

108TH CONGRESS  
1ST SESSION

# H. R. 1114

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. KIRK (for himself, Mr. HYDE, Mrs. JOHNSON of Connecticut, Mr. PORTMAN, Mr. SHAYS, Mr. BURR, Mr. MICA, Mr. MCCOTTER, Mr. GILLMOR, Mr. SHIMKUS, Mr. TIBERI, Ms. GINNY BROWN-WAITE of Florida, Ms. ROS-LEHTINEN, Mr. FOLEY, Mr. BAKER, Mr. KENNEDY of Rhode Island, Mr. DOOLITTLE, Mr. CASTLE, and Mr. MCCRERY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Asbestos Compensation Act of 2003”.

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

Sec. 1. Short title; table of contents.

TITLE I—ESTABLISHMENT AND PROCEDURE

- Sec. 101. Establishment of the Office of Asbestos Compensation.
- Sec. 102. Medical eligibility review.
- Sec. 103. Election of administrative process; settlement offers.
- Sec. 104. Claimant's choice of forum.
- Sec. 105. Administrative adjudication.
- Sec. 106. Appeals; judicial review.
- Sec. 107. Gathering and maintenance of information.
- Sec. 108. Legal assistance program.
- Sec. 109. Time limits for dispositions.

TITLE II—LAW APPLICABLE TO ASBESTOS ADJUDICATIONS

- Sec. 201. Medical eligibility.
- Sec. 202. Damages.
- Sec. 203. Statute of limitations or repose.
- Sec. 204. Come back rights.
- Sec. 205. Class actions, aggregations of claims and venue.
- Sec. 206. Joint and several liability.
- Sec. 207. Core claims.
- Sec. 208. Special rules applicable to section 105 adjudications.
- Sec. 209. Special rules applicable to the trustee.

TITLE III—ELIGIBLE MEDICAL CATEGORIES

- Sec. 301. Eligible medical categories.
- Sec. 302. Asbestos-related non-malignant conditions with impairment.
- Sec. 303. Asbestos-related mesothelioma.
- Sec. 304. Asbestos-related lung cancer.
- Sec. 305. Asbestos-related other cancer.
- Sec. 306. Medical testing reimbursement.

TITLE IV—FUNDING

- Sec. 401. Assessment and enforcement.
- Sec. 402. Fiscal and financial management of the asbestos compensation fund.
- Sec. 403. Authorization for appropriations and offsetting collections.

TITLE V—TRANSITION

- Sec. 501. Applicability; transitional civil actions.

TITLE VI—DEFINITIONS

- Sec. 601. Definitions.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Relationship to other laws.
- Sec. 702. Annual reports.
- Sec. 703. Enforcement.

Sec. 704. Qualifying National Settlement Plan.  
Sec. 705. Severability.  
Sec. 706. Settlements.

1     **TITLE I—ESTABLISHMENT AND**  
2                                   **PROCEDURE**

3     **SEC. 101. ESTABLISHMENT OF THE OFFICE OF ASBESTOS**  
4                                   **COMPENSATION.**

5             (a) ESTABLISHMENT OF PROGRAM; ADMINIS-  
6 TRATOR.—There is established in the Department of Jus-  
7 tice the Office of Asbestos Compensation (OAC) to be  
8 headed by an Administrator. The Administrator shall be  
9 appointed by the President by and with the advice and  
10 consent of the Senate. The Administrator shall serve for  
11 a term of 10 years, and may be removed by the Attorney  
12 General only for good cause. The Administrator shall have  
13 authority to promulgate all procedural and substantive  
14 rules necessary to administer this Act. All claims and  
15 other filings under this Act shall be lodged with the office  
16 designated by the Administrator.

17             (b) EXCLUSIVE JURISDICTION.—Except as otherwise  
18 provided in this Act, the OAC shall have exclusive jurisdic-  
19 tion over proceedings to determine if a claimant is entitled  
20 to compensation for an asbestos claim and the amount of  
21 such compensation. The foregoing shall not apply to any  
22 claim brought under any workers' compensation law or  
23 veterans' benefits program.

1           (c) MEDICAL DIRECTOR.—The Administrator shall  
2 appoint the Medical Director and may remove the Medical  
3 Director for good cause. The Medical Director shall, under  
4 the supervision of the Administrator, manage the medical  
5 review process under section 102 and shall have the au-  
6 thority to appoint or to contract for the services of claims  
7 examiners, physicians, and such other personnel as may  
8 be necessary or appropriate for the efficient conduct of  
9 the medical review process and to create the exceptional  
10 medical claims panel.

11           (d) ASBESTOS COMPENSATION FUND.—There is es-  
12 tablished in the OAC an Asbestos Compensation Fund for  
13 the purpose of providing payments to claimants under this  
14 Act. The Administrator shall appoint the Trustee of the  
15 Asbestos Compensation Fund and may remove the Trust-  
16 ee for good cause.

17           (e) OFFICE OF ADMINISTRATIVE LAW JUDGES.—  
18 There is established in the OAC an Office of Administra-  
19 tive Law Judges for the purpose of providing expedited  
20 administrative adjudication of asbestos claims pursuant to  
21 section 105. The Administrator shall have authority to ap-  
22 point Administrative Law Judges on a temporary or emer-  
23 gency basis and to remove such judges for good cause.

24           (f) MEDICAL ADVISORY COMMITTEE.—The Adminis-  
25 trator shall appoint a Medical Advisory Committee which

1 shall periodically evaluate this Act's medical review pro-  
2 cess and medical eligibility criteria. The Administrator shall  
3 set a term of appointment for members of the Medical Ad-  
4 visory Committee. The Committee shall make appropriate  
5 recommendations as and when it deems appropriate and  
6 shall submit an annual report to the Administrator and  
7 the Congress.

8 **SEC. 102. MEDICAL ELIGIBILITY REVIEW.**

9 (a) DETERMINATION OF ELIGIBILITY.—All claims  
10 when filed shall be immediately referred to the Medical  
11 Director. The Medical Director shall determine whether  
12 the claimant meets the requirements for medical eligibility  
13 in section 301 or the requirements for medical testing re-  
14 imbursement in section 306.

15 (b) INFORMATION FOR MEDICAL REVIEW.—The Ad-  
16 ministrator shall issue rules for the expeditious conduct  
17 of the medical review process. Such rules at a minimum  
18 shall provide for the following:

19 (1) Submission of the following information  
20 where relevant and feasible: smoking history; occu-  
21 pational history; description of the circumstances,  
22 intensity, time, and duration of exposure; medical  
23 test results necessary for a decision as to whether an  
24 exposed person meets the requirements for one or  
25 more medically eligible categories under sections

1 301, 302, 303, 304, 305, or 306, including all of the  
2 supporting data for any pulmonary function tests on  
3 which the claimant relies (including all flow volume  
4 loops, spirographs, and any other tracings for any  
5 test that is performed). The claimant shall also pro-  
6 vide such medical releases as the Administrator may  
7 require allowing the OAC to obtain any and all med-  
8 ical information relevant to the determination of  
9 medical eligibility.

10 (2) The Medical Director may require addi-  
11 tional non-invasive medical tests at the expense of  
12 the OAC if necessary for a determination of medical  
13 eligibility.

