adjudicated and the award, if any, to the plaintiff from the Fund has been paid in full;

(II) the plaintiff's claim under the Fund has been finally adjudicated and the claimant is not entitled to receive a monetary award or medical monitoring under subtitle D of title I;

(III) the plaintiff's claim has been resolved and paid in full under section 106(f); or

(IV) after the Administrator certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, the plaintiff's claim is pending in any venue other than a venue described under section 405(g)(3).

(E) NOTICE.—The Administrator shall send notice to the appropriate Federal or State court of any adjudication of any claim with the Fund filed by a plaintiff in an action that has been stayed under subparagraph (D)(i).

(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit dismissal, at any time, of a claim pending in Federal or State court for reasons independent of the enactment of this Act.

SA 2864. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2865. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 162, line 22 strike all through page 163, line 22, and insert the following:

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the revenues of such person or affiliated group. Such subtiers shall each contain 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 remaining included in subtier 3.

(2) PAYMENTS.—Except as adjusted by paragraph (3), each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

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

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(3) ADJUSTMENTS.—The following persons or affiliated groups in Tier II shall have their annual payment to the Fund adjusted as follows:

(A) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $200,000,000 but less than $300,000,000 shall pay, on an annual basis, an amount equal to 200 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(B) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $300,000,000 but less than $400,000,000 shall pay, on an annual basis, an amount equal to 250 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(C) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $400,000,000 but less than $500,000,000 shall pay, on an annual basis, an amount equal to 300 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(D) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $500,000,000 shall pay, on an annual basis, an amount equal to 350 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

SA 2866. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 20, strike ''date of enactment of this Act'' and insert ''effective date of this subsection''.

On page 392, after line 5, insert the following:

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, section 106(f) and section 403 shall not become effective until—

(1) the Administrator has met the public notice requirements for defendant and insurer participants under section 204(i)(6)(A)(ii) and section 212(b)(1);

(2) defendant and insurer participants have made their initial payments under section 204(i)(6)(C) and section 212(e); and

(3) the Administrator has certified that the aggregate payments by defendant and insurer participants are sufficient to satisfy the requirements of section 204(h)(1) and section 212(a)(3)(C)(i) for the first calendar year of the Fund.

SA 2867. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 12 and 13, insert the following:

(c) JUDICIAL STAYS.—Notwithstanding subsections (d) and (e) of section 403, if this Act is stayed by judicial order, pending judicial review of the constitutionality or enforceability of this Act, asbestos claims shall be permitted to continue in Federal or State court for as long as such stay remains in effect.

On page 291, line 13, strike ''(c)'' and insert ''(d)''.

SA 2868. Mr. BIDEN submitted an amendment intended to be proposed to

amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 319, strike lines 3 through 18, and insert the following:

(i) before the date of enactment of this Act, the settlement agreement or confirmation of settlement was authorized by the settling defendant or the settling insurer, and confirmed by, or with, counsel for the settling defendant or settling insurer;

On page 320, between lines 6 and 7, insert the following:

(B) AGREEMENTS DEALING WITH MORE THAN 1 CLAIM.—For the purposes of subparagraph (A), a settlement agreement which includes more than 1 asbestos claim shall only be enforceable as to any asbestos claim settled within such settlement agreement if—

(i) before the date of enactment of this Act, the specific asbestos claim was settled under such settlement agreement for a specific sum with a specific named plaintiff; and

(ii) the specific named plaintiff has complied with subparagraph (A)(iii).

On page 320, line 7, strike ''(B)'' and insert ''(C)''.

On page 320, line 11, strike ''(C)'' and insert ''(D)''.

On page 320, line 15, strike ''(D)'' and insert ''(E)''.

On page 320, line 21, strike ''(E)'' and insert ''(F)''.

SA 2869. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 344, line 16, insert ''(i)'' before ''who''.

On page 344, line 17, strike ''calendar'' and insert ''fiscal''.

On page 344, line 19, insert ''and (ii)'' before ''who have received''.

On page 347, strike line 13 and all that follows through ''Administrator,'' on line 15, and insert the following:

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a)—

(1) that

On page 347, line 18, strike ''(1)'' and insert ''(A)''.

