

S 1125

FAIR Act of 2003

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Sponsor

Name: Sen. Hatch, Orrin G. [R-UT]

Party: Republican • State: UT • Chamber: Senate

Cosponsors (7 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Allen, George [R-VA]	R · VA		May 22, 2003
Sen. Chambliss, Saxby [R-GA]	R · GA		May 22, 2003
Sen. DeWine, Mike [R-OH]	R · OH		May 22, 2003
Sen. Miller, Zell [D-GA]	D · GA		May 22, 2003
Sen. Nelson, Ben [D-NE]	D · NE		May 22, 2003
Sen. Voinovich, George V. [R-OH]	R · OH		May 22, 2003
Sen. Hagel, Chuck [R-NE]	R · NE		Jun 10, 2003

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Reported By	Jul 30, 2003

Subjects & Policy Tags

Policy Area:

Law

Related Bills

No related bills are listed.

Fairness in Asbestos Injury Resolution Act of 2003 or FAIR Act of 2003 - **Title I: Asbestos Claims Resolution - Subtitle A: United States Court of Federal Claims** - (Sec. 101) Grants the U.S. Court of Federal Claims (the Court), through the Office of Special Asbestos Masters (the Office) (established by this Act to provide fair compensation in a non-adversarial manner to individuals whose health has been adversely affected by exposure to asbestos), authority to examine asbestos claims and make awards. Places the Office under the supervision of the Court.

Directs the chief judge of the Court to appoint special asbestos masters (masters) as necessary to facilitate the expeditious processing of claims.

Prohibits the chief judge of the Court from appointing more than 20 masters unless the chief judge submits notice to Congress 60 days before each appointment in excess of that number is made. Directs the chief judge of the Court to appoint a chief master.

Authorizes the chief master to prescribe rules and procedures for the processing of claims. Provides for removal and sets compensation of masters.

Subtitle B: Asbestos Injury Claims Resolution Procedures - (Sec. 111) Provides that any individual who has suffered from a qualifying disease or condition that is believed to meet the requirements established under subtitle C of this Act may file a claim with the Court for an award. Authorizes the Court to issue procedural rules to specify individuals who may file as representatives. Prohibits an asbestos claim from being filed by any person seeking contribution or indemnity.

Requires an asbestos claim, to be valid, to be notarized and to include specified information, including: (1) the name, social security number, gender, date of birth, and (if applicable) date of death of the claimant; (2) information relating to the identity of the claimant's dependents and beneficiaries; (2) a detailed description of the claimant's work history, asbestos exposure, and tobacco product use history; (3) an identification and description of the claimant's asbestos-related diseases; and (4) sufficient evidence of a nonsmoking assertion, including relevant medical records.

Sets a statute of limitations of four years after the date on which the individual first received a medical diagnosis of an eligible disease or condition, or discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition.

Sets forth provisions regarding the effect of this Act on pending claims and on claims for multiple injuries.

(Sec. 112) Provides that an asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

(Sec. 113) Requires an individual, to be eligible for an award for an asbestos-related injury, to file an asbestos claim in a timely manner in accordance with this Act and prove, by a preponderance of the evidence, that the claimant: (1) suffers from an eligible disease or condition, as demonstrated by evidence that meets the medical and diagnostic criteria requirements established under this Act; and (2) meets the latency and exposure criteria requirements established under this Act.

(Sec. 114) Directs the Office to: (1) appoint, or contract for the services of, qualified individuals to assist masters by conducting eligibility reviews of asbestos claims filed with the Court; and (2) establish criteria with respect to the qualifications of individuals who are eligible to serve as claims examiners and, in developing such criteria, to consult with

such experts as the Court deems appropriate. Requires the Court to refer the claim, not later than 20 days after filing, to the Office.

Directs a claims examiner to make an initial review of an asbestos claim to determine whether all required information has been submitted by the claimant. Provides procedures for securing additional information.

Requires the Court to establish procedures for independently evaluating the medical evidence submitted in support of claims. Directs the Court, at a minimum, to prescribe procedures for masters to randomly assign claims for confirmation by an independent certified B reader (i.e., an individual certified by the National Institute of Occupational Safety and Health, whose certification is up to date) of x-rays submitted in support of a claim, the cost of which shall be borne by the the Asbestos Injury Claims Resolution Fund (established by section 223 of this Act) (the Fund).

