

108TH CONGRESS
1ST SESSION

H. R. 1586

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer impairment, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

Mr. CANNON introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos exposure, to ensure that individuals who suffer impairment, now or in the future, from illnesses caused by exposure to asbestos receive compensation for their injuries, 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 Fairness Act of 2003”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2 Findings and purposes.
- Sec. 3. Physical impairment.
- Sec. 4. Procedures; removal.
- Sec. 5. Statute of limitations; two-disease rule.
- Sec. 6. Scope of liability; damages.
- Sec. 7. Liability rules applicable to product sellers, renters, and lessors.
- Sec. 8. Definitions.
- Sec. 9. Miscellaneous provisions.
- Sec. 10. Effective date.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds that—

3 (1) asbestos is a mineral that was widely used
 4 prior to the 1980s for insulation, fire-proofing, and
 5 other purposes;

6 (2) millions of American workers and others
 7 were exposed to asbestos, especially during and after
 8 World War II and prior to the advent of regulation
 9 by the Occupational Safety and Health Administra-
 10 tion in the early 1970s;

11 (3) long-term exposure to asbestos has been as-
 12 sociated with various types of cancer, including
 13 mesothelioma and lung cancer, as well as such non-
 14 malignant conditions as asbestosis, pleural plaques,
 15 and diffuse pleural thickening;

16 (4) the diseases caused by asbestos often have
 17 long latency periods;

18 (5) although the use of asbestos has dramati-
 19 cally declined since 1980 and workplace exposures
 20 have been regulated since 1971 by the Occupational

1 Safety & Health Administration, past exposures will
2 continue to result in significant claims of death and
3 disability as a result of such exposure;

4 (6) exposure to asbestos has created a flood of
5 litigation in state and Federal courts that the
6 United States Supreme Court has characterized as
7 “an elephantine mass” of cases that “defies cus-
8 tomary judicial administration and calls for national
9 legislation,” *Ortiz v. Fibreboard Corporation*, 119 S.
10 Ct. 2295, 2302 (1999);

11 (7) asbestos personal injury litigation can be
12 unfair and inefficient, imposing a severe burden on
13 litigants and taxpayers alike;

14 (8) the extraordinary volume of nonmalignant
15 asbestos cases continues to strain state and Federal
16 courts, with over 200,000 cases currently pending
17 and over 50,000 new cases filed each year;

18 (9) asbestos personal injury litigation has al-
19 ready contributed to the bankruptcy of more than
20 60 companies, including nearly all manufacturers of
21 asbestos textile and insulation products, and the rate
22 of asbestos-driven bankruptcies is accelerating;

23 (10) the vast majority of asbestos claims are
24 filed by individuals who allege they have been ex-
25 posed to asbestos and who may have some physical

1 sign of exposure, but who suffer no present asbestos-
2 related impairment;

3 (11) the cost of compensating exposed individ-
4 uals who are not sick jeopardizes the ability of de-
5 fendants to compensate people with cancer and other
6 serious asbestos-related diseases, now and in the fu-
7 ture; threatens the savings, retirement benefits, and
8 jobs of defendants' current and retired employees;
9 adversely affects the communities in which these de-
10 fendants operate; and impairs the national economy
11 and interstate commerce;

12 (12) the several thousand asbestos-related can-
13 cer cases that are filed each year are manageable by
14 the courts and the litigants;

15 (13) concerns about statutes of limitations can
16 force claimants who have been exposed to asbestos
17 but who have no current injury to bring premature
18 lawsuits in order to protect against losing their
19 rights to future compensation should they become
20 impaired;

21 (14) consolidations, joinder, and similar proce-
22 dures, to which some courts have resorted in order
23 to deal with the mass of asbestos cases, can under-
24 mine the appropriate functioning of the judicial
25 process and encourage the filing of thousands of

1 cases by exposed individuals who are not yet sick
2 and who may never become sick;