On page 347, line 22, strike ''(2)'' and insert ''(B)''.

On page 347, line 24, strike the period and insert ''; and''.

On page 347, after line 24, insert the following:

(2) that—

(A) 100 percent of the asbestos claimants who filed claims during the prior fiscal year, and who were determined to be eligible to receive compensation under this Act, received the compensation to which they are entitled during that fiscal year; and

(B) 100 percent of the total obligations due to be paid to eligible claimants in the prior fiscal year have been paid.

On page 350, strike line 4 and all that follows through page 351, line 21.

On page 351, line 24, insert ''INITIAL'' before ''ANALYSIS''.

On page 352, line 5, strike ''when'' and insert ''the date on which''.

On page 352, line 6, insert ''in full'' after ''claims''.

On page 352, line 10, insert a period after ''claimants''.

On page 352, lines 10 and 11, strike ''and the public.'' and all that follows through ''Fund'' on line 15.

On page 353, line 6, strike the semicolon and insert ''; or''.

On page 353, line 7, strike ''reform'' and all that follows through line 13.

On page 353, line 14, strike ''changes'' and insert ''increases''.

On page 353, lines 16 and 17, strike '', or changes in award values)'' and insert ''in order to keep the Fund operational''.

On page 353, line 17, strike ''; or'' and insert a period.

On page 353, strike lines 18 through 19.

On page 354, line 6, strike ''except'' through ''212(a)(3)(C).'' on line 15.

On page 355, line 7, insert ''and'' after ''fraud,''.

On page 355, line 8, strike all after ''mesothelioma'' through line 10 and insert a semicolon.

On page 355, strike lines 11 through 14.

On page 355, line 15, strike ''(D)'' and insert ''(C)''.

On page 355, line 18, strike ''(E)'' and insert ''(D)''.

On page 355, line 20, strike ''(F)'' and insert ''(E)''.

On page 355, strike line 22 and all that follows through page 356, line 4, and insert the following:

(3) TERMINATION PLAN.—

(A) IN GENERAL.—Any recommendation of termination shall include a plan for terminating the affairs of the Fund (and the program generally) within a defined period.

(B) PLAN REQUIREMENTS.—The termination plan shall—

(i) specify the date on which the Fund will no longer be able to timely process and pay all eligible claims that are filed with the Fund while satisfying the other financial obligations of the Fund; and

(ii) provide for paying in full all such eligible claims and all claims resolved before that date.

On page 356, between lines 4 and 5, insert the following:

(4) PERIODIC REVIEWS.—The Administrator shall provide updates on any shortfall analysis to Congress every 6 months, or at such shorter intervals as the Administrator determines appropriate.

On page 356, line 5, strike ''(4)'' and insert ''(5)''.

On page 356, line 14, strike ''titles I (except subtitle A) and II and''.

On page 356, line 15, strike ''403 and 404(e)(2)'' and insert ''113, 403, 404, and 406''.

On page 356, line 19 insert ''(I)'' after ''(ii)''.

On page 356, line 19 strike ''part of the'' and all that follows through ''determines'' on line 24, and insert ''a result of the annual report, shortfall analysis or periodic reviews the Administrator determines''.

On page 356, line 25, strike ''claims are resolved'' and insert ''eligible claims are received''.

On page 357, line 3, strike ''221when'' and insert ''221 when''.

On page 357, line 3, insert ''such eligible claims and all previously'' after ''all''.

On page 357, line 7 strike ''(I)'' and insert ''(aa)''.

On page 357, line 9 strike ''(II)'' and insert ''(bb)''.

On page 357, line 11, strike the period and insert ''; or''.

On page 357, between lines 11 and 12, insert the following:

(II)(aa) the Administrator has failed to make the certifications under subsection (c); or

(bb) the Government Accountability Office has failed to report, pursuant to subsection (j), that the Administrator's certifications under subsection (c) are accurate.

On page 358, line 2, after ''effect'' insert ''either—

(A) on the date which the Administrator has determined is the date the Fund will not have sufficient funds to pay all eligible claims filed with the Fund and all claims resolved prior to that date while satisfying its financial obligations; or

(B) ''.

