

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.

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

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-

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

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

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

(1) by inserting “a future claims representative appointed under section 524(g)(10)(A),” after “section 333,”; and

(2) by inserting “, 524(g)(10)(B),” after “section 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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