3 (15) similarly, the availability of sympathetic
4 forums in states with no connection to the plaintiff
5 or to the exposures that form the basis of the law-
6 suit has encouraged the filing of thousands of cases
7 on behalf of exposed individuals who are not yet sick
8 and may never become sick;

9 (16) excessive, unpredictable, and often arbi-
10 trary damage awards and unfair allocations of liabil-
11 ity jeopardize the financial well-being of many indi-
12 viduals, businesses, and entire industries, particu-
13 larly the nation's small businesses;

14 (17) punitive damage awards unfairly divert the
15 resources of defendants from compensating genu-
16 inely impaired claimants and, given the lengthy his-
17 tory of asbestos litigation and the regulatory restric-
18 tions on the use of asbestos-containing products in
19 the workplace, the legal justification for such
20 awards—punishment and deterrence—is either inap-
21 plicable or inappropriate; and

22 (18) the public interest and the interest of
23 interstate commerce requires deferring the claims of
24 exposed individuals who are not sick in order to pre-
25 serve, now and for the future, defendants' ability to

1 compensate people who develop cancer and other se-
2 rious asbestos-related injuries and to safeguard the
3 jobs, benefits and savings of American workers and
4 the well-being of the national economy.

5 (b) PURPOSES.—It is the purpose of this Act to—

6 (1) give priority to those asbestos claimants
7 who can demonstrate actual physical harm or illness
8 caused by exposure to asbestos;

9 (2) fully preserve the rights of claimants who
10 were exposed to asbestos to pursue compensation
11 should they become impaired in the future as a re-
12 sult of such exposure;

13 (3) enhance the ability of the State and Federal
14 judicial systems to supervise and control asbestos
15 litigation and asbestos-related bankruptcy pro-
16 ceedings; and

17 (4) conserve the scarce resources of the defend-
18 ants, and marshal assets in bankruptcy, to allow
19 compensation of cancer victims and others who are
20 physically impaired by exposure to asbestos while se-
21 curing the right to similar compensation for those
22 who may suffer physical impairment in the future.

23 **SEC. 3. PHYSICAL IMPAIRMENT.**

24 (a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

25 Physical impairment of the exposed person, to which as-

1 bestos exposure was a substantial contributing factor,
2 shall be an essential element of an asbestos claim.

3 (b) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIR-
4 MENT FOR NONMALIGNANT ASBESTOS CLAIMS.—No per-
5 son shall bring or maintain a civil action alleging a non-
6 malignant asbestos claim in the absence of a prima facie
7 showing of physical impairment as a result of a medical
8 condition to which exposure to asbestos was a substantial
9 contributing factor. Such a prima facie showing shall in-
10 clude all of the following minimum requirements:

11 (1) Evidence verifying that a qualified physician
12 has taken a detailed occupational and exposure his-
13 tory of the exposed person or, if such person is de-
14 ceased, from the person who is the most knowledge-
15 able about the exposures that form the basis of the
16 nonmalignant asbestos claim, including—

17 (A) all of the exposed person's principal
18 places of employment and exposures to airborne
19 contaminants; and

20 (B) whether each place of employment in-
21 volved exposures to airborne contaminants (in-
22 cluding but not limited to asbestos fibers or
23 other disease causing dusts) that can cause pul-
24 monary impairment and the nature, duration
25 and level of any such exposure.

1 (2) Evidence verifying that a qualified physician
2 has taken detailed medical and smoking history, in-
3 cluding a thorough review of the exposed person's
4 past and present medical problems, and their most
5 probable cause.

6 (3) A determination by a qualified physician, on
7 the basis of a medical examination and pulmonary
8 function testing, that the exposed person has a per-
9 manent respiratory impairment rating of at least
10 Class 2 as defined by and evaluated pursuant to the
11 AMA Guides to the Evaluation of Permanent Im-
12 pairment.

13 (4) A diagnosis by a qualified physician of as-
14 bestosis or diffuse pleural thickening, based at a
15 minimum on radiological or pathological evidence of
16 asbestosis or radiological evidence of diffuse pleural
17 thickening.