On page 358, line 3, strike ''180'' and insert ''90''.

On page 358, line 3, strike ''date of a determination of the'' and all that follows through line 6, and insert ''date on which the certifications described in paragraph (1)(A)(iii) failed to occur.''.

On page 359, strike line 24 and all that follows through page 360, line 4.

On page 360, line 5, strike ''(8)'' and insert ''(7)''.

On page 361, line 13, strike ''MESOTHELIOMA CLAIM'' and insert ''ADDITIONAL CLAIMS''.

On page 361, line 17, insert ''a more serious condition or'' after ''a claim for''.

On page 361, line 18, insert ''more serious condition or'' after ''unless the''.

On page 362, line 15, strike ''or''.

On page 362, line 17, strike the period and insert a semicolon.

On page 362, between lines 17 and 18, insert the following:

(iv) any State court in a State where the company has its headquarters or its principal place of business; or

(v) any State court in a State where the company has at least 10 percent of its employees or 10 percent of its sales.

On page 362, line 20, strike ''(ii) or (iii)'' and insert ''(ii), (iii), (iv), or (v)''.

On page 363, strike line 1 and all that follows through line 18.

On page 364 strike line 15 and all that follows through page 365 line 4.

On page 365 between lines 8 and 9, insert ''(j) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—The Government Accountability Office shall annually review the certifications required in subsection (c), and any relevant supporting documentation, and report to Congress whether these certifications are accurate.

SA 2870. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, line 8 strike all through page 144 line 6 and insert the following:

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled, or possessed by the employer, if that claim is not a claim for benefits under a workers' compensation law or veteran benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 90 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

On page 150, strike lines 1 through page 151 line 16, and insert the following:

(d) TIERS II THROUGH VIII.—

(1) IN GENERAL.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, VI, VII, or VIII according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(A) Tier II: $350,000,000 or greater.

(B) Tier III: $200,000,000 or greater, but less than $350,000,000.

(C) Tier IV: $75,000,000 or greater, but less than $200,000,000.

(D) Tier V: $50,000,000 or greater, but less than $75,000,000.

(E) Tier VI: $10,000,000 or greater, but less than $50,000,000.

(F) Tier VII: $5,000,000 or greater, but less than $10,000,000.

(G) Tier VIII: $1,000,000 or greater, but less than $5,000,000.

(2) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—Asbestos premises defendant participants which would be assigned to Tiers IV, V, VI, or VII according to their prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that an asbestos premises defendant participant which would be assigned to Tier IV shall instead be assigned to Tier V, an asbestos premises defendant participant which would be assigned to Tier V shall instead be assigned to Tier VI, an asbestos premises defendant participant which would be assigned to Tier VI shall instead be assigned to Tier VII, and an asbestos premises defendant participant which would be assigned to Tier VII shall instead be assigned to Tier VIII.

On page 162, strike line 22 through page 170, line 9, and insert the following:

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $49,500,000.

(B) Subtier 2: $46,750,000.

(C) Subtier 3: $44,000,000.

(D) Subtier 4: $41,250,000.

(E) Subtier 5: $38,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $38,500,000.

(B) Subtier 2: $35,750,000.

(C) Subtier 3: $33,000,000.

(D) Subtier 4: $30,250,000.

(E) Subtier 5: $27,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 5 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $27,500,000.

(B) Subtier 2: $24,750,000.

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

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 5 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain 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 remaining 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: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 4 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(h) TIER VII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VII shall be included in 1 of the 3 subtiers of Tier VII, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(i) TIER VIII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VIII shall be included in 1 of the 3 subtiers of Tier VIII, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(j) TIER IX.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, VI, VII, or VIII, a person or affiliated group shall also be included in Tier IX, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier IX shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VIII.

(3) SUBTIER 1.—Each person or affiliated group in Tier IX with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier IX with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier IX with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The

joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SA 2871. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike from line 6 on page 321 to line 13 on page 322, and insert in lieu thereof the following:

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) This Act shall not be the exclusive remedy for claims in which a defendant is a company or any domestic or foreign subsidiary of that company that does business with the Islamic Republic of Iran.