14 (c) PROCEDURES.—Upon receipt of a complete med-  
15 ical application, the Medical Director shall send notice to  
16 the claimant confirming the OAC's receipt of the claim.  
17 The Medical Director shall make an initial decision within  
18 30 days of such receipt. If the application is initially de-  
19 nied, the claimant shall be so notified and, at the claim-  
20 ant's request, the application shall be immediately referred  
21 to—

22 (1) a review panel of 2 qualified physicians,  
23 with a third qualified physician available to resolve  
24 any disagreement between the initial 2 qualified phy-  
25 sicians; or

1           (2) an exceptional medical claims panel.  
2 The Medical Director shall be bound by a panel's decision.  
3 The rules shall also provide for the prioritization of claims,  
4 including enhanced priority for claimants who have meso-  
5 thelioma, and set a time limit for a determination by the  
6 review panel.

7           (d) EXCEPTIONAL MEDICAL CLAIMS.—The rules of  
8 the medical review process shall provide the claimant with  
9 an opportunity to apply to an exceptional medical claims  
10 panel for a determination of whether the exposed person  
11 meets the requirements under section 301(b) for an excep-  
12 tional medical claim for any category. This opportunity  
13 shall be provided both at the initial filing of a claim and  
14 after a claim has been denied under this subsection. The  
15 exceptional medical claims panel shall decide whether the  
16 claimant qualifies as an exceptional medical claim within  
17 30 days of receipt of the claim. This time limit may be  
18 extended by the Administrator only for good cause. The  
19 Medical Director shall be bound by the decision of the ex-  
20 ceptional medical claims panel. The Medical Director shall  
21 issue a final denial, along with a brief statement of rea-  
22 sons, if the claimant is found ineligible following an oppor-  
23 tunity to submit the claim to a medical review panel and  
24 an exceptional medical claims panel.

1 (e) MONITORING ACCURACY OF DETERMINATIONS.—

2 The Medical Director shall establish audit and personnel  
3 review procedures for evaluating the accuracy of medical  
4 eligibility determinations, including both erroneous ap-  
5 provals and erroneous denials.

6 (f) OPT-OUT.—After receiving a certificate of eligi-  
7 bility, a claimant may opt out of settlement proceedings  
8 provided for under sections 103 and 104 and elect to file  
9 suit in any State or Federal court of competent jurisdic-  
10 tion.

11 **SEC. 103. ELECTION OF ADMINISTRATIVE PROCESS; SET-**  
12 **TLEMENT OFFERS.**

13 (a) NAMING AND NOTIFICATION OF DEFENDANTS.—  
14 Medically eligible claimants, other than those who elect to  
15 file suit in court under section 102(f), shall name defend-  
16 ants. Defendants shall receive notice from the Adminis-  
17 trator.

18 (1) IDENTIFICATION OF DEFENDANTS ASSOCI-  
19 ATED WITH WORK SITES.—At the claimant's re-  
20 quest, the Administrator will provide information  
21 concerning person who may have provided asbestos  
22 or asbestos-containing products or materials to work  
23 sites named by the claimant and when such asbestos  
24 or asbestos-containing products or materials may  
25 have been provided as well as the time such products



1 or materials were located at the named work sites.  
2 The Administrator may implement this paragraph  
3 through rulemaking.

4 (2) VERIFIED PARTICULARIZED STATEMENT.—

5 Within such time after receiving a certificate of med-  
6 ical eligibility as may be provided by rule, a claimant  
7 shall provide, with respect to each person that the  
8 claimant alleges is responsible for the injury claimed,  
9 a verified particularized statement of the basis for  
10 the allegation that the person is or may be respon-  
11 sible for the injury. The particularized statement  
12 shall include such information as the Administrator  
13 may require for the purpose of providing the defend-  
14 ant with a reasonable basis for making an offer of  
15 settlement. The claimant may incorporate by ref-  
16 erence any information required by this paragraph  
17 that may already have been submitted to the OAC.

18 (3) NOTICE.—Upon finding that the claimant’s  
19 particularized statement meets the requirements of  
20 paragraph (2), the Administrator shall provide no-  
21 tice to each named defendant. The defendant shall  
22 at the same time be furnished with a copy of all par-  
23 ticularized statements submitted by the claimant  
24 under paragraph (2) and, subject to reasonable rules  
25 protecting the confidentiality of information provided

1 by the claimant, a copy of all information submitted  
2 by the claimant, records and other information ob-  
3 tained by the Medical Director relating to the claim  
4 and the results of any medical tests administered at  
5 the direction of the Medical Director. Any defendant  
6 may provide any information relevant to the amount  
7 of any recommended settlement under subsection  
8 (b), including information regarding product identi-  
9 fication, exposure, and damages.

10 (4) THIRD-PARTY PRACTICE.—Defendants may  
11 assert third-party claims in accordance with rules  
12 adopted by the Administrator. Third-party claimants  
13 shall provide a verified particularized statement,  
14 meeting the requirements of paragraph (2), substan-  
15 tiating the allegation that the third-party defendant  
16 may be liable to the third-party plaintiff, wholly or  
17 in part, for the claimant’s injury. For good cause  
18 shown and subject to reasonable limitations, an Ad-  
19 ministrative Law Judge may allow discovery for the  
20 purpose of obtaining information necessary to allow  
21 the claimant or any third-party plaintiff to provide  
22 a particularized statement under paragraph (2) or  
23 this paragraph.

24 (b) SETTLEMENT OFFERS; OFFER OF COMPENSA-  
25 TION BY THE TRUSTEE.—

1           (1) MANDATORY OFFER FROM DEFENDANTS.—  
2           Within 21 days following the naming of all defend-  
3           ants, each defendant shall provide to the claimant in  
4           writing a good faith settlement offer, and shall pro-  
5           vide a copy to the Trustee.

6           (2) MANDATORY OFFER FROM ASBESTOS COM-  
7           PENSATION FUND.—Within 10 days of receiving all  
8           of the defendants' offers, the Trustee shall make an  
9           offer of compensation to the claimant, based on a  
10          compensation grid which shall be established and  
11          regularly revised by rule.

12 **SEC. 104. CLAIMANT'S CHOICE OF FORUM.**

13          (a) IN GENERAL.—The claimant shall notify each de-  
14          fendant and the Trustee whether the claimant accepts or  
15          rejects the defendant's settlement offer under section  
16          103(b)(1). If the claimant accepts any such offer, or any  
17          other settlement offer, the Trustee's offer of compensation  
18          shall be automatically reduced by the amount of such set-  
19          tlements.

20          (b) NOTICE.—The claimant shall notify the Trustee  
21          and any defendant within 60 days whether the claimant  
22          accepts or rejects an offer that has been provided pursuant  
23          to section 103(b)(1) or 103(b)(2).

1 (c) ORPHAN SHARES.—The Trustee shall not make  
2 an offer to the claimant under section 103(b) if no solvent  
3 defendant has been named.

4 (d) ACCEPTANCE.—If the claimant accepts the Trust-  
5 ee’s offer of compensation, the Trustee shall assume the  
6 claim. The Trustee may accept any defendant’s settlement  
7 offer under section 103(b)(1) or may prosecute the claim  
8 against any defendant as provided in section 105, or may  
9 prosecute the claim in any State or Federal court.

10 (e) REJECTION.—If the claimant rejects any defend-  
11 ant’s settlement offer and also rejects the Trustee’s offer  
12 of compensation, the claimant may elect an administrative  
13 adjudication under section 105 or opt out of further ad-  
14 ministrative proceedings and file suit in a State or Federal  
15 court.