18 (5) A determination by a qualified physician
19 that asbestosis or diffuse pleural thickening (rather
20 than solely chronic obstructive pulmonary disease) is
21 a substantial contributing factor to the exposed per-
22 son's physical impairment, based at a minimum on
23 a determination that the exposed person has—

1 (A) total lung capacity, by plethysmog-
2 raphy or timed gas dilution, below the predicted
3 lower limit of normal;

4 (B) forced vital capacity below the lower
5 limit of normal and a ratio of FEV1 to FVC
6 that is equal to or greater than the predicted
7 lower limit of normal; or

8 (C) a chest x-ray showing small, irregular
9 opacities (s,t) graded by a certified B-reader at
10 least 2/1 on the ILO scale.

11 (c) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED
12 LUNG CANCER.—No person shall bring or maintain a civil
13 action alleging an asbestos claim which is based upon lung
14 cancer, in the absence of a prima facie showing which shall
15 include the following minimum requirements:

16 (1) Diagnosis by a Board-certified pathologist,
17 pulmonary specialist, or oncologist of a primary lung
18 cancer and that exposure to asbestos was a substan-
19 tial contributing factor to the condition.

20 (2) Evidence sufficient to demonstrate that at
21 least 10 years have elapsed between the date of first
22 exposure to asbestos and the date of diagnosis of the
23 lung cancer.

1 (3) Depending on whether the exposed person
2 has a history of smoking, the requirements of either
3 (A) or (B) below—

4 (A) in the case of an exposed person who
5 is a nonsmoker, either—

6 (i) radiological or pathological evi-
7 dence of asbestosis or radiological evidence
8 of diffuse pleural thickening; or

9 (ii) evidence of occupational exposure
10 to asbestos for the following minimum ex-
11 posure periods in the specified occupations:

12 (I) 5 exposure years for in-
13 sulators, shipyard workers, workers in
14 manufacturing plants handling raw
15 asbestos, boilermakers, shipfitters,
16 steamfitters, or other trades per-
17 forming similar functions;

18 (II) 10 exposure years for utility
19 and power house workers, secondary
20 manufacturing workers, or other
21 trades performing similar functions;
22 or

23 (III) 15 exposure years for gen-
24 eral construction, maintenance work-
25 ers, chemical and refinery workers,

1 marine engine room personnel and
2 other personnel on vessels, stationary
3 engineers and firemen, railroad engine
4 repair workers, or other trades per-
5 form in similar functions;

6 (B) in the case of an exposed person who
7 is a smoker, the criteria contained in both
8 (A)(i) and (A)(ii) must be met.

9 (d) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED
10 OTHER CANCER.—No person shall bring or maintain a
11 civil action alleging an asbestos claim which is based upon
12 cancer of the colon, rectum, larynx, pharynx, esophagus,
13 or stomach, in the absence of a prima facie showing which
14 shall include the following minimum requirements:

15 (1) A diagnosis by a Board-certified patholo-
16 gist, Board-certified pulmonary specialist, or Board-
17 certified oncologist (as appropriate for the type of
18 cancer claimed) of primary cancer of the colon, rec-
19 tum, larynx, pharynx, esophagus, or stomach, and
20 that exposure to asbestos was a substantial contrib-
21 uting factor to the condition.

22 (2) Evidence sufficient to demonstrate that at
23 least 10 years have elapsed between the date of first
24 exposure to asbestos and the date of diagnosis of the
25 cancer.

1 (3) The requirements of either (A) or (B)
2 below—

3 (A) radiological or pathological evidence of
4 asbestosis or radiological evidence of diffuse
5 pleural thickening;

6 (B) evidence of occupational exposure to
7 asbestos for the following minimum exposure
8 periods in the specified occupations:

9 (i) 5 exposure years for insulators,
10 shipyard workers, workers in manufac-
11 turing plants handling raw asbestos, boiler-
12 makers, shipfitters, steamfitters, or other
13 trades performing similar functions;

14 (ii) 10 exposure years for utility and
15 power house workers, secondary manufac-
16 turing workers, or other trades performing
17 similar functions; or

18 (iii) 15 exposure years for general
19 construction, maintenance workers, chem-
20 ical and refinery workers, marine engine
21 room personnel and other personnel on
22 vessels, stationary engineers and firemen,
23 railroad engine repair workers, or other
24 trades performing similar functions.