(B) IN GENERAL.—This Act shall not apply to any asbestos claim that—

i. Is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

ii. Is not part of a consolidation of actions or a class action; and

iii. On the date of enactment of this Act—

I. In the case of a civil action which includes a jury trial, is before the jury after its impaneling and commencement of presentation of evidence, but before its deliberations;

II. In the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

III. a verdict, final order, or final judgment has been entered by a trial court.

(C) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (B) throughout the final disposition of the action.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 386, line 6, strike all through page 393, line 7.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 4, strike all through page 393, line 7.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 386, line 6, strike all through page 393, line 7.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

SEC. 503. ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.

(a) MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund under section 121 if —

(A) such claimant has been exposed to asbestos from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) PHYSICIAN PANEL.—In reviewing medical evidence submitted by a claimant under paragraph (1), the Physicians Panel shall take into consideration the unique nature of such disasters and the potential for asbestos exposure resulting from such disasters.

(b) PRESERVATION OF ACTIONS.—Nothing in this Act shall be construed to limit or abrogate any pending or future civil action against the United States Government or any State or local government, or any agency or subdivision thereof, or any former or present officer or employee thereof, in either their official or individual capacities, seeking redress for exposure to asbestos—

(1) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(A) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(ii) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(B) the clean up and remediation following a disaster described in subparagraph (A); or

(2) as a result of living with a person who has met the exposure requirements described in paragraph (1).

(c) NATURAL OR OTHER DISASTER FUNDS.—

(1) IN GENERAL.—Nothing in this Act shall be construed to limit or abrogate any existing fund, or preclude the formation of any future fund, for the payment of eligible medical expenses relating to treating asbestos-related disease for individuals exposed to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensation as defined under section 134(a).

(d) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 21, before the period at the end, insert the following: '', or the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517)''.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 359, strike line 3 and all that follows through page 361, line 23, and insert the following:

(6) ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(7) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—Except as provided in subparagraphs (B) and (C), on and after the date of termination under subsection (g), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (g).

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(D) STATUTE OF LIMITATIONS.—Notwithstanding any other provision of law, a claimant who, on the date of termination under subsection (g), had a claim filed with the Fund that was unresolved or was eligible to file a claim with the Fund under section 113(b) may file a civil action in accordance with this section not less than 2 years after the date of termination under subsection (g).

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 155, line 17, strike all through page 115, line 8, and insert the following:

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount previously reported as revenues or that would have been reported as revenues, and determined in accordance with generally accepted accounting principles, for the most recent fiscal year ending on or before December 31, 2002.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 329, line 4 , insert '', including a claim described under paragraph (2),'' after ''claim''.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 212, line 21, strike all through page 214, line 22, and insert the following:

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—

(i) AMOUNT OF PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology shall be uniform for all insurer participants.

(ii) RESERVE STUDY REQUIRED.—The Commission shall conduct a reserve study (the

''Reserve Study'') to determine the appropriate reserve allocation of each insurer participant and may request information from each insurer participant, defendant participant, the Securities and Exchange Commission or any State regulatory agency for the purpose of conducting the Reserve Study. The Reserve Study shall calculate each insurer's exposure to current and future asbestos claims in the asbestos litigation environment as it existed prior to enactment. Such calculation shall be derived from the following elements:

(I) an estimation of each and every defendant participant's current and future exposure to expense and loss costs in the asbestos litigation environment as it existed prior to enactment (''Ultimate Expense and Loss'');

(II) applying a uniform set of assumptions regarding the application of insurance and reinsurance to Ultimate Expense and Loss, an analysis of each insurer participant's unresolved or unexhausted insurance or reinsurance coverage applicable to such Ultimate Expense and Loss for each defendant participant;

(III) a project of each insurer's exposure to claims by entities that had not yet become defendants as of the date of enactment, but might reasonably have been anticipated to become defendants in the future if the asbestos litigation environment as it existed prior to enactment had continued. Not later than 60 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 conducting the Reserve Study and allocating payments among insurer participants on the basis of the Reserve Study. Such methodology shall be consistent with the provisions of this paragraph.