16 **SEC. 105. ADMINISTRATIVE ADJUDICATION.**

17 If a claimant elects adjudication under this section,  
18 the OAC shall assign an Administrative Law Judge to  
19 conduct a hearing on the record and to determine whether  
20 compensation is to be provided and the amount of such  
21 compensation. The Administrative Law Judge shall ad-  
22 here to the law applicable to asbestos adjudications as con-  
23 tained in sections 201 through 210. The Administrative  
24 Law Judge shall issue a decision, containing findings of

1 fact and conclusions of law, as expeditiously as possible,  
2 but not later than 90 days after the case is assigned.

3 **SEC. 106. APPEALS; JUDICIAL REVIEW.**

4 Any person aggrieved by a final decision of the Ad-  
5 ministrator under section 105 or a final denial by the  
6 Medical Director under section 102, may seek review of  
7 that decision or denial in the United States Court of Fed-  
8 eral Claims, which shall uphold the decision or denial if  
9 it is supported by substantial evidence and is not contrary  
10 to law. A decision by the Medical Director that a claimant  
11 has an eligible medical condition is not a final decision  
12 under this section. Decisions of the United States Court  
13 of Federal Claims are appealable, without regard to the  
14 amount in controversy or the citizenship of the parties,  
15 to a United States Court of Appeals for a judicial circuit.

16 **SEC. 107. GATHERING AND MAINTENANCE OF INFORMA-**  
17 **TION.**

18 (a) **PRODUCT IDENTIFICATION.**—The OAC shall col-  
19 lect and regularly update information regarding product  
20 identification and shall make such information publicly  
21 available. The data base maintained by the OAC under  
22 this section is for information purposes only, and the pres-  
23 ence of information in that database shall not lead to any  
24 presumption.

1 (b) SETTLEMENTS, JUDGMENTS, AND AWARDS.—  
2 The OAC shall collect data on settlements, judgments, and  
3 awards in connection with asbestos claims and shall make  
4 such data publicly available. The OAC may require this  
5 data to be reported in such form as it may prescribe.

6 (c) SUBPOENA POWER.—The OAC may compel, by  
7 subpoena or other appropriate process, information from  
8 any person regarding past settlements or product identi-  
9 fication for purposes of developing and maintaining a com-  
10 pensation grid under section 103(b)(2) and maintaining  
11 a database for purposes of naming defendants under sec-  
12 tion 103(a)(1). In addition, the subpoena power under this  
13 subsection may be used by the OAC in order to secure  
14 financial information from any defendant.

15 (d) CONFIDENTIALITY.—Any information or docu-  
16 mentary material concerning settlements which is specific  
17 to a company, law firm, or plaintiff that is provided to  
18 the OAC pursuant to subsection (b) or (c), whether by  
19 subpoena or otherwise, shall be exempt from disclosure  
20 under section 552 of title 5, United States Code, and the  
21 disclosure of such information by the OAC or any person  
22 is prohibited.

23 **SEC. 108. LEGAL ASSISTANCE PROGRAM.**

24 (a) IN GENERAL.—The OAC shall implement a legal  
25 assistance program for the purpose of providing legal rep-

1 representation to claimants. The OAC shall maintain a roster  
2 of qualified counsel who agree to provide services to claim-  
3 ants under rules, practices, and procedures established by  
4 the Administrator.

5 (b) FREE CHOICE OF COUNSEL.—Claimants shall  
6 not be required to use counsel provided or recommended  
7 by the OAC, but shall retain their right to be assisted by  
8 counsel of their choice.

9 (c) LEGAL ASSISTANCE.—The OAC shall adopt rules  
10 concerning the reasonableness of fees, and all legal rep-  
11 resentation of persons asserting asbestos claims shall com-  
12 ply with such rules.

13 **SEC. 109. TIME LIMITS FOR DISPOSITIONS.**

14 (a) IN GENERAL.—If the Medical Director fails to  
15 meet the time limits for an initial decision provided under  
16 this Act with respect to more than 30 percent of claims,  
17 then the Administrator shall take such action as may be  
18 necessary, including increasing staff and administrative  
19 assessments under section 401, to ensure compliance with  
20 such time limit with regard to at least 70 percent of  
21 claims.

22 (b) NO OFFER.—If the Trustee fails to make an offer  
23 within 120 days after the Administrator's receipt of a  
24 complete application under section 102 with respect to  
25 more than 30 percent of claims, then the Administrator

1 shall take such action as may be necessary, including in-  
2 creasing staff and administrative assessments under sec-  
3 tion 401, to ensure compliance with such time limit with  
4 regard to at least 70 percent of claims.

5 (c) DUTIES.—The duties established by subsections  
6 (a) and (b) shall be non-discretionary and enforceable by  
7 an order of mandamus from any judge of the United  
8 States Court of Federal Claims.

9 (d) EXCEPTIONS.—The Administrator may by rule  
10 establish exceptions to the time limits in this section. Such  
11 rules shall take into consideration the complexity of the  
12 case, the extent to which delays are attributable to the  
13 fault or neglect of the claimant or the claimant’s attorney  
14 and other factors that are beyond the control of the OAC.

## 15 **TITLE II—LAW APPLICABLE TO** 16 **ASBESTOS ADJUDICATIONS**

### 17 **SEC. 201. MEDICAL ELIGIBILITY.**

18 A claimant may recover compensation for damages  
19 caused by an eligible medical condition only if the claimant  
20 presents a certificate of medical eligibility establishing its  
21 existence. A certificate of medical eligibility shall be con-  
22 clusive unless rebutted by clear and convincing evidence.  
23 However, a certificate of medical eligibility shall not be  
24 conclusive as to allegations regarding exposure to asbestos



1 or when medical eligibility is established pursuant to sec-  
2 tion 304(b).

3 **SEC. 202. DAMAGES.**

4 A claimant who establishes an eligible medical condi-  
5 tion shall be entitled to compensatory damages to the ex-  
6 tent provided by applicable law, including damages for  
7 emotional distress, pain and suffering, and medical moni-  
8 toring where authorized. Such damages shall not include  
9 punitive damages or damages solely for enhanced risk of  
10 a future condition, except as provided in section 208(d).

11 **SEC. 203. STATUTE OF LIMITATIONS OR REPOSE.**

12 No defense to an asbestos claim based on a statute  
13 of limitations or statute of repose, laches, or any other  
14 defense based on the timeliness of the claim shall be recog-  
15 nized or allowed, unless such claim was untimely as of the  
16 date of enactment of this Act. No claim shall be deemed  
17 to have accrued until and unless the claimant's condition  
18 would have qualified as an eligible medical condition under  
19 section 302, 303, 304, or 305.

20 **SEC. 204. COME BACK RIGHTS.**

21 Notwithstanding any other provision of law, a judg-  
22 ment or settlement of an asbestos claim for a non-malig-  
23 nant disease shall not preclude a subsequent claim with  
24 respect to the same exposed person for an eligible medical  
25 condition pursuant to section 301(b), 303, 304, or 305.

1 **SEC. 205. CLASS ACTIONS, AGGREGATIONS OF CLAIMS AND**  
2 **VENUE.**

3 (a) CONSOLIDATIONS.—No joinder of parties, aggre-  
4 gation of claims, consolidation of actions, extrapolation,  
5 or other device to determine multiple asbestos claims on  
6 a collective basis shall be permitted without the consent  
7 of all parties, except as provided in subsection (b) or un-  
8 less the court, pursuant to an exercise of judicial authority  
9 to promote the just and efficient conduct of asbestos civil  
10 actions, orders such procedures, including the transfer for  
11 consolidation, to determine multiple asbestos claims on a  
12 collective basis.