1 (e) NO PRIMA FACIE REQUIREMENT FOR MESOTHE-
 2 LIOMA.—In a civil action alleging an asbestos claim based
 3 upon mesothelioma, no prima facie showing is required.

4 (f) COMPLIANCE WITH TECHNICAL STANDARDS.—
 5 Evidence relating to physical impairment under this sec-
 6 tion, including pulmonary function testing and diffusing
 7 studies, shall comply with the technical recommendations
 8 for examinations, testing procedures, quality assurance/
 9 quality control, and equipment of the AMA Guides to the
 10 Evaluation of Permanent Impairment or, where the AMA
 11 Guides are silent, other authoritative standards. No ad-
 12 justments with respect to pulmonary function testing shall
 13 be made on the basis of race.

14 (g) NO PRESUMPTION AT TRIAL.—Presentation of
 15 prima facie evidence meeting the requirements of sub-
 16 section (b), (c), or (d) of this section shall not—

17 (1) result in any presumption at trial that the
 18 exposed person is impaired by an asbestos-related
 19 condition;

20 (2) be conclusive as to the liability of any de-
 21 fendant; and

22 (3) be admissible at trial.

23 **SEC. 4. PROCEDURES; REMOVAL.**

24 (a) CONSOLIDATION.—A court may consolidate for
 25 trial any number and type of asbestos claims with consent

1 of all the parties. In the absence of such consent, the court
2 may consolidate for trial only asbestos claims relating to
3 the same exposed person and members of his or her house-
4 hold.

5 (b) VENUE.—A civil action alleging an asbestos claim
6 may only be brought in the State of plaintiff's domicile
7 or a State in which there occurred exposure to asbestos
8 that is a substantial contributing factor to the physical
9 impairment on which the claim is based.

10 (c) PRELIMINARY PROCEEDINGS.—The plaintiff in
11 any civil action alleging an asbestos claim shall file to-
12 gether with the complaint or other initial pleading a writ-
13 ten report and supporting test results constituting prima
14 facie evidence of the exposed person's asbestos-related im-
15 pairment meeting the requirements of subsection (b), (c),
16 or (d) of section 3. For any asbestos claim pending on
17 the effective date of this Act, the plaintiff shall file such
18 a written report and supporting test results no later than
19 60 days following the effective date, or no later than 30
20 days prior to trial. The defendant shall be afforded a rea-
21 sonable opportunity to challenge the adequacy of the prof-
22 fered prima facie evidence of asbestos-related impairment.
23 The plaintiff's claim shall be dismissed without prejudice
24 upon a finding of failure to make the required prima facie
25 showing.

1 (d) REMOVAL.—

2 (1) In the event that a State court refuses or
3 fails to apply subsections (a), (b), or (c) of this sec-
4 tion, any party in a civil action for an asbestos claim
5 may remove such action to a district court of the
6 United States in accordance with chapter 89 of title
7 28, United States Code. The district courts of the
8 United States shall have jurisdiction of all civil ac-
9 tions removed pursuant to this subsection, without
10 regard to the amount in controversy and without re-
11 gard to the citizenship or residence of the parties.
12 Any defendant without the consent of all defendants
13 may remove a civil action to the district court of the
14 United States in accordance with this subsection.

15 (2) The district court shall remand any civil ac-
16 tion removed solely under subsection (c) unless it
17 finds that the State court failed to comply with pro-
18 cedures prescribed by law or that its failure to dis-
19 miss lacked substantial support in the record before
20 it.

