

115TH CONGRESS  
2D SESSION

# S. 2564

To amend title 11, United States Code, to promote the investigation of fraudulent claims against certain trusts, to amend title 18, United States Code, to provide penalties against fraudulent claims against certain trusts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 15, 2018

Mr. TILLIS (for himself, Mr. CORNYN, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 11, United States Code, to promote the investigation of fraudulent claims against certain trusts, to amend title 18, United States Code, to provide penalties against fraudulent claims against certain trusts, 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.**

4 This Act may be cited as the “Providing Responsible  
5 Oversight of Trusts to Ensure Compensation and Trans-  
6 parency for Asbestos Victims Act of 2018” or the “PRO-  
7 TECT Asbestos Victims Act of 2018”.

1 **SEC. 2. REDUCTION OF FRAUDULENT CLAIMS AND DE-**  
2 **MANDS RELATING TO CERTAIN TRUSTS.**

3 (a) IN GENERAL.—Section 524(g) of title 11, United  
4 States Code, is amended—

5 (1) in paragraph (4)(B)(i), by striking “the  
6 court appoints a legal representative” and inserting  
7 “the United States trustee or bankruptcy adminis-  
8 trator appoints, under paragraph (10), a future  
9 claims representative”; and

10 (2) by adding at the end the following:

11 “(8) INVESTIGATION OF FRAUDULENT CLAIMS  
12 AND DEMANDS.—

13 “(A) IN GENERAL.—Notwithstanding sec-  
14 tion 302(d)(3) of the Bankruptcy Judges,  
15 United States Trustees, and Family Farmer  
16 Bankruptcy Act of 1986 (28 U.S.C. 581 note),  
17 rule 9035 of the Federal Rules of Bankruptcy  
18 Procedure, or any other provision of law, in any  
19 judicial district of the United States, the United  
20 States trustee may investigate the administra-  
21 tion and operation of a trust described in para-  
22 graph (2)(B)(i), including a trust described in  
23 paragraph (2)(B)(i) that was created before the  
24 date of enactment of the PROTECT Asbestos  
25 Victims Act of 2018.

1           “(B) AUTHORITY OF THE UNITED STATES  
2 TRUSTEE.—In conducting an investigation  
3 under subparagraph (A), the United States  
4 trustee shall have the authority—

5           “(i) to conduct discovery, including by  
6 any means of discovery available to a  
7 trustee in an action under chapter 5 of  
8 title 11, relating to the trust, a claimant of  
9 the trust, or a claim against the trust, in-  
10 cluding a claim filed by a claimant against  
11 the trust in a bankruptcy court or other  
12 forum, notwithstanding the effect of any  
13 order purporting to limit the access of the  
14 United States trustee to any information  
15 relating to that discovery;

16           “(ii) to conduct an audit or contract  
17 for an audit of any claim or demand paid,  
18 or to be paid, in whole or in part by the  
19 trust;

20           “(iii) if the United States trustee has  
21 reasonable grounds to believe that a false  
22 claim or demand to be paid in whole or in  
23 part by a trust was made, to refer the  
24 matter to the United States attorney for  
25 the relevant judicial district, and, on the

1 request of the United States attorney, as-  
2 sist the United States attorney in carrying  
3 out a prosecution based on that false claim  
4 or demand; and

5 “(iv) to request that the court exercise  
6 any authority and impose remedies avail-  
7 able to it, including those—

8 “(I) under the terms of the plan  
9 of reorganization to prevent abuse or  
10 mismanagement of the trust; and

11 “(II) under section 105.

12 “(C) STANDING.—In carrying out this  
13 paragraph, the United States trustee shall have  
14 standing to raise, to appear, and to be heard on  
15 any matter for which the court has jurisdiction  
16 or for which the court has reserved jurisdiction  
17 under the terms of the plan of reorganization.

