

S 852

FAIR Act of 2005

Congress: 109 (2005–2007, Ended)

Chamber: Senate

Policy Area: Law

Introduced: Apr 19, 2005

Current Status: Cloture motion on the measure withdrawn by unanimous consent in Senate.

Latest Action: Cloture motion on the measure withdrawn by unanimous consent in Senate. (Feb 14, 2006)

Official Text: <https://www.congress.gov/bill/109th-congress/senate-bill/852>

Sponsor

Name: Sen. Specter, Arlen [R-PA]

Party: Republican • **State:** PA • **Chamber:** Senate

Cosponsors (20 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Baucus, Max [D-MT]	D · MT		Apr 19, 2005
Sen. DeWine, Mike [R-OH]	R · OH		Apr 19, 2005
Sen. Feinstein, Dianne [D-CA]	D · CA		Apr 19, 2005
Sen. Grassley, Chuck [R-IA]	R · IA		Apr 19, 2005
Sen. Hatch, Orrin G. [R-UT]	R · UT		Apr 19, 2005
Sen. Leahy, Patrick J. [D-VT]	D · VT		Apr 19, 2005
Sen. Voinovich, George V. [R-OH]	R · OH		Apr 19, 2005
Sen. Graham, Lindsey [R-SC]	R · SC		Apr 26, 2005
Sen. Vitter, David [R-LA]	R · LA		Apr 26, 2005
Sen. Allard, Wayne [R-CO]	R · CO		Jun 21, 2005
Sen. Isakson, Johnny [R-GA]	R · GA		Jun 21, 2005
Sen. Santorum, Rick [R-PA]	R · PA		Jun 21, 2005
Sen. Stevens, Ted [R-AK]	R · AK		Jun 21, 2005
Sen. Talent, Jim [R-MO]	R · MO		Jun 21, 2005
Sen. Warner, John [R-VA]	R · VA		Jun 21, 2005
Sen. Domenici, Pete V. [R-NM]	R · NM		Jun 22, 2005
Sen. Roberts, Pat [R-KS]	R · KS		Jun 23, 2005
Sen. Lugar, Richard G. [R-IN]	R · IN		Sep 6, 2005
Sen. Burr, Richard [R-NC]	R · NC		Sep 22, 2005
Sen. Alexander, Lamar [R-TN]	R · TN		Feb 6, 2006

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Re-Committed to	Feb 15, 2006

Subjects & Policy Tags

Policy Area:

Law

Related Bills

Bill	Relationship	Last Action
109 S 3274	Related bill	Jun 7, 2006: Committee on the Judiciary. Hearings held. Hearings printed: S.Hrg. 109-594.
109 HR 1360	Related bill	May 19, 2005: Referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.
109 HR 1957	Related bill	Apr 28, 2005: Referred to the House Committee on the Judiciary.

Fairness in Asbestos Injury Resolution Act of 2005 or the FAIR Act of 2005 - **Title I: Asbestos Claims Resolution - Subtitle A: Office of Asbestos Disease Compensation** - (Sec. 101) Establishes in the Department of Labor the Office of Asbestos Disease Compensation (Office), to be headed by an Administrator who is appointed by the President and who is responsible for processing claims for asbestos-related illnesses and paying compensation to eligible claimants. Declares that the purpose of such Office is to provide timely, fair compensation to claimants whose health has been adversely affected by exposure to asbestos, on a no-fault basis and in a non-adversarial manner.

Terminates the Office not later than 12 months after certification by the Administrator that the Office has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

Limits the term of the Administrator to five years. Requires the Administrator to report directly to the Assistant Secretary of Labor for the Employment Standards Administration. Sets forth the specific duties of the Administrator.

Makes the Freedom of Information Act applicable to the Office and the Asbestos Insurers Commission.

Sets forth procedures to protect the confidentiality of claimants' financial and medical records.

(Sec. 102) Directs the Administrator to establish an Advisory Committee on Asbestos Disease Compensation (Advisory Committee). Provides that the Advisory Committee shall consist of 20 members appointed by the Majority and Minority Leaders of the Senate and the Speaker and the Minority Leader of the House of Representatives and the Administrator. Directs the Advisory Committee to advise the Administrator on asbestos disease compensation matters, including: (1) claims filing and claims processing procedures; (2) claimant assistance programs; and (3) audit procedures and quality control programs.

(Sec. 103) Directs the Administrator to establish a Medical Advisory Committee to provide expert medical advice.

(Sec. 104) Requires the Administrator to establish a comprehensive asbestos claimant assistance program, including a program to provide legal assistance to asbestos claimants.