21 **SEC. 5. STATUTE OF LIMITATIONS; TWO-DISEASE RULE.**

22 (a) STATUTE OF LIMITATIONS.—Notwithstanding
23 any other provision of law, with respect to any asbestos
24 claim not barred as of the effective date of this Act, the
25 limitations period shall not begin to run until the exposed

1 person discovers, or through the exercise of reasonable
2 diligence should have discovered, that the he or she is
3 physically impaired by an asbestos-related condition.

4 (b) TWO-DISEASE RULE.—An asbestos claim arising
5 out of a nonmalignant condition shall be a distinct cause
6 of action from an asbestos claim relating to the same ex-
7 posed person arising out of asbestos-related cancer. No
8 damages shall be awarded for fear or risk of cancer in
9 any civil action asserting an asbestos claim.

10 (c) GENERAL RELEASES FROM LIABILITY PROHIB-
11 ITED.—No settlement of a nonmalignant asbestos claim
12 concluded after the date of enactment shall require, as a
13 condition of settlement, release of any future claim for as-
14 bestos-related cancer.

15 **SEC. 6. SCOPE OF LIABILITY; DAMAGES.**

16 (a) PROPORTIONAL LIABILITY.—A defendant against
17 whom a final judgment is entered in a civil action alleging
18 an asbestos claim shall be liable only for that portion of
19 the judgment that corresponds to the percentage of re-
20 sponsibility of such defendant. For the purposes of deter-
21 mining the percentage of responsibility of a defendant, the
22 trier-of-fact shall determine that percentage as a percent-
23 age of the total fault of all persons (including the plaintiff
24 and those who have filed for bankruptcy protection) who
25 are responsible for the harm to the plaintiff, regardless

1 of whether or not such person is a party to the action.
2 This provision shall apply only to a defendant that is
3 found to be less than 50 percent responsible for the harm
4 to the plaintiff. The court shall render a separate judg-
5 ment against each defendant in an amount determined
6 pursuant to this subsection.

7 (b) NONECONOMIC LOSS.—In any civil action alleg-
8 ing an asbestos claim, the total amount of damages that
9 may be awarded for noneconomic loss shall not exceed
10 \$250,000 or three times economic loss, whichever is great-
11 er, regardless of the number of parties against whom the
12 action is brought. However, in actions involving an asbes-
13 tos claim based upon mesothelioma the total amount of
14 damages that may be awarded for noneconomic loss shall
15 not exceed \$500,000 or three times economic loss, which-
16 ever is greater.

17 (c) PUNITIVE DAMAGES.—No punitive damages shall
18 be awarded in any civil action alleging an asbestos claim.

19 (d) COLLATERAL SOURCE PAYMENTS.—At the time
20 a complaint is filed in a civil action alleging an asbestos
21 claim, the plaintiff must file a written report with the
22 court that discloses the total amount of any collateral
23 source payments received, including payments which the
24 plaintiff will receive in the future, as a result of settle-
25 ments or judgments based upon the same claim. For any

1 asbestos claim pending on the date of enactment of this
 2 Act, the plaintiff shall file such written report no later
 3 than 60 days after the date of enactment, or no later than
 4 30 days prior to trial. Further, the plaintiff shall be re-
 5 quired to update this report on a regular basis during the
 6 course of the proceeding until a final judgment is entered
 7 in the case. The court shall ensure that the information
 8 contained in the initial and updated reports is treated as
 9 privileged and confidential and that the contents of the
 10 written reports shall not be disclosed to anyone except the
 11 other parties to the action.

12 **SEC. 7. LIABILITY RULES APPLICABLE TO PRODUCT SELL-**
 13 **ERS, RENTERS, AND LESSORS.**

14 (a)(1) IN GENERAL.—In any civil action alleging an
 15 asbestos claim, a product seller other than a manufacturer
 16 shall be liable to a plaintiff only if the plaintiff establishes
 17 that—

18 (A)(i) the product that allegedly caused the
 19 harm that is the subject of the complaint was sold,
 20 rented, or leased by the product seller;

21 (ii) the product seller failed to exercise reason-
 22 able care with respect to the product; and

23 (iii) the failure to exercise reasonable care was
 24 a proximate cause of the harm to the exposed per-
 25 son;

1 (B)(i) the product seller made an express war-
2 ranty applicable to the product that allegedly caused
3 the harm that is the subject of the complaint, inde-
4 pendent of any express warranty made by the manu-
5 facturer as to the same product;

6 (ii) the product failed to conform to the war-
7 ranty; and

8 (iii) the failure of the product to conform to the
9 warranty caused the harm to the exposed person; or

10 (C)(i) the product seller engaged in intentional
11 wrongdoing, as determined under applicable State
12 law; and

13 (ii) the intentional wrongdoing caused the harm
14 that is the subject of the complaint.