18 “(9) ACCESSING TRUST INFORMATION.—

19 “(A) IN GENERAL.—Subject to section 107  
20 and any appropriate protective order, a trust  
21 described in paragraph (2)(B)(i) shall, on writ-  
22 ten request, provide, in a timely manner, any  
23 information relating to any payment from, and  
24 any demand for payment from, the trust to a

1 party to an action at law or equity if the action  
2 relates to liability for asbestos exposure.

3 “(B) COSTS.—A trust described in para-  
4 graph (2)(B)(i) may require, from the person  
5 making a request under subparagraph (A), pay-  
6 ment of any reasonable cost incurred to comply  
7 with the requirements under subparagraph (A).

8 “(10) APPOINTMENT OF FUTURE CLAIMS REP-  
9 REPRESENTATIVES.—

10 “(A) IN GENERAL.—On notification by a  
11 plan proponent of the intention of the plan pro-  
12 ponent to seek an injunction under this sub-  
13 section, the United States trustee or bank-  
14 ruptcy administrator, after consultation with  
15 parties in interest, shall appoint, subject to the  
16 approval of the court, a disinterested individual  
17 to serve as the future claims representative.

18 “(B) SUPPORT.—

19 “(i) IN GENERAL.—The future claims  
20 representative, subject to the approval of  
21 the court, may employ 1 or more attor-  
22 neys, accountants, or other professional  
23 persons to represent the future claims rep-  
24 resentative or assist the future claims rep-  
25 resentative in carrying out the duties of

1 the future claims representative under this  
2 subsection.

3 “(ii) QUALIFICATIONS.—An attorney,  
4 accountant, or other professional person  
5 employed under clause (i) to represent or  
6 assist the future claims representative—

7 “(I) shall be a disinterested per-  
8 son; and

9 “(II) may not represent any  
10 other entity having an adverse interest  
11 in connection with the case.

12 “(11) POWER OF THE COURT.—Notwith-  
13 standing any other provision of law, including para-  
14 graph (1)(B), sections 1127, 1141, and 1144 of this  
15 title, and section 157 of title 28, the court may issue  
16 any order, process, or judgment that is necessary  
17 and appropriate—

18 “(A) to carry out the provisions of para-  
19 graphs (8) and (9); or

20 “(B) to enforce or implement a court order  
21 or prevent an abuse of process relating to a  
22 trust described in paragraph (2)(B)(i).

23 “(12) BENEFITS UNDER MEDICARE.—

24 “(A) POTENTIAL ELIGIBLE CLAIMANTS.—  
25 Not later than 60 days after a claim is sub-

1           mitted to a trust described in paragraph  
2           (2)(B)(i), the administrator of the trust shall  
3           determine whether the claimant is entitled to  
4           benefits under the Medicare program under  
5           title XVIII of the Social Security Act (42  
6           U.S.C. 1395 et seq.).

7           “(B) REQUIRED INFORMATION.—If a  
8           claimant is determined to be entitled to benefits  
9           under subparagraph (A), the administrator of  
10          the trust shall submit to the Secretary of  
11          Health and Human Services, in the form and  
12          manner (including frequency) specified by the  
13          Secretary of Health and Human Services, the  
14          information described in section 1862(b)(8)(B)  
15          of Social Security Act (42 U.S.C.  
16          1395y(b)(8)(B)).”.

17          (b) COMPENSATION.—Section 330(a)(1) of title 11,  
18          United States Code, is amended—

19                 (1) by inserting “a future claims representative  
20                 appointed under section 524(g)(10)(A),” after “sec-  
21                 tion 333,”; and

22                 (2) by inserting “, 524(g)(10)(B),” after “sec-  
23                 tion 327”.

1           (c) REOPENING CASES.—Section 350 of title 11,  
2 United States Code, is amended by adding at the end the  
3 following:

4           “(c) INVESTIGATIONS BY UNITED STATES TRUST-  
5 EE.—On the request of the United States trustee, a case  
6 shall be reopened in the court in which that case was  
7 closed in order to enable the United States trustee to con-  
8 duct an investigation under section 524(g)(8).”.