Requires a claimant, to aid in the assessment of the accuracy of representations as to the claimant's smoking status for purposes of determining eligibility and amount of award, to provide consent for the claims examiner to obtain relevant historical records. Provides procedures for mandatory testing of claimants asserting that they are nonsmokers or ex-smokers.

Directs the Court to: (1) prescribe rules to expedite claims for asbestos claimants with exigent circumstances; and (2) establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of masters.

Requires the master, not later than 60 days after receipt of all required information and requested medical advice, to determine the amount of any award to which the claimant is entitled. Directs that such determination include relevant findings of fact and be admissible as evidence in any additional review, and that the final decision include an acceptance form by which the claimant may waive the right to additional review and expedite payment of an award.

Requires the master, upon determining that a claimant is entitled to an award and waives any right to appeal, to notify the Administrator to award the claimant an amount of the master's decision from the Fund, acceptance of which shall extinguish all claims related to such payment.

Sets forth procedures for appeal of a decision to a panel of masters.

Requires the panel, upon determining that a claimant is entitled to an award and waives any right to appeal, to notify the Administrator to award the claimant an amount of the panel's decision from the Fund, acceptance of which shall extinguish all claims related to such payment.

Authorizes the chief judge of the Court to appoint a Medical Advisory Committee of the Court.

(Sec. 115) Directs the Court to develop methods for auditing the medical evidence submitted as part of an asbestos claim, including methods to ensure the independent reading of x-rays and results of pulmonary function tests.

Requires the Court, upon determining that an audit conducted in accordance with such methods demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the requirements of this Act, to notify claims examiners and masters that any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act. Directs the Court to then notify the physician or medical facility involved of the results of the audit. Grants such physician or facility a right to appeal the determination.

(Sec. 116) Directs the Court to: (1) establish an asbestos claimant assistance program and a legal assistance program;

(2) maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants; and (3) provide claimants with notice and information about available pro bono services. Requires attorneys to provide notice to prospective clients of such services.

Subtitle C: Medical Criteria - (Sec. 121) Requires that, unless otherwise specified, all diagnoses of an asbestos-related disease for a level be accompanied by: (1) a physician's statement that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or (2) a history of the claimant's exposure that is sufficient to establish such a 10-year latency period.

Sets forth diagnostic guidelines of asbestos-related diseases, depending on specified diseases levels (I to X). Provides that a claimant may be required to submit x-rays or computerized tomography, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examinations, reviews of other medical evidence, and medical evidence that complies with recognized medical standards.

Requires the claimant, to qualify for any disease level, to demonstrate: (1) a minimum exposure to asbestos or asbestos-containing products; (2) that the exposure occurred in the United States, its territories or possessions, or while a U.S. citizen was an employee of an entity organized under any Federal or State law regardless of location, or while a U.S. citizen was serving on any U.S. flagged or owned ship, provided the exposure results from such employment or service; and (3) any additional asbestos exposure required under this subtitle.

Describes documentation accepted as meaningful and credible evidence to establish exposure. Provides: (1) exceptions regarding certain persons living with an individual who would have met the exposure criteria for the given disease level if such individual had filed the claim; and (2) a waiver for workers at the Libby, Montana, vermiculite mining and milling facility or those who worked or lived within 20 miles of Libby for at least 12 consecutive months before December 31, 2003.

Directs the Institute of Medicine of the National Academy of Sciences to complete a study of the causal link between asbestos exposure and other cancers. Allows the Court and the Medical Advisory Committee to consider the results for purposes of determining whether asbestos exposure is a substantial contributing factor.

Authorizes a claimant who does not meet the medical criteria requirements of this subtitle to apply for designation of the claim as an exceptional medical claim. Directs the Court to refer such applications and supporting documentation to the Medical Advisory Committee for review.

Subtitle D: Awards - (Sec. 131) Provides that an asbestos claimant who meets requirements of this Act shall be entitled to an award in an amount determined by reference to a specified benefit table. Provides for a cost-of-living adjustment (COLA) beginning January 1, 2006.

(Sec. 132) Provides that: (1) the filing of an asbestos claim for reimbursement for medical monitoring shall not be considered evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations; and (2) reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for x-ray and pulmonary function tests every three years. Directs the Administrator to promulgate regulations that establish the reasonable costs for medical monitoring and the procedures applicable to asbestos claimants.

(Sec. 133) States that an asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund over three years and within four years after the final adjudication of the claim. Directs

the Administrator to develop guidelines for accelerated and expedited payments.