15 (2) REASONABLE OPPORTUNITY FOR INSPECTION.—

16 For the purposes of paragraph (1)(A)(i), a product seller
17 shall not be considered to have failed to exercise reason-
18 able care with respect to a product based upon an alleged
19 failure to inspect the product, if—

20 (A) the failure occurred because there was no
21 reasonable opportunity to inspect the product; or

22 (B) the inspection, in the exercise of reasonable
23 care, would not have revealed the aspect of the prod-
24 uct that allegedly caused the exposed person's im-
25 pairment.

1 (b) RENTED OR LEASED PRODUCTS.—In any civil
2 action alleging an asbestos claim, a person engaged in the
3 business of renting or leasing a product shall not be liable
4 for the tortious act of another solely by reason of owner-
5 ship of that product.

6 **SEC. 8. DEFINITIONS.**

7 In this Act:

8 (1) AMA GUIDES TO THE EVALUATION OF PER-
9 MANENT IMPAIRMENT.—The term “AMA Guides to
10 the Evaluation of Permanent Impairment” means
11 the American Medical Association’s Guides to the
12 Evaluation of Permanent Impairment (Fifth Edition
13 2000) as may be modified from time to time by the
14 American Medical Association.

15 (2) ASBESTOS.—The term “asbestos” includes
16 all minerals defined as “asbestos” in 29 CFR 1910
17 as amended from time to time.

18 (3) ASBESTOS CLAIM.—The term “asbestos
19 claim” means any claim for damages or other relief
20 presented in a civil action or bankruptcy proceeding,
21 arising out of, based on, or related to the health ef-
22 fects of exposure to asbestos, including loss of con-
23 sortium and any other derivative claim made by or
24 on behalf of any exposed person or any representa-
25 tive, spouse, parent, child or other relative of any ex-

1 posed person. The term does not include claims for
2 benefits under a workers' compensation law or vet-
3 erans' benefits program, or claims brought by any
4 person as a subrogee by virtue of the payment of
5 benefits under a workers' compensation law.

6 (4) ASBESTOSIS.—The term “asbestosis”
7 means bilateral diffuse interstitial fibrosis of the
8 lungs caused by inhalation of asbestos fibers.

9 (5) BANKRUPTCY PROCEEDING.—The term
10 “bankruptcy proceeding” means a case brought
11 under title 11, United State Code, or any related
12 proceeding as provided in section 157 of title 28,
13 United States Code.

14 (6) CERTIFIED B-READER.—The term “cer-
15 tified B-reader” means an individual qualified as a
16 “final” or “B-reader” under 42 CFR 37.51(b) as
17 amended.

18 (7) CIVIL ACTION.—The term “civil action”
19 means all suits or claims of a civil nature in State
20 or Federal court, whether cognizable as cases at law
21 or in equity or in admiralty, including an asbestos
22 claim in a bankruptcy proceeding. The term does not
23 include an action relating to any workers' compensa-
24 tion law, or a proceeding for benefits under any vet-
25 erans' benefits program.

1 (8) ECONOMIC LOSS.—The term “economic
2 loss” means any pecuniary loss resulting from phys-
3 ical impairment, including the loss of earnings or
4 other benefits related to employment, medical ex-
5 pense loss, replacement services loss, loss due to
6 death, burial costs, and loss of business or employ-
7 ment opportunities.