(Sec. 105) Requires the Administrator to establish physician panels for the purposes of making medical determinations and assisting in other functions as required by this Act. Exempts such panels from the requirements of the Federal Advisory Committee Act.

(Sec. 106) Requires the Administrator to promulgate interim regulations for the processing of claims, including procedures for expediting exigent health claims and for processing claims through a claims facility. Includes extreme financial hardship as a basis for an exigent health claim.

Stays any asbestos claim pending in a state or federal court on the date of enactment of this Act, unless the presentation of evidence has begun before a jury or judge, or a verdict, final order, or final judgment has been entered by a trial court.

Sets forth procedures for the settlement of exigent health claims (claims by mesothelioma patients, by patients with a life expectancy of less than one year, or by relatives of individuals who have died from asbestos disease after the enactment of this Act).

Allows asbestos claimants to file non-exigent claims in federal or state court if the Administrator cannot certify to Congress that the Asbestos Injury Claims Resolution Fund is operational and paying claims within 24 months after the

enactment of this Act.

(Sec. 107) Authorizes the Administrator to issue witness subpoenas, administer oaths, examine witnesses, require the production of books and records, and request assistance from other federal agencies.

Subtitle B: Asbestos Disease Compensation Procedures - (Sec. 111) Requires that all claims for asbestos disease compensation be filed in a timely manner and be proven by a preponderance of evidence.

(Sec. 112) Exempts claimants from the necessity of proving that their asbestos-related injuries resulted from the negligence or fault of any other person.

(Sec. 113) Sets forth procedures for the filing of claims, including claims for multiple injuries and additional awards. Requires claimants to file claims within five years of an initial medical diagnosis.

Sets forth special procedures for Libby, Montana, asbestos claims.

(Sec. 114) Requires the Administrator to determine whether a claim for asbestos disease filed under this Act meets certain eligibility requirements and to make a proposed decision on any claim within 90 days after such claim is filed. Allows payments on any claim for which the Administrator fails to make a proposed decision within 180 days after such claim is filed.

(Sec. 115) Requires the Administrator to develop methods for auditing and evaluating medical evidence submitted as part of the claims process, including pulmonary function test results. Authorizes the Administrator to require medical tests, including serum cotinine screening to verify whether claimants are nonsmokers or ex-smokers for purposes of making appropriate awards under this Act.

Imposes civil and criminal penalties for submitting false medical records.

Subtitle C: Medical Criteria - (Sec. 121) Sets forth: (1) diagnostic criteria for evaluating asbestos disease claims; (2) medical evidence requirements for assessing credibility of claims; and (3) evidentiary requirements for assessing exposure to asbestos, including exposure presumptions. Waives occupational exposure requirements for Libby, Montana, claimants.

Establishes nine levels of asbestos disease, including levels for nonmalignant and malignant conditions.

Directs the Institute of Medicine of the National Academy of Sciences to complete studies by April 1, 2006, on: (1) whether there is a causal link between asbestos exposure and other cancers; and (2) the use of CT scans in evaluating asbestos disease.

Allows certain asbestos claims that do not meet medical criteria requirements, Libby, Montana claims, and claims for exposure to naturally occurring asbestos to be classified as exceptional medical claims. Requires review of such claims by a Physicians Panel.

Requires the Agency for Toxic Substances and Disease Registry to study certain vermiculite processing facilities.

Directs the Administrator to commission the American College of Radiology to develop guidelines and methodology for the use of CT scans as a diagnostic tool for asbestos disease.

Subtitle D: Awards - (Sec. 131) Sets forth allowable award amounts for asbestos disease, based upon the level of such

disease and whether a claimant smokes or has smoked tobacco products.

Authorizes the Administrator to increase or decrease Level 9 awards depending upon a claimant's age and number of dependents.

Requires the Administrator to issue regulations for making special adjustments to claims under the Federal Employers' Liability Act (FELA).

(Sec. 132) Provides that the filing of a claim for reimbursement of medical monitoring shall not trigger the applicable statute of limitation for filing a claim under this Act.

Directs the Administrator to issue regulations for the reimbursement of medical monitoring costs.

(Sec. 133) Provides for a system of structured payments, over a period of three years (no more than four years) of asbestos awards. Permits lump sum and expedited payments for claimants with advanced or terminal illnesses.

(Sec. 134) Provides for reductions in asbestos disease awards for collateral source compensation and awards made prior to the enactment of this Act, excluding workers' compensation, certain disability and sickness benefits, veterans' benefits, and certain awards for malignant asbestos-related disease.