13 (b) CLASS ACTION SUITS.—In any civil action assert-  
14 ing an asbestos claim, a class action may be allowed with-  
15 out the consent of all parties if the requirements of Rule  
16 23, Federal Rules of Civil Procedure are satisfied.

17 (c) VENUE.—At the election of the claimant, an as-  
18 bestos claim may be filed in any jurisdiction where the  
19 claimant is alleging that the claimant was exposed to as-  
20 bestos or where the claimant is currently domiciled.

21 (d) REMOVAL.—Any party in a civil action that in-  
22 volves a violation of subsection (a), (b) or (c) of this sec-  
23 tion may remove such action to an appropriate district  
24 court of the United States. The district courts of the  
25 United States shall have jurisdiction of all civil actions re-

1 moved pursuant to this section without regard to diversity  
2 of citizenship or amount in controversy.

3 (e) ADMINISTRATIVE PROCEEDINGS.—In any pro-  
4 ceeding under section 105, the Administrative Law Judge  
5 may order adjudication of claims on a collective basis.

6 **SEC. 206. JOINT AND SEVERAL LIABILITY.**

7 This Act shall not be construed to limit joint and sev-  
8 eral liability under applicable Federal or State law. In any  
9 core claim that is successfully asserted against a defend-  
10 ant, such defendant shall be held jointly and severally lia-  
11 ble for full compensatory damages to the claimant not-  
12 withstanding any contrary provision of law.

13 **SEC. 207. CORE CLAIMS.**

14 In any core claim, the issues to be decided shall be  
15 limited to—

16 (1) whether the exposed person with respect to  
17 whom a claim is made has or had an eligible medical  
18 condition;

19 (2) whether the exposure of the exposed person  
20 to the product of the defendant was a substantial  
21 contributing factor in causing that eligible medical  
22 condition; and

23 (3) the amount of compensation to be provided.

1 **SEC. 208. SPECIAL RULES APPLICABLE TO SECTION 105 AD-**  
2 **JUDICATIONS.**

3 (a) **APPLICABLE LAW.**—Unless otherwise provided in  
4 this Act, in claims based on State law, the Administrative  
5 Law Judge shall, with respect to each defendant, apply  
6 the substantive law of the State which has the most sig-  
7 nificant relationship to the exposure and the parties.

8 (b) **FULL COMPENSATORY DAMAGES IN WRONGFUL**  
9 **DEATH CASES.**—Notwithstanding any contrary provision  
10 of State law, full compensatory damages, including dam-  
11 ages for non-economic loss, shall be awarded in wrongful  
12 death claims involving mesothelima. In all other cases,  
13 damages for non-economic loss may be awarded to the ex-  
14 tent that they are available pursuant to applicable law.

15 (c) **PENALTY FOR INADEQUATE OFFER.**—In any pro-  
16 ceeding against a defendant by a claimant under section  
17 105, and in any proceeding by the Trustee, if the final  
18 offer made by any defendant is less than the share of the  
19 total liability awarded against that defendant, a penalty  
20 shall be added to the award equal to 100 percent of the  
21 difference between the defendant's settlement offer under  
22 section 103(b) and the lesser of—

23 (1) the defendant's share of the offer made by  
24 the Trustee under section 103(b); or

25 (2) the defendant's share of the award made  
26 under section 105.

1 (d) PUNITIVE DAMAGES.—Punitive damages may be  
2 awarded against a defendant if the claimant establishes  
3 by clear and convincing evidence that the conduct carried  
4 out by the defendant with a conscious, flagrant indiffer-  
5 ence to the rights or safety of others was the proximate  
6 cause of the harm that is the subject of the asbestos claim.  
7 Punitive damages may not exceed 3 times the amount of  
8 the award pursuant to a section 105 adjudication plus any  
9 penalties added to that award pursuant to subsection (c).

10 **SEC. 209. SPECIAL RULES APPLICABLE TO THE TRUSTEE.**

11 In an action by the Trustee as assignee of the claim-  
12 ant, the award under section 104(d) shall include compen-  
13 satory damages for the claimant’s injury and all punitive  
14 damages under section 208(d), any penalties for inad-  
15 equate offers by defendants, and the Trustee’s costs in  
16 establishing the claim, including reasonable attorneys’ fees  
17 and expenses and an allowance for interest on the amount  
18 paid by the Fund to the claimant under section 104. Inter-  
19 est shall be calculated from the time of such payments,  
20 and in accordance with Title IV. All economic and non-  
21 economic damages recovered by the Fund in excess of 200  
22 percent of the amount paid to the claimant pursuant to  
23 section 104 and all punitive damages under section 208(d)  
24 shall be paid to the settling claimant. The fact that the  
25 claimant has accepted an offer of compensation by the

1 Trustee, and the amount and terms of such offer, shall  
2 not be admissible in any adjudication of a claim brought  
3 by the Trustee against any defendant.

## 4 **TITLE III—ELIGIBLE MEDICAL** 5 **CATEGORIES**

### 6 **SEC. 301. ELIGIBLE MEDICAL CATEGORIES.**

7 (a) IN GENERAL.—The eligible medical categories  
8 under this Act are asbestos-related non-malignant condi-  
9 tions with impairment, asbestos-related mesothelioma, as-  
10 bestos-related lung cancer, and asbestos-related other can-  
11 cer.

12 (b) ESTABLISHING EXISTENCE.—A claimant may es-  
13 tablish the existence of an eligible medical condition either  
14 by demonstrating that the exposed person meets the  
15 standard criteria provided in sections 302, 303, 304, and  
16 305 or by demonstrating to an exceptional medical claims  
17 panel, through reliable evidence, that the exposed person  
18 has an asbestos-related impairment that is substantially  
19 comparable to the condition of an exposed person who  
20 would satisfy the requirements of a given medical cat-  
21 egory. The Administrator, after consultation with the  
22 Medical Advisory Committee, may adopt rules consistent  
23 with this section to assure consistency and efficiency in  
24 the designation of claims as exceptional medical claims.

1 **SEC. 302. ASBESTOS-RELATED NON-MALIGNANT CONDI-**  
2 **TIONS WITH IMPAIRMENT.**

3 (a) IN GENERAL.—The standard criteria for asbes-  
4 tos-related non-malignant conditions with impairment  
5 shall include—

- 6 (1) clinical evidence of asbestosis,  
7 (2) pathological evidence of asbestosis, or  
8 (3) evidence of bilateral pleural thickening with  
9 impairment.

10 (b) OBSTRUCTIVE LUNG DISEASE.—A claimant shall  
11 not be disqualified from compensation under this category  
12 solely because an exposed person who otherwise meets the  
13 requirements for impairment has a reduced FEV1/FVC  
14 ratio indicating obstructive lung disease. In that event, the  
15 exceptional medical claims panel shall determine, giving  
16 due regard to the evidence that any impairment is related  
17 to obstructive disease and taking into consideration all  
18 available evidence, whether an asbestos-related restrictive  
19 disease substantially contributes to the impairment of the  
20 exposed person. Such a contribution shall be presumed if  
21 the panel concludes, based upon the findings of a certified  
22 B-reader, that the exposed person's chest x-ray is ILO  
23 Grade 2/1 or more.

24 **SEC. 303. ASBESTOS-RELATED MESOTHELIOMA.**

25 The standard criteria for asbestos-related mesothe-  
26 lioma shall include a diagnosis by a qualified physician of

1 a malignant mesothelioma caused or contributed to by ex-  
2 posure to asbestos with a primary site in the pleura, peri-  
3 toneum, or like tissue, or reasonably equivalent clinical di-  
4 agnosis in the absence of adequate tissue for pathological  
5 diagnosis.

