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116TH CONGRESS
1ST SESSION

S. 766

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 13, 2019

Mr. TILLIS (for himself, Mr. GRASSLEY, Mr. CORNYN, and Mr. CRAPO) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Providing Responsible Oversight of Trusts to Ensure Compensation and Transparency for Asbestos Victims Act of 2019'' or the ''PROTECT Asbestos Victims Act of 2019''.

SEC. 2. REDUCTION OF FRAUDULENT CLAIMS AND DEMANDS RELATING TO CERTAIN TRUSTS.

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

(1) in paragraph (4)(B)(i), by striking ''the court appoints a legal representative'' and inserting ''the United States trustee or bankruptcy administrator appoints, under paragraph (10), a future claims representative''; and

(2) by adding at the end the following:

''(8) INVESTIGATION OF FRAUDULENT CLAIMS AND DEMANDS.—

''(A) IN GENERAL.—Notwithstanding section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note), rule 9035 of the Federal Rules of Bankruptcy Procedure, or any other provision of law, in any judicial district of the United States, the United States trustee may investigate the administration and operation of a trust described in paragraph (2)(B)(i), including a trust described in paragraph (2)(B)(i) that was created before the date of enactment of the PROTECT Asbestos Victims Act of 2019.

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

"(i) to conduct discovery, including by any means of discovery available to a trustee in an action under chapter 5 of title 11, relating to the trust, a claimant of the trust, or a claim against the trust, including a claim filed by a claimant against the trust in a bankruptcy court or other forum, notwithstanding the effect of any order purporting to limit the access of the United States trustee to any information relating to that discovery;

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

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

request of the United States attorney, assist the United States attorney in carrying out a prosecution based on that false claim or demand; and

''(iv) to request that the court exercise any authority and impose remedies available to it, including those—

''(I) under the terms of the plan of reorganization to prevent abuse or mismanagement of the trust; and

''(II) under section 105.

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

''(9) ACCESSING TRUST INFORMATION.—

''(A) IN GENERAL.—Subject to section 107 and any appropriate protective order, a trust described in paragraph (2)(B)(i) shall, on written request, provide, in a timely manner, any information relating to any payment from, and any demand for payment from, the trust to a

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

"(B) COSTS.—A trust described in paragraph (2)(B)(i) may require, from the person making a request under subparagraph (A), payment of any reasonable cost incurred to comply with the requirements under subparagraph (A).

"(10) APPOINTMENT OF FUTURE CLAIMS REPRESENTATIVES.—

"(A) IN GENERAL.—On notification by a plan proponent of the intention of the plan proponent to seek an injunction under this subsection, the United States trustee or bankruptcy administrator, after consultation with parties in interest, shall appoint, subject to the approval of the court, a disinterested individual to serve as the future claims representative.

"(B) SUPPORT.—

"(i) IN GENERAL.—The future claims representative, subject to the approval of the court, may employ 1 or more attorneys, accountants, or other professional persons to represent the future claims representative or assist the future claims representative in carrying out the duties of

the future claims representative under this subsection.

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

''(I) shall be a disinterested person; and

''(II) may not represent any other entity having an adverse interest in connection with the case.

''(11) POWER OF THE COURT.—Notwithstanding any other provision of law, including paragraph (1)(B), sections 1127, 1141, and 1144 of this title, and section 157 of title 28, the court may issue any order, process, or judgment that is necessary and appropriate—

''(A) to carry out the provisions of paragraphs (8) and (9); or

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

''(12) BENEFITS UNDER MEDICARE.—

''(A) POTENTIAL ELIGIBLE CLAIMANTS.—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''.

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

''(c) INVESTIGATIONS BY UNITED STATES TRUSTEE.—On the request of the United States trustee, a case shall be reopened in the court in which that case was closed in order to enable the United States trustee to conduct an investigation under section 524(g)(8).''.

SEC. 3. CRIMINAL PENALTIES.

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

(1) in paragraph (8), by striking ''or'' after the semicolon;

(2) by striking the comma at the end of paragraph (9) and inserting a semicolon; and

(3) by inserting after paragraph (9) the following:

''(10) knowingly and fraudulently makes a false representation to a trust described in section 524(g)(2)(B)(i) of title 11, or any official of a trust described in that section, in relation to an investigation conducted under section 524(g)(8)(A) of that title; or

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

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

SEC. 4. AUTHORITY OF UNITED STATES TRUSTEE.

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

''(g) INVESTIGATION OF FRAUDULENT CLAIMS AND DEMANDS.—

''(1) IN GENERAL.—The United States trustee may investigate the administration and operation of a trust, including a trust that was created before the date of enactment of the PROTECT Asbestos Victims Act of 2019—

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

''(B) established under section 105(a) of title 11 for the purpose of assuming the asbestos-related liabilities of a debtor.

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

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

against the trust, including a claim filed by a claimant against the trust in a bankruptcy court or other forum, notwithstanding the effect of any order purporting to limit the access of the United States trustee to any information relating to that discovery;

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

''(C) if the United States trustee has reasonable grounds to believe that a false claim or demand to be paid in whole or in part by a trust was made, to refer the matter to the United States attorney for the relevant judicial district, and, on the request of the United States attorney, assist the United States attorney in carrying out a prosecution based on that false claim or demand; and

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

''(i) under the terms of the plan of reorganization to prevent abuse or mismanagement of the trust; and

''(ii) under section 105.

''(3) STANDING.—In carrying out this subsection, the United States trustee shall have standing to raise, to appear, and to be heard on any matter for which the court has jurisdiction or for which the court has reserved jurisdiction under the terms of the plan of reorganization.

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

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