8 (9) EXPOSED PERSON.—The term “exposed
9 person” means any person whose exposure to asbes-
10 tos or to asbestos-containing products is the basis
11 for an asbestos claim.

12 (10) EXPOSURE YEARS.—The term “exposure
13 years” means—

14 (A) each single year of exposure prior to
15 1972 will be counted as one year;

16 (B) each single year of exposure from
17 1972 through 1979 will be counted as one-half
18 year;

19 (C) exposure after 1979 will not be count-
20 ed, except that each year from 1972 forward
21 for which the plaintiff can establish exposure
22 exceeding the OSHA limit for 8-hour time-
23 weighted average airborne concentration for a
24 substantial portion of the year will count as one
25 year.

1 (11) FEV1.—The term “FEV1” means forced
2 expiratory volume in the first second, which is the
3 maximal volume of air expelled in one second during
4 performance of simple spirometric tests.

5 (12) FVC.—The term “FVC” means forced
6 vital capacity which is the maximal volume of air ex-
7 pired with maximum effort from a position of full in-
8 spiration.

9 (13) ILO SCALE.—The term “ILO Scale”
10 means the system for the classification of chest x-
11 rays set forth in the International Labour Office’s
12 Guidelines for the Use of ILO International Classi-
13 fication of Radiographs of Pneumoconioses (1980)
14 as amended from time to time by the International
15 Labour Office.

16 (14) LUNG CANCER.—The term “lung cancer”
17 means a malignant tumor located inside of the
18 lungs, but such term does not include an asbestos
19 claim based upon mesothelioma.

20 (15) MESOTHELIOMA.—The term “mesothe-
21 lioma” means a malignant tumor with a primary site
22 in the pleura or the peritoneum, which has been di-
23 agnosed by a Board-certified pathologist, using
24 standardized and accepted criteria of microscopic
25 morphology and/or appropriate staining techniques.

1 (16) NONECONOMIC LOSS.—The term “non-
2 economic loss” means subjective, nonmonetary loss
3 resulting from physical impairment, including pain,
4 suffering, inconvenience, mental anguish, emotional
5 distress, disfigurement, loss of society and compan-
6 ionship, loss of consortium, injury to reputation, or
7 any other nonpecuniary loss of any kind or nature.

8 (17) NONMALIGNANT CONDITION.—The term
9 “nonmalignant condition” means any condition that
10 is caused or may be caused by asbestos other than
11 a diagnosed cancer.

12 (18) NONSMOKER.—The term “nonsmoker”
13 means the exposed person has not smoked cigarettes
14 or used any other tobacco products within the last
15 15 years.

16 (19) PATHOLOGICAL EVIDENCE OF ASBES-
17 TOSIS.—The term “pathological evidence of asbes-
18 tosis” means a statement by a Board-certified pa-
19 thologist that more than one representative section
20 of lung tissue uninvolved with any other disease
21 process demonstrates a pattern of peribronchiolar or
22 parenchymal scarring in the presence of char-
23 acteristic asbestos bodies and that there is no other
24 more likely explanation for the presence of the fibro-
25 sis.

1 (20) PREDICTED LOWER LIMIT OF NORMAL.—

2 The term “predicted lower limit of normal” for any
3 test means the fifth percentile of healthy populations
4 based on age, height, and gender, as referenced in
5 the AMA Guides to the Evaluation of Permanent
6 Impairment.

7 (21) PUNITIVE DAMAGES.—The term “punitive
8 damages” means damages awarded against a de-
9 fendant in order to punish or deter such defendant
10 or others from engaging in similar behavior in the
11 future.

12 (22) QUALIFIED PHYSICIAN.—The term “quali-
13 fied physician” means a medical doctor, who—

14 (A) is a Board-certified internist, on-
15 cologist, pathologist, pulmonary specialist, radi-
16 ologist, or specialist in occupational and envi-
17 ronmental medicine;

18 (B) is actually treating or treated the ex-
19 posed person, and has or had a doctor-patient
20 relationship with such person;

21 (C) spends no more than 10 percent of his/
22 her professional practice time in providing con-
23 sulting or expert services in connection with ac-
24 tual or potential civil actions, and whose med-
25 ical group, professional corporation, clinic, or

1 other affiliated group earns not more than 20
2 percent of their revenues from providing such
3 services;

4 (D) is currently licensed to practice and
5 actively practices in the State where the plain-
6 tiff resides or where the plaintiff's civil action
7 was filed; and

8 (E) receives or received payment for the
9 treatment of the exposed person from that per-
10 son's health maintenance organization or other
11 medical provider.