6 **SEC. 304. ASBESTOS-RELATED LUNG CANCER.**

7 (a) IN GENERAL.—The standard criteria for asbes-  
8 tos-related lung cancer shall include—

9 (1) a diagnosis by a qualified physician of lung  
10 cancer that the physician concludes was caused or  
11 contributed to by exposure to asbestos;

12 (2) a latency period of at least 10 years; and

13 (3) either—

14 (A) evidence of asbestosis or bilateral pleu-  
15 ral thickening with impairment sufficient to  
16 meet the requirements of section 302 or to  
17 qualify as an exceptional medical claim under  
18 section 301(b); or

19 (B) chest x-rays which, in the opinion of a  
20 certified B-reader, demonstrate asbestos-related  
21 bilateral pleural plaques or thickening, and 7.5  
22 equivalent-years of exposure to asbestos-con-  
23 taining materials in employment regularly re-  
24 quiring work in the immediate area of visible  
25 asbestos dust.



1 (b) HISTORY OF SMOKING.—If a finding of asbestos-  
2 related lung cancer is made pursuant to paragraph (3)(B)  
3 and the exposed person has a substantial history of smok-  
4 ing, which shall be defined by rule, the claimant shall be  
5 medically eligible for compensation, but the finding of as-  
6 bestos-related lung cancer shall not be conclusive as to  
7 causation for purposes of section 201.

8 **SEC. 305. ASBESTOS-RELATED OTHER CANCER.**

9 The standard criteria for asbestos-related other can-  
10 cer shall include a diagnosis by a qualified physician of  
11 a malignant primary tumor of the larynx, oral-pharynx,  
12 gastro-intestinal tract, or stomach, caused or contributed  
13 to by exposure to asbestos, together with evidence of a  
14 condition sufficient to meet the requirements of section  
15 302 or to qualify as an exceptional medical claim under  
16 section 301(b).

17 **SEC. 306. MEDICAL TESTING REIMBURSEMENT.**

18 (a) LEVEL A.—A claimant with at least 4 equivalent-  
19 years of heavy exposure to asbestos, whose chest x-ray  
20 shows either small irregular opacities of ILO Grade 1/0  
21 or bilateral pleural thickening of ILO Grade B/2, shall be  
22 eligible for reimbursement of 100 percent of out-of-pocket  
23 expenses for any medical testing required under section  
24 102, up to a ceiling of \$1500. Level A claimants shall be  
25 eligible at 3 year intervals for similar reimbursement of

1 future medical testing expenses for up to 2 additional oc-  
2 casions. Level A reimbursements shall be treated as ad-  
3 ministrative expenses of the OAC and paid for by defend-  
4 ants under section 401.

5 (b) LEVEL B.—The Administrator shall, subject to  
6 the availability of appropriated funds, reimburse up to 100  
7 percent of the out-of-pocket expenses for any medical test-  
8 ing required under section 102, up to a ceiling established  
9 by rule, with the approval of the Trustee, for any claimant  
10 with at least one equivalent-year of heavy exposure to as-  
11 bestos who meets the medical but not the exposure re-  
12 quirements of Level A. Level B claimants may be eligible  
13 for similar reimbursement of future medical testing ex-  
14 penses for up to 2 additional occasions at least 3 years  
15 apart. The Administrator shall adjust periodically the  
16 amount of the cash payment to reflect changes in medical  
17 costs. Level B reimbursements shall be treated as adminis-  
18 trative expenses of the OAC and paid for by defendants  
19 under section 401.

20 (c) CERTIFIED LABS.—The Administrator is author-  
21 ized to establish a program for the certification of labora-  
22 tories to provide medical testing under this section.

23 (d) EXPOSURE VERIFICATION.—The Administrator  
24 shall establish audit and other procedures to provide rea-  
25 sonable assurance that statements concerning exposure

1 made by claimants seeking medical testing reimbursement  
2 under this section are accurate.

## 3 **TITLE IV—FUNDING**

### 4 **SEC. 401. ASSESSMENT AND ENFORCEMENT.**

5 (a) RULES.—The Administrator shall adopt rules for  
6 calculating and collecting from defendants all costs associ-  
7 ated with the determination of claims and payments to  
8 claimants.

9 (b) TRUSTEE.—The Trustee shall have authority to  
10 bring an action in the district courts of the United States  
11 to enforce any obligation imposed on any person by this  
12 section and such courts shall have exclusive jurisdiction  
13 of such actions without regard to the amount in con-  
14 troversy or citizenship of the parties. The district court  
15 shall not entertain any defense other than lack of jurisdic-  
16 tion in any action by the Trustee under this subsection.

17 (c) TRUSTEE PREVAILS.—In any action under sub-  
18 section (b) in which the Trustee prevails, the Trustee shall  
19 be entitled to costs, including reasonable attorneys' fees,  
20 and interest on any unpaid amount.

21 (d) JUDICIAL REVIEW.—A defendant may challenge  
22 the legality or amount of any assessment only by seeking  
23 judicial review in the United States Court of Federal  
24 Claims after paying the disputed amount. If successful,  
25 the defendant shall be awarded interest.

1 **SEC. 402. FISCAL AND FINANCIAL MANAGEMENT OF THE**  
2 **ASBESTOS COMPENSATION FUND.**

3 (a) APPLICABILITY OF CREDIT REFORM ACT PRIN-  
4 CIPLES; FISCAL MANAGEMENT RULES.—Except as pro-  
5 vided in this section, the operations of the Fund related  
6 to settlement payments under section 104, and associated  
7 recoveries from defendants, shall be governed by the Fed-  
8 eral Credit Reform Act of 1990 (2 U.S.C. 661 et seq.),  
9 notwithstanding the status of the Fund as a governmental  
10 entity. The Administrator shall promulgate rules, ap-  
11 proved by the Office of Management and Budget, for the  
12 fiscal management of the Fund. Such rules and their ap-  
13 plication shall not be subject to judicial review and shall,  
14 as regards payments under section 104—

15 (1) provide all reasonable assurance that, over  
16 an appropriate time period, the subsidy rate associ-  
17 ated with the net litigation risk of the Fund is zero;

18 (2) provide all reasonable assurance that, in  
19 any given year, the subsidy rate associated with the  
20 net litigation risk of the Fund is no more than 2  
21 percent;

22 (3) provide for the allocation of receipts from  
23 defendants to various Fund accounts, including the  
24 Fund's financing account, program account, and an  
25 account for salaries and expenses (which shall in-  
26 clude litigation costs); and

1           (4) provide specific instructions for the Trustee  
2           to reduce payments by the Fund when necessary to  
3           meet the solvency requirements of this subsection.

4           (b) FINANCING OF THE FUND, SETTLEMENT PAY-  
5           MENTS TO CLAIMANTS.—

6           (1) CREDIT REFORM PRINCIPLES.—The Fund  
7           is authorized to receive from defendants, as offset-  
8           ting receipts, any amounts related to settlements or  
9           judgments, including damages, interest, litigation  
10          costs, specific administrative costs that may be re-  
11          quired by the Administrator through rulemaking,  
12          and interest costs incurred by the Fund in connec-  
13          tion with payment of settlement offers made under  
14          section 103. Amounts received from defendants as  
15          interest shall be sufficient to pay interest costs due  
16          to the United States Treasury from the financing  
17          account, plus the subsidy costs of the program ac-  
18          count, provided that the latter amounts may not ex-  
19          ceed 3 percent of the amount of any settlement or  
20          award. Recoveries on a claim by the Fund in excess  
21          of the settlement amount paid to the claimant and  
22          other costs of the Fund which are not paid to the  
23          claimant under section 209 shall be available to the  
24          program account as a reduction to subsidy costs in  
25          the current or any subsequent year.