Provides that: (1) asbestos claims shall not be assignable; (2) awards under this title shall be exempt from claims of creditors and from attachment; and (3) no award shall be deemed a payment under the Social Security Act.

(Sec. 134) Directs that the amount of an award otherwise available to an asbestos claimant be reduced by the amount of collateral source compensation. Excludes statutory workers' compensation and veterans' benefits from consideration as collateral source compensation.

Subtitle E: En Banc Review - (Sec. 141) Provides that each panel established under this subtitle be referred to as the United States Court of Asbestos Claims (Asbestos Court). Directs the chief judge of the Court to establish en banc panels and randomly assign three judges of the Asbestos Court to each panel. Allows a claimant to file an appeal with the Asbestos Court not later than 30 days after receiving notice of a special asbestos masters panel decision.

Authorizes the Asbestos Court to: (1) uphold the findings of fact and conclusions of law and sustain the decision of the special asbestos master; (2) set aside any such findings or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and to issue its own findings and conclusions; or (3) remand the petition to the special master for further action.

Sets forth provisions regarding time allowed for remands, final decisions, and extinguishment of claims. Authorizes the Administrator to appoint counsel to represent the interests of the Fund and the Administrator in all proceedings before a panel.

Directs a Court panel to apply the Federal Rules of Appellate Procedure to all proceedings before the panel and to enter a final decision on an appeal on the earlier date occurring not later than 30 days after the conclusion of oral arguments or 60 days after an appeal is filed under this subtitle.

Title II: Asbestos Injury Claims Resolution Fund - Subtitle A: Asbestos Defendants Funding Allocation - (Sec. 201) Defines "class action trust" as a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant under a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure that has been approved by a final judgment of a U.S. district court before the date of this Act's enactment.

(Sec. 202) Directs the Administrator to assess from defendant participants contributions to the Fund based on assigned tiers and subtiers. Sets the aggregate contribution level required of all defendant participants. Grants the Administrator authority to allocate the contributions assessed from the defendant participants among the tiers.

Directs the Administrator to assign to Tier I all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than \$1 million.

Defines "bankrupt business entity" to mean a person that is not a natural person that: (1) filed under chapter 1 before January 1, 2003; (2) has not confirmed a reorganization plan as of this Act's enactment date; and (3) the bankruptcy court presiding over the business entity's case determines that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing. Limits consideration of the question of whether asbestos liability was the sole or precipitating cause of the entity's filing. Directs that any review of this determination be an expedited appeal and limited to whether the decision was against the weight of the evidence.

Provides conditions under which a bankrupt business entity may proceed with a reorganization plan that does not comply

with the requirements of this Act.

Provides for the assignment of Tiers II through VI, according to the prior asbestos expenditures paid by such persons or affiliated groups, as specified.

Sets forth provisions regarding assignments and costs.

(Sec. 203) Directs the Administrator to assess contributions to persons or affiliated groups within Tiers I through VII as specified. Requires that revenues be determined in accordance with generally accepting accounting principles.

Excludes from the 2002 revenues of a debtor and affiliated group that includes a person with respect to whose liabilities for asbestos claims a class action trust has been established, all revenues of: (1) the person with respect to whose liabilities for asbestos claims the class action trust was established; and (2) the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

Requires the Administrator to assign each debtor in Tier I to subtiers and directs each debtor to make specified contributions to the Fund.

Directs that the assets of any class action trust that has been established with respect to the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been assigned to Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims reduced to a final order or judgment before this Act's enactment) be transferred to the Fund within six months.

Directs the Administrator to assign each person or affiliated group in Tier II through VI to one of five subtiers, based on revenues.

Requires assignment to Tier VII of a person who: (1) is subject to asbestos claims brought under the Federal Employers' Liability Act as a result of operations as a common carrier by railroad; and (2) has paid not less than \$5 million in settlement, judgment, defense, or indemnity costs relating to such claims.

(Sec. 204) Directs the Administrator to assess contributions based on amounts provided under this subtitle for each person or affiliated group within Tiers II through VII for the first five years of the Fund's operation, and then to reduce the contribution amount for each defendant participant in each of these tiers in proportion to specified reductions in the schedule. Makes a person or affiliated group that is a small business concern on December 31, 2002, exempt from any contribution requirement. Directs the Administrator to prescribe procedures for payment of contributions.