(Sec. 135) Exempts asbestos claimants who receive an award under this Act from any obligation to repay insurance or other governmental benefits previously received. Provides that the payment of any award under this Act shall not affect any claim for insurance or for worker's compensation, healthcare, or disability benefits.

Title II: Asbestos Injury Claims Resolution Fund - Subtitle A: Asbestos Defendants Funding Allocation - (Sec. 202) Provides for a system of payments by defendant participants to the Asbestos Injury Claims Resolution Fund (Fund). Assigns a tier or subtier to each class of defendant participants based upon their prior expenditures on asbestos claims. Defines "defendant participant" as an entity subject to liability for asbestos claims under this Act, an insurer company, or any successor in interest of a defendant participant.

Establishes the aggregate payment obligation to the Fund for all defendant participants at \$90 billion, less certain bankruptcy trust credits.

(Sec. 203) Sets forth the amount of required payments to the Fund for defendant participants in assigned subtiers.

(Sec. 204) Requires defendant participants to make payments to the Fund on an annual basis until they have satisfied their obligations to the Fund or the Fund receives \$90 billion from all defendant participants.

Exempts certain small businesses as defined under the Small Business Act from payment obligations under this Act.

Allows defendant participants to apply for adjustments to its payment requirements based upon severe financial hardship or demonstrated inequity. Limits the term of such adjustments to three years, but allows renewals and reinstatements. Limits the annual amount of such adjustments to \$300 million unless the Administrator determines that such limitation is insufficient and additional adjustments are necessary to prevent defendant participant insolvency.

Directs the Administrator to appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise on the process of making adjustments to defendant participant payments.

Provides for annual payments to the Fund from defendant participants of at least \$3 billion for the first 30 years of the

Fund. Empowers the Administrator to assess certain surcharges to cover deficits in the Fund.

Sets forth procedures for making payments to the Fund according to the classification of defendant participants in tiers one through nine. Requires the Administrator to notify defendant participants directly of the requirement to submit information necessary to calculate the amount of required payments to the Fund and to publish a notice in the Federal Register. Requires defendant participants who receive such notice to respond with the required information within 30 days.

Requires the Administrator to make an initial determination of the tier and subtier classification of defendant participants and the amount of their annual payment obligation. Requires defendant participants to pay any amount required by such notice within 30 days of receiving such notice.

(Sec. 205) Provides for a 10% reduction of the initial minimum aggregate funding obligation of the Asbestos Claims Resolution Fund after the tenth year after enactment of this Act. Directs the Administrator to suspend, cancel, reduce or delay such reductions to ensure the solvency of the Fund and, at any time after the tenth year after enactment of this Act, to reduce or waive payments by defendant participants to the Fund if the Administrator determines and certifies that there are already sufficient amounts in the Fund to meet current obligations.

(Sec. 206) Specifies the accounting treatment for the discounting of defendant participant payment obligations to the Fund.

Subtitle B: Asbestos Insurers Commission - (Sec. 211) Establishes the Asbestos Insurers Commission to determine the amount each insurer participant is required to pay into the Asbestos Injury Claims Resolution Fund.

(Sec. 213) Specifies certain powers of the Asbestos Insurers Commission, including the power to hold hearings, to obtain information from any federal or state agency directly, and to contract for expert advice and analysis.

(Sec. 214) Provides for the compensation of Commission members, travel expenses, and staffing of the Commission.

(Sec. 215) Terminates the Commission 90 days after a final determination of contribution or 90 days after the last appeal of any final Commission action, whichever occurs later.

(Sec. 216) Provides that all expenses of the Commission are to be paid from the Asbestos Injury Claims Resolution Fund.

Subtitle C: Asbestos Injury Claims Resolution Fund - (Sec. 221) Establishes in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund (Fund) to pay asbestos-related injury claims.

(Sec. 222) Sets forth criteria for the investment of Fund assets. Authorizes the Administrator to impose a pro rata surcharge on all participants in the event certain assets of a bankruptcy trust are unavailable to the Fund and borrowing would be insufficient to ensure the liquidity of the Fund.

(Sec. 223) Sets forth procedures for enforcing the payment obligations of defendant participants and insurer participants to the Fund.

(Sec. 224) Provides for payment of interest on any late payment, plus a penalty, to the Fund.

(Sec. 225) Directs the Administrator to establish: (1) an outreach and education program to provide information about asbestos-related medical conditions to individuals at risk for developing such conditions; (2) a medical screening program

for high risk individuals; and (3) a medical monitoring program for individuals exposed to asbestos and approved for Level I compensation.

(Sec. 226) Establishes the National Mesothelioma Research and Treatment Program for the detection, prevention, treatment, and cure of malignant mesothelioma.