1           (2) **AUTHORITY.**—The program account shall  
2           have permanent indefinite authority, not subject to  
3           further appropriation, to transfer funds to the fi-  
4           nance account in accordance with principles of the  
5           Credit Reform Act.

6   **SEC. 403. AUTHORIZATION FOR APPROPRIATIONS AND OFF-**  
7                                   **SETTING COLLECTIONS.**

8           (a) **IN GENERAL.**—There are authorized to be appro-  
9           priated—

10           (1) to the OAC such sums as may be required  
11           to perform responsibilities under this Act;

12           (2) to the United States Court of Federal  
13           Claims, such sums as may be required to carry out  
14           its responsibilities under this Act; and

15           (3) to the OAC an amount not to exceed \$100  
16           million, for a one-time loan to the Fund in connec-  
17           tion with startup expenses, such loan to be repaid by  
18           the Fund with interest.

19           The total of appropriations provided under this subsection  
20           in the first year after the date of enactment not exceed  
21           \$250 million and in any subsequent year not exceed \$150  
22           million.

23           (b) **OFFSETTING COLLECTIONS OF ADMINISTRATIVE**  
24           **ASSESSMENTS.**—The OAC is authorized to receive and to  
25           expend in any year, as offsetting collections, all adminis-

1 trative assessments or prepaid administrative assessments  
2 and all costs and penalties paid to it.

### 3 **TITLE V—TRANSITION**

#### 4 **SEC. 501. APPLICABILITY; TRANSITIONAL CIVIL ACTIONS.**

5 (a) IN GENERAL.—This Act shall be effective upon  
6 its date of enactment with respect to any civil action as-  
7 serting an asbestos claim in which trial has not com-  
8 menced as of that date.

9 (b) PENDING CLAIM.—A claimant with a pending  
10 civil claim on the date of enactment shall not be required  
11 to obtain a certificate of medical eligibility or otherwise  
12 exhaust the procedures set forth in title I if trial com-  
13 mences within 6 months of the date of enactment of this  
14 Act. This 6-month period may be extended by the Attor-  
15 ney General for up to an additional 6 months if required  
16 for the orderly implementation of this Act, and after re-  
17 porting to the Congress the reasons for any such exten-  
18 sion.

19 (c) RIGHT TO SUE LETTER.—If a claimant with—

20 (1) a pending civil action on the date of enact-  
21 ment of this Act, and

22 (2) a scheduled trial date within one year after  
23 the date of enactment of this Act—

24 does not receive an initial decision on medical eligibility  
25 within the time period prescribed in section 102(c), the

1 claimant may request a right-to sue letter from the Ad-  
2 ministrator at any time prior to the issuance of that initial  
3 decision. If the Attorney General determines that the 6-  
4 month period in subsection (b) should be extended, the  
5 one-year period in the preceding sentence shall be similarly  
6 extended. The Administrator shall issue a right-to-sue let-  
7 ter or an initial decision under section 102 within 10 days  
8 following the receipt of the claimant's request. A claimant  
9 who receives a right-to-sue letter may assert the claimant's  
10 asbestos claim in any competent forum notwithstanding  
11 section 101(b).

12 (d) CLAIM IN ANOTHER FORUM.—Any claimant who  
13 asserts his claim in a forum other than the OAC under  
14 subsections (b) or (c) must demonstrate that the exposed  
15 person has qualified for medical eligibility under section  
16 301, 302, 303, 304, 305, or 306.

## 17 **TITLE VI—DEFINITIONS**

### 18 **SEC. 601. DEFINITIONS.**

19 In this Act:

20 (1) ASBESTOS CLAIM.—The term “asbestos  
21 claim” means any claim for damages or other relief,  
22 arising out of, based on, or related to the health ef-  
23 fects of exposure to asbestos, including any claim for  
24 personal injury, death, mental or emotional injury,  
25 risk of disease or other injury, or the costs of med-



1 ical monitoring or surveillance, and including any  
2 claim made by or on behalf of any exposed person  
3 or any representative, spouse, parent, child, or other  
4 relative of any exposed person. The term does not  
5 include any claim for workers' compensation bene-  
6 fits, or any claim by an employer or insurer for re-  
7 imbursement from a third-party for benefits paid  
8 under a workers' compensation plan, or any claim  
9 for benefits under a veterans' benefits program.

10 (2) ASBESTOS TRUST.—The term “asbestos  
11 trust” means a court-supervised trust established to  
12 resolve asbestos claims arising directly or indirectly  
13 from exposure to asbestos or asbestos-containing  
14 products, including a trust created pursuant to the  
15 bankruptcy laws of the United States or Rule 23 of  
16 the Federal Rules of Civil Procedure.

17 (3) CERTIFICATE OF MEDICAL ELIGIBILITY.—  
18 The term “certificate of medical eligibility” means a  
19 certificate issued to a claimant pursuant to this Act  
20 certifying that an exposed person meets the require-  
21 ments of one or more eligible medical categories or  
22 qualifies as an exceptional medical claim.

23 (4) CERTIFIED B-READER.—The term “cer-  
24 tified B-reader” means an individual qualified as a  
25 “final” or “B-reader” under 42 C.F.R. 37.51(b)

1 (1997) (and any subsequent revisions thereof) whose  
2 certification is current.

3 (5) CHEST X-RAYS.—The term “chest x-rays”  
4 means chest radiographs taken in at least 2 views  
5 (Posterior-Anterior and Lateral) and graded quality  
6 1 for reading according to the criteria established by  
7 the ILO. If the claimant is unable to provide quality  
8 1 chest x-rays because of death or because of an in-  
9 ability to have new chest x-rays taken, chest x-rays  
10 graded quality 2 will be acceptable.

11 (6) CIVIL ACTION.—The term “civil action”  
12 means any action, lawsuit, or proceeding in any  
13 State, Federal, or tribal court, but does not in-  
14 clude—

15 (A) a criminal action; or

16 (B) an action relating to State or Federal  
17 workers’ compensation laws, or a proceeding for  
18 benefits under any veterans’ benefits program.

19 (7) CLAIMANT.—The term “claimant” means  
20 any exposed person or the person’s legal representa-  
21 tive, and any relative of an exposed person or their  
22 legal representative, who asserts an asbestos claim.

23 (8) CLINICAL EVIDENCE OF ASBESTOSIS.—The  
24 term “clinical evidence of asbestosis” means a diag-

1 nosis of pulmonary asbestosis by a qualified physi-  
2 cian based on the minimum objective criteria of—

3 (A) chest x-rays for which a B-reader re-  
4 port is furnished showing small irregular opac-  
5 ities of ILO Grade 1/0 and pulmonary function  
6 testing and physical examination that show ei-  
7 ther—

8 (i) FVC  $< 80\%$  of predicted value  
9 with FEV1/FVC  $\geq 75\%$  (actual value); or

10 (ii) TLC  $< 80\%$  of predicted value,  
11 with either DLCO  $\leq 76\%$  of predicted value  
12 or bilateral basilar crackles, and also the  
13 absence of any probable explanation for  
14 this DLCO result or crackles finding other  
15 than the presence of asbestos lung disease;  
16 or

17 (B) chest x-rays for which a B-reader re-  
18 port is furnished showing small irregular opac-  
19 ities of ILO Grade 1/1 or greater and pul-  
20 monary function testing that shows either—

21 (i) FVC  $< 80\%$  of predicted value  
22 with FEV1/FVC  $\geq 72\%$  (actual value) or, if  
23 the individual tested is at least 68 years  
24 old at the time of the testing, with FEV1/  
25 FVC  $\geq 65\%$  (actual value); or

1 (ii) TLC <80% of predicted value.