Authorizes a defendant participant, under expedited procedures established by the Administrator, to seek adjustment of the amount of its contribution (and renewal of the adjustment) based on severe financial hardship or demonstrated inequity. Prohibits the Administrator from granting adjustments in any year that exceed, in the aggregate, six percent of the total annual contributions required of all defendant participants. Directs the Administrator thereafter to annually determine whether there has been a material change in the defendant's financial condition such that the Administrator may reinstate any part or all of the defendant's contribution under the statutory allocation that was not paid during the adjustment term.

Provides that a defendant: (1) may qualify for an adjustment based on inequity by demonstrating that the amount of the defendant's contribution under the statutory allocation is exceptionally inequitable when measured against the amount of

the likely cost to the defendant of its future liability in the tort system in the absence of the Fund, when compared to the median contribution rate for all defendants in the same tier, or when measured against the percentage of the defendant's prior asbestos expenditures that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant; and (2) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant's contribution based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to railroad locomotives and related products, as long as such person's manufacture and sale is temporally and causally remote.

Sets the defendant's contribution rate as the defendant's contribution stated as a percentage of gross revenues for calendar year 2002. Makes an inequity adjustment granted by the Administrator, subject to the annual availability of funds in the Orphan Share Reserve Account, effective for a term of three years. Authorizes the Administrator to grant inequity adjustments only to the extent that: (1) the Fund's financial condition is sufficient; (2) the Orphan Share Reserve Account is sufficient; and (3) such adjustments do not exceed four percent of the total annual contributions required of all defendant participants.

Authorizes a defendant to renew an inequity adjustment every three years by demonstrating that the adjustment remains justified. Directs the Administrator, following the termination of an adjustment and during the mandatory funding period of the Fund, to annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant's contribution under the statutory allocation was not inequitable. Authorizes the Administrator to reinstate any or all of the defendant's contribution requirements.

Directs the Administrator to appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel.

Sets forth provisions regarding liability limitations, consolidation of contributions, determination of a defendant's prior asbestos expenditures, minimum aggregate contributions of defendant participants to the Fund for specified calendar years, and procedures to determine Fund contribution assessments.

Applies the Freedom of Information Act (FOIA) to the Office of Asbestos Injury Claims Resolution. Provides procedures for designating records as confidential.

Directs the Administrator to adopt procedures for revising initial assessments based on new information received after the initial assessments are calculated. Authorizes the Administrator to request the Attorney General to subpoena persons to compel relevant information. Grants a participant a right to obtain rehearing of the Administrator's initial determination.

Subtitle B: Asbestos Insurers Commission - (Sec. 210) Defines "captive insurance company" as a company: (1) whose entire beneficial interest is owned by a defendant participant or by a participant's ultimate parent or the affiliated group; (2) whose primary commercial business from 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group; and (3) that was incorporated or operating no later than December 31, 2002.

(Sec. 211) Establishes the Asbestos Insurers Commission to determine the amount that each insurer participant will be required to pay into the Fund. Includes every insurer, reinsurer, and run-off entity with asbestos-related obligations in the United States within the Commission's authority, and requires each to fulfill its allocation obligation without regard to whether it is licensed in the United States.

Authorizes, within 30 days after the Commission issues its initial determination, the direct insurer participants or reinsurer participants to submit an allocation agreement, approved by all of the participants in the applicable group, to the

Commission and to the House and Senate Judiciary Committees. Terminates the Commission's authority on the day after the Commission certifies that an allocation agreement meets the requirements of this subtitle.

Sets forth provisions regarding: (1) the total contribution required of all insurer participants over the life of the Fund (\$52 billion); (2) declining payments over time; and (3) liability (several, not joint).

Requires insurers that have paid, or that have been assessed by a legal judgment or settlement, at least \$1 million in defense and indemnity costs before the enactment date in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance to be mandatory insurer participants in the Fund (with other insurers exempt from mandatory payments).

Directs that contributions be determined by establishing an individual contribution obligation for each insurer participant. Requires the Commission to establish such contribution obligations on an equitable basis, considering (exclusive of worker's compensation) such factors as: (1) historical premiums; (2) recent loss experience; (3) amounts reserved for asbestos liabilities; and (4) the likely costs to each insurer participant of its future liabilities.

Sets forth provisions regarding determination of reserves, total fund contributions, captive insurance companies, payment schedules, and judicial review with regard to an allocation formula. Sets forth procedures for notice to participants, response, notice of initial determination, and review period. Requires the Commission to determine the percentage of the total liability of each participant identified. Sets forth reporting requirements.