(iii) PERMITTED EXTRAPOLATION OF ULTIMATE EXPENSE AND LOSS FOR PERIPHERAL DEFENDANT PARTICIPANTS.—The Commission shall be given the discretion to establish an appropriate methodology to extrapolate Ultimate Expense and Loss for Tier VI defendant participants for the purposes of the Reserve Study. Considerations for such methodology shall include, but not be limited to, the nature of that Tier VI defendant participant's asbestos liability, the number of pending and historic asbestos claims against the Tier VI defendant participant and the jurisdictions in which such Tier VI defendant participant had been sued for asbestos liability.

(iv) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall undermine the initial payment requirement in section 212(e)(1).

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 23, strike all through page 73, line 2, and insert the following:

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NONMALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any nonmalignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the nonmalignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (C), if an asbestos claim that was timely filed within ten years prior to the date of enactment is pending as of the date of enactment and is preempted under section 403(e), a claim under this Act for the same disease or condition may be filed with the Office under this section within 5 years after such date of enactment.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 306, line 20, strike all after the period through page 307, line 10, and insert ''In the event that collateral source compensation exceeds the amount that the claimant would be paid (excluding any adjustments under section 131(b) (3) and (4) of the Act) for such condition under the Act most similar to the claimant's claim with the trust, such trust shall not make any payment to the claimant.''.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 262, line 20, strike all through page 270, line 20, and insert the following:

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A) a temporary restraining order or a preliminary or permanent injunction such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, strike line 9 and all that follows through page 304, line 17, and insert the following:

''(aa) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(bb) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(cc) for any condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in paragraph (2), (3), (4), (5), (7), (8), or (9) of section 121(d) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(dd) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter, insert the following:

SEC. 503. TRANSACTIONS.

(a) NOTICE OF TRANSACTIONS.—Notwithstanding any other provision of this Act, any participant that has engaged in any transaction or a series of transactions under which a significant portion of such participant's assets, properties, or business was, directly or indirectly, transferred by any means (including by sale, dividend, contribution to a subsidiary, or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(b) TIMING OF NOTICE AND RELATED ACTIONS.—

(1) IN GENERAL.—Any notice that a participant is required to give under subsection (a) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(2) OTHER NOTIFICATIONS.—

(A) IN GENERAL.—Not later than the date in any year on which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(i) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this section; or

(ii) the participant was not required to provide any notice under this section during such period.

(B) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(3) NOTICE COMPLETION.—The Administrator shall not consider any notice given under subsection (a) as given until such time as the Administrator receives substantially all the information required by this section.

(c) CONTENTS OF NOTICE.—

(1) IN GENERAL.—The Administrator shall determine by regulation the information to be included in the notice required under this section, which shall include such information as may be necessary to enable the Administrator to determine whether—

(A) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(B) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(2) STATEMENTS.—The notice shall also include—

(A) a statement by the participant as to whether the participant believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(B) a statement by the participant as to whether that person has acknowledged that such person has become a successor in interest for purposes of this Act.

(d) DEFINITION.—In this section, the term ''significant portion of the assets, properties or business of a participant'' means assets (including tangible or intangible assets, securities, and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(1) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(2) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(3) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(4) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(e) RIGHT OF ACTION.—

(1) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions) that—

(A) involves a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(B) may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(2) RELIEF ALLOWED.—In any action commenced under this section, the Administrator or a participant, as applicable, may seek—

(A) with respect to a transaction (or series of transactions) referred to under subparagraph (A) of paragraph (1), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(B) with respect to a transaction (or series of transactions) referred to under subparagraph (B) of paragraph (1)—

(i) a temporary restraining order or a preliminary or permanent injunction; or

(ii) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(3) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this subsection shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This subsection shall not preempt any other rights of any person under applicable Federal or State law.

(4) VENUE.—Any action under this subsection shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(f) REGULATIONS.—The Administrator—

(1) shall promulgate rules to carry out subsection (c), including regulations relating to the form, timing and content of notices; and

(2) may promulgate regulations to effectuate the intent of this section.