9 **SEC. 3. CRIMINAL PENALTIES.**

10          Section 152 of title 18, United States Code, is  
11 amended—

12           (1) in paragraph (8), by striking “or” after the  
13 semicolon;

14           (2) by striking the comma at the end of para-  
15 graph (9) and inserting a semicolon; and

16           (3) by inserting after paragraph (9) the fol-  
17 lowing:

18           “(10) knowingly and fraudulently makes a false  
19 representation to a trust described in section  
20 524(g)(2)(B)(i) of title 11, or any official of a trust  
21 described in that section, in relation to an investiga-  
22 tion conducted under section 524(g)(8)(A) of that  
23 title; or

24           “(11) knowingly and fraudulently makes a false  
25 claim or demand to be paid in whole or in part by

1 a trust described in section 524(g)(2)(B)(i) of title  
2 11.”.

3 **SEC. 4. AUTHORITY OF UNITED STATES TRUSTEE.**

4 Section 586 of title 28, United States Code, is  
5 amended by adding at the end the following:

6 “(g) INVESTIGATION OF FRAUDULENT CLAIMS AND  
7 DEMANDS.—

8 “(1) IN GENERAL.—The United States trustee  
9 may investigate the administration and operation of  
10 a trust, including a trust that was created before the  
11 date of enactment of the PROTECT Asbestos Vic-  
12 tims Act of 2018—

13 “(A) described in section 524(g)(2)(B)(i)  
14 of title 11; or

15 “(B) established under section 105(a) of  
16 title 11 for the purpose of assuming the asbes-  
17 tos-related liabilities of a debtor.

18 “(2) AUTHORITY OF THE UNITED STATES  
19 TRUSTEE.—In conducting an investigation under  
20 subparagraph (A), the United States trustee shall  
21 have the authority—

22 “(A) to conduct discovery, including by  
23 any means of discovery available to a trustee in  
24 an action under chapter 5 of title 11, relating  
25 to the trust, a claimant of the trust, or a claim

1 against the trust, including a claim filed by a  
2 claimant against the trust in a bankruptcy  
3 court or other forum, notwithstanding the effect  
4 of any order purporting to limit the access of  
5 the United States trustee to any information re-  
6 lating to that discovery;

7 “(B) to conduct an audit or contract for  
8 an audit of any claim or demand paid, or to be  
9 paid, in whole or in part by the trust;

10 “(C) if the United States trustee has rea-  
11 sonable grounds to believe that a false claim or  
12 demand to be paid in whole or in part by a  
13 trust was made, to refer the matter to the  
14 United States attorney for the relevant judicial  
15 district, and, on the request of the United  
16 States attorney, assist the United States attor-  
17 ney in carrying out a prosecution based on that  
18 false claim or demand; and

19 “(D) to request that the court exercise any  
20 authority and impose remedies available to it,  
21 including those—

22 “(i) under the terms of the plan of re-  
23 organization to prevent abuse or mis-  
24 management of the trust; and

25 “(ii) under section 105.

1           “(3) STANDING.—In carrying out this sub-  
2           section, the United States trustee shall have stand-  
3           ing to raise, to appear, and to be heard on any mat-  
4           ter for which the court has jurisdiction or for which  
5           the court has reserved jurisdiction under the terms  
6           of the plan of reorganization.

7           “(4) JUDICIAL DISTRICTS ESTABLISHED FOR  
8           ALABAMA AND NORTH CAROLINA.—Notwithstanding  
9           section 302(d)(3) of the Bankruptcy Judges, United  
10          States Trustees, and Family Farmer Bankruptcy  
11          Act of 1986 (28 U.S.C. 581 note), rule 9035 of the  
12          Federal Rules of Bankruptcy Procedure, or any  
13          other provision of law, the United States trustee for  
14          the appropriate region described in section 581(a)  
15          shall have the authority to carry out this subsection  
16          with respect to a trust described in paragraph (1) in  
17          a case that is filed in a judicial district established  
18          for the State of Alabama or North Carolina.”.

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