12 (23) RADIOLOGICAL EVIDENCE OF ASBES-
13 TOSIS.—The term “radiological evidence of asbes-
14 tosis” means a chest x-ray showing small, irregular
15 opacities (s,t) graded by a certified B-reader as at
16 least 1/1 on the ILO scale.

17 (24) RADIOLOGICAL EVIDENCE OF DIFFUSE
18 PLEURAL THICKENING.—The term “radiological evi-
19 dence of diffuse pleural thickening” means a chest
20 x-ray showing bilateral pleural thickening of at least
21 B2 on the ILO scale and blunting of at least one
22 costophrenic angle.

23 (25) SMOKER.—The term “smoker” means a
24 person who has smoked cigarettes or used other to-
25 bacco products within the last 15 years.

1 (26) STATE.—The term “State” means any
2 State of the United States, the District of Columbia,
3 Commonwealth of Puerto Rico, the Northern Mar-
4 iana Islands, the Virgin Islands, Guam, American
5 Samoa, and any other territory or possession of the
6 United States or any political subdivision of any of
7 the foregoing.

8 (27) SUBSTANTIAL CONTRIBUTING FACTOR.—
9 The term “substantial contributing factor” means—

10 (A) exposure to asbestos is the predomi-
11 nate cause of the physical impairment alleged in
12 the asbestos claim;

13 (B) the exposure to asbestos took place on
14 a regular basis over an extended period of time
15 and in close proximity to the exposed person;
16 and

17 (C) a qualified physician has determined
18 with a reasonable degree of medical certainty
19 that the physical impairment of the exposed
20 person would not have occurred but for the as-
21 bestos exposures.

22 (28) VETERANS’ BENEFITS PROGRAM.—The
23 term “veterans’ benefits program” means any pro-
24 gram for benefits in connection with military service

1 administered by the Veterans' Administration under
2 title 38, United States Code.

3 (29) WORKERS' COMPENSATION LAW.—The
4 term “workers’ compensation law” means a law re-
5 specting a program administered by a State or the
6 United States to provide benefits, funded by a re-
7 sponsible employer or its insurance carrier, for occu-
8 pational diseases or injuries or for disability or death
9 caused by occupational diseases or injuries. The
10 term includes the Longshore and Harbor Workers’
11 Compensation Act (33 U.S.C. 901–944, 948–950),
12 and chapter 81 of title 5, United States Code
13 (known as the Federal Employees Compensation
14 Act), but does not include the Act of April 22, 1908
15 (45 U.S.C. 51 et seq.) (popularly referred to as the
16 “Federal Employers’ Liability Act”).

17 **SEC. 9. MISCELLANEOUS PROVISIONS.**

18 (a) CONSTRUCTION WITH OTHER LAWS.—This Act
19 shall not be construed to affect the scope or operation of
20 any workers’ compensation law or veterans’ benefit pro-
21 gram, to affect the exclusive remedy or subrogation provi-
22 sions of any such law, or to authorize any lawsuit which
23 is barred by any such provision of law.

24 (b) CONSTITUTIONAL AUTHORITY.—The Constitu-
25 tional authority for this Act is contained in article I, sec-

1 tion 8, clause 3 of the Constitution of the United States
2 and in article III, section 1 of the Constitution of the
3 United States.

4 **SEC. 10. EFFECTIVE DATE.**

5 This Act shall be effective on the date of the enact-
6 ment of this Act and apply to any civil action asserting
7 an asbestos claim in which trial has not commenced as
8 of the date of the enactment of this Act.