2 (9) COMPENSATORY DAMAGES.—The term  
3 “compensatory damages” means damages awarded  
4 for economic loss, such as medical expenses, as well  
5 as non-economic loss. Non-economic loss includes  
6 subjective, non-pecuniary loss, such as pain, suf-  
7 fering, inconvenience, emotional distress, loss of soci-  
8 ety and companionship, and loss of consortium.

9 (10) CORE CLAIM.—The term “core claim”  
10 means an asbestos claim against a defendant who ei-  
11 ther—

12 (A) manufactured any asbestos-containing  
13 product which released asbestos fibers to which  
14 the exposed person was exposed, and paid out  
15 \$50 million in respect of such claims cumula-  
16 tively over the 10 year period preceding the fil-  
17 ing of the claim; or

18 (B) was not a manufacturer but paid out  
19 \$100 million in respect of such claims cumula-  
20 tively over the 10 year period preceding the fil-  
21 ing of the claim; provided that the alleged liabil-  
22 ity is not based upon the control or ownership  
23 of property.

24 (11) DEFENDANT.—The term “defendant”  
25 means any person who is or may be responsible for

1 the asbestos-related condition of the exposed person  
2 and who is so notified by the Administrator pursu-  
3 ant to title I. The term does not include—

4 (A) an asbestos trust in existence as of the  
5 date of enactment of this Act unless the trust  
6 elects to be covered by this Act under section  
7 701(b); or

8 (B) the United States Government or a  
9 State government.

10 (12) DLCO.—The term “DLCO” means single-  
11 breath diffusing capacity of the lung (carbon mon-  
12 oxide), which is a measure of the volume of carbon  
13 monoxide transferred from the alveoli to blood in the  
14 pulmonary capillaries for each unit of driving pres-  
15 sure of the carbon monoxide.

16 (13) EQUIVALENT-YEAR.—The term “equiva-  
17 lent-year” means a measure of exposure to asbestos  
18 adjusted to reflect varying exposure levels typical of  
19 different occupations. Each year of exposure in  
20 which an exposed person’s primary occupation in-  
21 volved the direct installation, repair, or removal of  
22 asbestos-containing products, shall count as one  
23 year. Each year of such occupational exposure in  
24 which the exposed person’s primary occupation in-  
25 volved either the direct manufacture of asbestos-con-

1 taining products using raw asbestos fiber or the di-  
2 rect installation, repair, or removal of asbestos-con-  
3 taining products in a shipyard during World War II,  
4 shall count as 2 years. Each year of exposure in oc-  
5 cupations not described above shall count as one-half  
6 year.

7 (14) EVIDENCE OF BILATERAL PLEURAL  
8 THICKENING WITH IMPAIRMENT.—The term “evi-  
9 dence of bilateral pleural thickening with impair-  
10 ment” means a diagnosis of bilateral pleural thick-  
11 ening by a qualified physician based on the min-  
12 imum objective criteria of either—

13 (A) chest x-rays for which a B-reader re-  
14 port is furnished showing bilateral pleural  
15 thickening of ILO Grade B/2 with pulmonary  
16 function testing and physical examination that  
17 show either—

18 (i) FVC <80% of predicted value  
19 with FEV1/FVC  $\geq$  75% (actual value) or

20 (ii) TLC <80% of predicted value,  
21 with either DLCO  $\leq$  76% of predicted value  
22 or bilateral basilar crackles, and also the  
23 absence of any probable explanation for  
24 this DLCO result or crackles finding other

1 than the presence of asbestos lung disease;

2 or

3 (B) chest x-rays for which a B-reader re-  
4 port is furnished showing bilateral pleural  
5 thickening of ILO Grade C/2 or greater; and  
6 pulmonary function testing that shows either—

7 (i) FVC <80% of predicted value  
8 with FEV1/FVC ≥ 72% (actual value) or, if  
9 the individual tested is at least 68 years  
10 old at the time of the testing, with FEV1/  
11 FVC ≥ 65% (actual value); or

12 (ii) TLC <80% of predicted value.

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

18 (16) FEV1.—The term “FEV1” means forced  
19 expiratory volume (1 second), which is the maximal  
20 volume of air expelled in one second during perform-  
21 ance of the spirometric test for forced vital capacity  
22 (FVC).

23 (17) FUND.—The term “Fund” means the As-  
24 bestos Compensation Fund.

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

5           (19) ILO.—The term “ILO” means the Inter-  
6 national Labour Organization.

7           (20) ILO GRADE.—The term “ILO grade”  
8 means the radiological ratings for the presence of  
9 lung or pleural changes by chest x-ray as established  
10 from time to time by the ILO.

11          (21) LATENCY PERIOD.—The term “latency pe-  
12 riod” means the period from the date of the exposed  
13 person’s first exposure to asbestos or an asbestos-  
14 containing product to the date of manifestation of  
15 the condition claimed.

16          (22) LUNG CANCER.—The term “lung cancer”  
17 means a primary malignant bronchogenic tumor, of  
18 any cell type, caused or contributed to by exposure  
19 to asbestos.

20          (23) MANIFESTATION.—The term “manifesta-  
21 tion” means either the date of the actual diagnosis  
22 of the condition claimed, or the date upon which the  
23 clinical records and available tests indicate that the  
24 condition could reasonably have been diagnosed by  
25 a qualified physician.



1           (24) NET LITIGATION RISK.—The term “net  
2 litigation risk” means the risk to the Asbestos Com-  
3 pensation Fund that amounts paid out to claimants,  
4 plus associated interest and litigation expenses, will  
5 exceed amounts recovered from defendants, ex-  
6 pressed as a percentage of sums expended, and esti-  
7 mated for a specific cohort of transactions. Losses  
8 on particular claims are netted against excess recov-  
9 eries on other claims.

10           (25) OAC.—The term “OAC” means the Office  
11 of Asbestos Compensation.

12           (26) OCCUPATIONAL HISTORY.—The term “oc-  
13 cupational history” means a listing of all employ-  
14 ment positions, providing for the dates and location  
15 of employment, the employer, and a description of  
16 job responsibilities and activities.

17           (27) PARTY.—The term “party” does not in-  
18 clude the United States Government or a State gov-  
19 ernment.

20           (28) PATHOLOGICAL EVIDENCE OF ASBES-  
21 TOSIS.—The term “pathological evidence of asbes-  
22 tosis” means diagnosis of pulmonary asbestosis by a  
23 qualified physician based on a finding that more  
24 than one representative section of lung tissue other-  
25 wise uninvolved with any other process (e.g., cancer

1 or emphysema) demonstrates a pattern of  
2 peribronchiolar or parenchymal scarring in the pres-  
3 ence of characteristic asbestos bodies, and also that  
4 there is no other more likely explanation for the  
5 presence of the fibrosis.