(g) PREEMPTION OF SECTION 223(J).—Section 223(j) shall have no force or effect.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Subcommittee on National Parks.

The hearing originally scheduled for Thursday, February 16, 2006 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building will now be held at 1:30 p.m. on February 16, 2006 in the same room.

The purpose of the hearing is to receive testimony on the following bills: S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower; S. 1870, a bill to clarify the authorities for the use of certain National Park Service properties within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, and for other purposes; S. 1913, a bill to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes; S. 1970, a bill to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes; H.R. 562, a bill to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932–1933; H.R. 318, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom, Lillie at (202) 224–5161 or David Szymanski at (202) 224–6293.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources.

The hearing originally scheduled for Tuesday, February, 14, 2006 at 10 a.m. in Room. SD–366 of the Dirksen Senate Office Building will now be held on Thursday, February 16, 2006 at 2:30 p.m. in the same room.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani 202–224–5269 or Shannon Ewan at 202–224–7555.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 14, 2006, at 10 a.m., to conduct a hearing on the nomination of Mr. Randall S. Kroszner, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System; Mr. Edward P. Lazear, of California, to be a member of the Council of Economic Advisers; Mr. Kevin M. Warsh, of New York, to be a member of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 14, 2006, at 10 a.m., on State and local issues and municipal networks.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 14 at 10 a.m. The purpose of this hearings is to discuss the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States Energy Market.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 14, 2006, at 10 a.m. to hold a hearing on the President's budget for foreign affairs, and a business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Tuesday, February 14, 2006, at 10 a.m. for a hearing titled, ''Hurricane Katrina: The Homeland Security Department's Preparation and Response.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, February 14, 2006, at 2:30 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's Fiscal Year 2007 Budget Request for Indian Programs. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, February 14, 2006, for a committee hearing on the Administration's proposed fiscal year 2007 Department of Veterans Affairs budget. The hearing will take place in room 418 of the Russell Senate Office Building at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on February 14, 2006, at 2:30 p.m., in open session to receive testimony on improving contractor incentives in review of the defense authorization request for fiscal year 2007.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON RETIREMENT SECURITY AND AGING

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Retirement Security and Aging, be authorized to hold a hearing during the session of the Senate on Tuesday, February 14th at 2:30 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT

Mr. GRASSLEY. Mr. President. I ask unanimous consent that the Subcommittee on Trade, Tourism, and Economic Development be authorized to meet on Tuesday, February 14, 2006, at 2:30 p.m., on Canadian softwood lumber.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICAN JEWISH HISTORY MONTH

Mr. FRIST. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H. Con. Res. 315 and the Senate now proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 315) urging the President to issue a proclamation for the observance of an American Jewish History Month.

There being no objection, the Senate proceeded to consideration of the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 315) was agreed to.

CARIBBEAN-AMERICAN HERITAGE MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H. Con. Res. 71 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 71) expressing the sense of Congress that there should be established a Caribbean-American Heritage Month.

There being no objection, the Senate proceeded to consideration of the concurrent resolution.

Mr. FRIST. I ask unanimous consent the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 71), was agreed to.

The preamble was agreed to.

ORDERS FOR WEDNESDAY, FEBRUARY 15, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, February 15; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 30 minutes with the first 15 minutes under the control of the majority leader or his designee and the second 15 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate resume the motion to proceed to S. 2271.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow, following morning business, the Senate will resume debate on the motion to proceed to the PATRIOT Act Amendments Act. I filed cloture on that motion, and we will announce when that vote will occur.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:19 p.m., adjourned until Wednesday, February 15, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 14, 2006:

FEDERAL DEPOSIT INSURANCE CORPORATION

JON T. RYMER, OF TENNESSEE, TO BE INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION, VICE GASTON L. GIANNI, JR.

THE JUDICIARY

JEROME A. HOLMES, OF OKLAHOMA, TO BE UNITED STATE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA, VICE SVEN E. HOLMES, RESIGNED.

MILAN D. SMITH, JR., OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE A. WALLACE TASHIMA, RETIRED.

FRANK D. WHITNEY, OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, VICE H. BRENT MCKNIGHT, DECEASED.