(Sec. 213) Authorizes the Administrator to require insurer participants to make payments to the Fund prior to the establishment of an allocation formula, subject to a limitation. Grants the Administrator authority to pursue a civil action in Federal court against any reinsurer that fails to comply with its obligations under this Act and to seek treble damages for such failure.

(Sec. 215) Applies FOIA to the Commission.

(Sec. 216) Terminates the Commission 60 days after the date on which the Commission submits its report.

Subtitle C: Office of Asbestos Injury Claims Resolution - (Sec. 221) Establishes the Office of Asbestos Injury Claims Resolution to be responsible for administering the Fund and providing payments from the Fund to asbestos claimants who are determined to be eligible for awards.

(Sec. 222) Directs that amounts in the Fund be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries.

Directs the Administrator to refer information concerning conduct occurring after this Act's enactment that may have been a violation of Environmental Protection Agency (EPA) standards under the Toxic Substances Control Act or the Clean Air Act to the EPA Administrator and the U.S. Attorney for possible criminal and civil penalties and to the appropriate State authority with jurisdiction to investigate asbestos matters. Sets forth a similar provision regarding violation of Occupational Safety and Health Administration standards.

Directs the U.S. Sentencing Commission to review and amend, as appropriate, the sentencing guidelines and related policy statements to ensure that environmental crimes related to asbestos are sufficiently addressed.

(Sec. 223) Establishes in the Office the Fund. Limits the aggregate contributions of all mandatory participants to the Fund to \$5 billion in any calendar year unless otherwise provided. Authorizes the Administrator to borrow, in any calendar year,

an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out Fund obligations.

Directs the Administrator to: (1) establish a guaranteed payment account within the Fund to insure payment of the total amount of contributions required to be paid into the Fund by all participants; and (2) impose a reasonable surcharge to be paid into the guaranteed payment account to insure against the risk of nonpayment of required contributions.

Requires the Administrator to establish within the Fund: (1) a Mesothelioma Account; (2) a Lung Cancer Account; (3) a Severe Asbestosis Account; and (4) a Moderate Asbestosis Account. Directs the Administrator to allocate to each account a portion of contributions to the Fund adequate to compensate all anticipated claimants for each account after consulting appropriate epidemiological and statistical studies.

Directs the Administrator: (1) unless he or she certifies that there are adequate funds available to compensate past, pending, and projected future claimants at the scheduled award values, to assess additional contributions from all participants during the first 27 years of the Fund (subject to later readjustment); and (2) to require additional contributions from the insurer participants in an amount equal to the total amount of additional contributions allocated to the defendant participants for any three-year, six-year, or one-year period.

Authorizes the Administrator to request annually \$1 billion in the aggregate each from defendant participants and from insurer participants after year 27 of the Fund. Provides that, upon a determination by the Administrator that additional contributions are required, a defendant participant or an insurer participant may make an annual contribution to the Fund in an amount equal to that participant's required share of the aggregate payment requested by the Administrator. Makes payments voluntary, but subjects a participant who decides not to make such payments to a civil action in Federal court.

Requires the amount by which participant contributions in any given year exceed the minimum aggregate contribution to be placed in an Orphan Share Reserve Account established within the Fund by the Administrator.

(Sec. 224) Sets forth provisions regarding enforcement of contributions in cases of default and bankruptcy. Authorizes the Administrator to bring a civil action in Federal district court for the District of Columbia (DC), in cases in which there has been a refusal or failure to pay liability imposed by certain final determinations under this Act. Authorizes the Administrator to seek recovery for punitive damages, costs of civil actions, and collection of a fine equal to the total amount of the liability that has not been collected where failure to pay was willful. Bars the participant, in a proceeding under this section, from bringing any challenge to the assessment if such challenge could have been made during the review period or a judicial review proceeding.

Title III: Judicial Review - (Sec. 301) Grants the U.S. Court of Appeals for the Federal Circuit exclusive jurisdiction over any action to review a final decision of the U.S. Court of Asbestos Claims of the Court of Federal Claims. Makes the decision of the U.S. Court of Appeals for the Federal Circuit final, but subject to review by the U.S. Supreme Court.

(Sec. 302) Grants the U.S. district court for DC exclusive jurisdiction over any action to review a final determination by the Administrator or the Commission regarding the assessment of a contribution to the Fund from a participant. Sets procedures for appeal and the standard of review.