6 (29) PERSON.—The term “person” means an  
7 individual, trust, firm, corporation, association, part-  
8 nership, or joint venture. The term does not in-  
9 clude—

10 (A) an asbestos trust in existence as of the  
11 date of enactment of this Act unless the trust  
12 elects to be covered by this Act under section  
13 701(b); or

14 (B) the United States Government or any  
15 State government.

16 (30) PHYSICIAN.—The term “physician” means  
17 a medical doctor or doctor of osteopathy currently li-  
18 censed to practice medicine in any State who has  
19 not, within the 5-year period prior to the date of en-  
20 actment of this Act, spent more than one half of the  
21 doctor’s professional time, or derived more than one-  
22 half of the doctor’s professional income, either annu-  
23 ally or in total, either reviewing or testifying in any  
24 forum on medical-legal issues related to asbestos.

1           (31) PREDICTED VALUE.—The term “predicted  
2 value” means a published reference to the normal  
3 breathing capacity of healthy populations based on  
4 age, height, and gender, as approved by the Medical  
5 Director, pursuant to a rule, issued within 120 days  
6 of the date of enactment. For the purposes of this  
7 Act, the use of any published, predicted values that  
8 are generally accepted in the medical community  
9 shall be acceptable and such values may not be ad-  
10 justed for race.

11           (32) PULMONARY FUNCTION TESTING.—The  
12 term “pulmonary function testing” means tests for  
13 forced vital capacity, lung volume, and diffusing  
14 studies using equipment, tests and standards gen-  
15 erally accepted in the medical community, as ap-  
16 proved by the Medical Director, pursuant to a rule,  
17 issued within 120 days of enactment of this Act.  
18 Such pulmonary function test shall not be adjusted  
19 for race.

20           (33) PUNITIVE DAMAGES.—The term “punitive  
21 damages” means damages, in addition to compen-  
22 satory damages, awarded against any person to pun-  
23 ish past conduct or deter that person, or others,  
24 from engaging in similar conduct in the future.

1           (34) QUALIFIED PHYSICIAN.—The term “quali-  
2           fied physician” means, with respect to a diagnosis or  
3           other medical judgment or procedure under this Act,  
4           an internist, pulmonary specialist, pathologist, radi-  
5           ologist, oncologist, or specialist in occupational medi-  
6           cine with an appropriate subspecialty, as appro-  
7           priate, who is certified by the relevant medical spe-  
8           cialty board.

9           (35) QUALIFYING NATIONAL SETTLEMENT  
10          PLAN.—The term “Qualifying National Settlement  
11          Plan” means a written agreement or related series  
12          of written agreements with claimants or with attor-  
13          neys or law firms representing claimants, pursuant  
14          to which a person who is or may be responsible for  
15          such claims has resolved or agreed to resolve at least  
16          50 percent of the asbestos claims that were pending  
17          against such person.

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

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

4           (38) TRUSTEE.—The term “Trustee” means  
5 the Trustee of the Asbestos Compensation Fund.

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

11          (40) WORKERS’ COMPENSATION LAW.—The  
12 term “workers’ compensation law” means a law re-  
13 specting a program administered by a State or the  
14 United States to provide benefits, funded by a re-  
15 sponsible employer or its insurance carrier, for occu-  
16 pational diseases or injuries or for disability or death  
17 caused by occupational diseases or injuries. The  
18 term includes the Longshore and Harbor Workers’  
19 Compensation Act (33 U.S.C. 901-944, 948-950),  
20 but does not include the Employer’s Liability Act,  
21 (45 U.S.C. chapter 2).

1           **TITLE VII—MISCELLANEOUS**  
2                           **PROVISIONS**

3   **SEC. 701. RELATIONSHIP TO OTHER LAWS.**

4           (a) **APPLICABILITY OF OTHER FEDERAL LAWS.—**

5   The OAC may, with the approval of the Director of the  
6   Office of Management and Budget, waive the applicability  
7   in whole or in part of personnel and procurement laws and  
8   regulations, provided that any such waiver must be spe-  
9   cific, must be subject to periodic review and evaluation,  
10   and must be reasonably related to the goals of expeditious,  
11   professional, efficient, cost-effective and fair resolution of  
12   asbestos claims.

13           (b) **APPLICATION TO EXISTING ASBESTOS**  
14   **TRUSTS.—**

15           (1) **IN GENERAL.—**This Act shall not apply to  
16   any asbestos trust in existence as of the date of en-  
17   actment of this Act, except as provided in paragraph  
18   (2).

19           (2) **ELECTION.—**An asbestos trust may elect to  
20   be subject to this Act by providing written notice of  
21   such election to the OAC, in which case the trust  
22   will have the same rights and responsibilities under  
23   this Act as any person who is not a trust. A valid  
24   election under this paragraph shall be irrevocable.

1 (c) SETTLEMENTS PRESERVED.—Nothing in this  
2 Act—

3 (1) invalidates any settlement of asbestos  
4 claims entered into prior to the date of enactment  
5 of this Act; or

6 (2) revokes or negates any asbestos defendant's  
7 standing offer to settle existing asbestos claims.

8 (d) OTHER COMPENSATION.—This Act shall not be  
9 construed to affect the scope or operation of any workers'  
10 compensation law or veterans' disability benefit program,  
11 to affect the exclusive remedy provisions of any such law,  
12 or to authorize any lawsuit which is barred by any such  
13 provision of law.

14 (e) SUCCESSOR LIABILITY.—Nothing in this Act is  
15 intended to displace otherwise applicable law governing  
16 any liability arising from the defendants' status as trans-  
17 feree or successor with respect to a change in ownership  
18 of corporate assets.

19 **SEC. 702. ANNUAL REPORTS.**

20 The Administrator shall submit an annual report to  
21 the President and Congress.

22 **SEC. 703. ENFORCEMENT.**

23 The Administrator may enforce any obligation im-  
24 posed on any person by this Act in a district court of the  
25 United States, and such courts shall have exclusive juris-

1 diction over such actions without regard to the amount  
2 in controversy or citizenship of the parties. The Adminis-  
3 trator, if successful, shall be entitled to costs, including  
4 attorney's fees.

5 **SEC. 704. QUALIFYING NATIONAL SETTLEMENT PLAN.**

6 Any defendant which is party to a Qualifying Na-  
7 tional Settlement Plan may elect to defer the application  
8 of this Act (other than sections 201 through 207 and sec-  
9 tion 501) to asbestos claims against that defendant for  
10 a period not exceeding 7 years from a date relative to the  
11 commencement of the Qualified National Settlement Plan.  
12 The Administrator shall, by rule, adopt procedures for  
13 processing requests for deferral under this section. If the  
14 request for deferral is accepted, the deferred defendant  
15 and any asbestos claims or third party asbestos claims  
16 against the deferred defendant shall not be subject to the  
17 provisions of this Act (other than sections 201 through  
18 207 and section 501).

19 **SEC. 705. SEVERABILITY.**

20 If any provision of this Act or the application of such  
21 provision to any person or circumstance is held invalid,  
22 it is the intent of Congress that the remainder of this Act  
23 and application of such provision to other persons or cir-  
24 cumstances shall not be affected thereby.



1 **SEC. 706. SETTLEMENTS.**

2 For a period of 7 years after the date of enactment  
3 of this Act, a claimant or a defendant may specifically en-  
4 force, in any applicable Federal or State court where the  
5 claimant is alleging that the claimant was exposed to as-  
6bestos or where the claimant is currently domiciled, any  
7 written settlement agreement which was agreed to by the  
8 claimant or the claimant's attorney and the defendant be-  
9 fore such date of enactment.

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