(Sec. 303) Provides that an action of the Court of Asbestos Claims, the Administrator, or the Asbestos Insurers Commission for which review could be obtained under this title shall not be subject to judicial review in any other proceeding, including proceedings before the Court of Federal Claims. Provides that any interlocutory or final judgment, decree, or order of a Federal court holding this Act unconstitutional shall be reviewable as a matter of right by direct

appeal to the Supreme Court if filed within 30 days.

(Sec. 304) Authorizes any insurer participant to file a claim in the U.S. district court for DC against any reinsurer that is contractually obligated to reimburse such insurer participant for a portion of costs incurred as a result of payment of asbestos related claims. Sets forth provisions regarding expedited procedures and appeals.

Title IV: Miscellaneous Provisions - (Sec. 401) Amends the Federal criminal code to prohibit fraud and false statements in connection with participation in the Fund. Sets penalties for violations.

(Sec. 402) Modifies Federal bankruptcy law to make contribution obligations nondischargeable in bankruptcy. Incorporates existing trusts into the Fund.

(Sec. 403) Declares that: (1) this Act supersedes all Federal and State laws insofar as they may relate to any asbestos claim filed under this Act; and (2) the remedies provided by this Act shall be the exclusive remedy for any asbestos claim.

Provides that no asbestos claim may be pursued in Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before this Act's enactment. Preempts any action asserting an asbestos claim in State court, except actions for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before this Act's enactment.

Sets forth provisions regarding dismissal and removal of actions, time limits, procedures, and jurisdiction. Makes provisions of this section ineffective until the Administrator determines that the Fund is fully operational and processing claims, with State remedies available in the interim. Requires that a participant's contributions to the Fund be reduced by the amount of any claims made payable by the operation of this section after this Act's enactment.

(Sec. 404) Directs the Administrator to report annually to the House and Senate Judiciary Committees on the operation of the Fund. Sunsets this Act if the Administrator fails to certify that 95 percent or more of: (1) the asbestos claimants who filed claims during the prior calendar year and who were determined eligible for compensation have received that compensation; and (2) the total obligations of the Fund owed to eligible claimants in the prior calendar year have been paid.

(Sec. 406) Sets forth provisions regarding erosion of insurance coverage limits. Deems the collective payment obligation to the Fund of the insurer and reinsurer participants as assessed by the Administrator as of this Act's enactment to erode remaining aggregate products limits available to a defendant participant only in an amount of 74.51 percent of each defendant participant's scheduled assessment amount. Specifies erosion methods and dispute resolution procedures.

Title V: Prohibition of Asbestos Containing Products - (Sec. 501) Amends the Federal criminal code to direct the EPA Administrator to promulgate regulations that prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

Establishes a procedure for petitioning the EPA Administrator for an exemption in cases where: (1) the exemption would not result in an unreasonable risk of injury to public health or the environment; and (2) the person has made good faith efforts but has been unable to develop a substance or to identify a mineral that does not present an unreasonable risk that may be substituted for an asbestos containing product.

Directs the EPA Administrator to provide exemptions sought by the Secretary of Defense or by the Administrator of the National Aeronautics and Space Administration (NASA) when necessary for certain critical functions. Exempts asbestos

diaphragms for use in the manufacture of chlor-alkali. Exempts roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, but requires the EPA Administrator to review and revoke that exemption if warranted.

Requires each person that possesses an asbestos containing product subject to the prohibitions of this Act to dispose of the product by a means that is in compliance with applicable Federal, State, and local requirements.

Actions Timeline

- **Jul 30, 2003:** Committee on the Judiciary. Reported by Senator Hatch with amendments. With written report No. 108-118. Additional and Minority views filed.
- **Jul 30, 2003:** Committee on the Judiciary. Reported by Senator Hatch with amendments. With written report No. 108-118. Additional and Minority views filed.
- **Jul 30, 2003:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 239.
- **Jul 10, 2003:** Committee on the Judiciary. Ordered to be reported with amendments favorably.
- **Jun 26, 2003:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **Jun 24, 2003:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **Jun 19, 2003:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **Jun 4, 2003:** Committee on the Judiciary. Hearings held.
- **May 22, 2003:** Introduced in Senate
- **May 22, 2003:** Sponsor introductory remarks on measure. (CR S6947-6949)
- **May 22, 2003:** Read twice and referred to the Committee on the Judiciary.