Requires the Administrator and the Director of the National Institutes of Health (NIH) to allot specified amounts from the Fund and other amounts, from FY2006-FY2015, to establish: (1) 10 mesothelioma disease research and treatment centers; (2) a National Mesothelioma Registry and Tissue Bank; and (3) a Center for Mesothelioma Education. Requires the Director of NIH to report to Congress by September 30, 2015, on the National Mesothelioma Research and Treatment Program.

Title III: Judicial Review - (Sec. 301) Grants exclusive jurisdiction to the U.S. Court of Appeals for the District of Columbia Circuit over any action to review rules or regulations promulgated by the Administrator of the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under this Act. Requires: (1) a petition for review of a rule or regulation to be filed within 60 days after it is promulgated; and (2) expedited review of such petitions.

(Sec. 302) Allows a claimant to petition for judicial review within 90 days of a final adverse decision of the Administrator in the judicial circuit in which the claimant resides. Requires the court to uphold the Administrator's decision unless it is not supported by substantial evidence, is contrary to law, or not in accordance with established procedures.

(Sec. 303) Grants exclusive jurisdiction to the U.S. Court of Appeals for the District of Columbia Circuit over any action to review a final determination of liability for payments to the Asbestos Injury Claims Resolution Fund.

(Sec. 304) Grants exclusive jurisdiction to the U.S. District Court for the District of Columbia over any action for declaratory or injunctive relief challenging any provisions of this Act. Allows a direct appeal to the U.S. Supreme Court of any final decision. Requires expedited treatment of any action or appeal.

(Sec. 305) Prohibits any court from issuing a stay of payment into the Fund or a stay or injunction pending final judicial action.

Grants exclusive jurisdiction to the U.S. District Court for the District of Columbia over any action challenging the constitutionality of any provision of this Act. Requires that any such action be heard by a three judge panel. Allows a direct appeal to the U.S. Supreme Court of any final decision.

Title IV: Miscellaneous Provisions - (Sec. 401) Imposes criminal penalties for fraud against the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, or for making false statements in connection with an award from the Asbestos Injury Claims Resolution Fund.

(Sec. 402) Amends the federal bankruptcy code to (1) deny defendant participants an automatic stay in bankruptcy; (2) deny discharge of a debtor's payment obligations against a participant; (3) allow all claims brought by the Administrator in bankruptcy proceedings; (4) exempt payments by participants pending bankruptcy or in bankruptcy from avoidance rules; and (5) exempt the Administrator from requirements for returning property seized prior to bankruptcy for the purpose of satisfying participant obligations to the Asbestos Injury Claims Resolution Fund.

Incorporates existing asbestos trusts into the Asbestos Injury Claims Resolution Fund.

Grants priority to a lien of the Asbestos Injury Resolution Fund in insurance receivership proceedings.

(Sec. 403) Provides that the provisions of this Act shall supersede any federal or state law relating to an asbestos claim.

Allows the filing of personal injury claims in state and federal courts for silica that are not related to asbestos exposure.

Provides that asbestos-related settlement agreements that require future performance shall be superseded by the provisions of this Act, except for certain agreements completed within 30 days of enactment.

Specifies that the remedies provided by this Act are the exclusive remedy for an asbestos claim, with certain exceptions for civil actions commenced in federal or state court on the date of enactment of this Act in which a jury has been impaneled or a verdict, final order, or judgment has been entered by a trial court.

Bars new or pending asbestos claims in any state or federal court as of the date of enactment of this Act, with certain limited exceptions.

(Sec. 404) Sets forth rules for determining reductions in insurance and reinsurance contracts held by defendant participants based upon contributions to the Fund made by insurers and reinsurers.

(Sec. 405) Requires the Administrator to: (1) submit an annual report to the House and Senate Judiciary Committees on the operation of the Asbestos Injury Claims Resolution Fund; (2) conduct claims analyses; and (3) conduct a shortfall analysis of the Fund and impose shortfall assessments on insurer participants, if necessary.

Sets forth provisions for the termination of this Act and the treatment of claims pending at the termination of this Act (sunset claims).

(Sec. 406) States that nothing in this Act shall: (1) create a cause of action against the United States or an obligation of funding from the United States; (2) preclude funding for the medical expenses of current and former residents of Libby, Montana, with asbestos disease claims; or (3) preclude claimants from choosing the health care provider of their choice.

(Sec. 408) Requires the Administrator to refer any information relating to violations of the Toxic Substances Control Act, the Clean Air Act, or the Occupational Safety and Health Act to the Secretary of Labor, the Administrator of the Environmental Protection Agency, or the U.S. attorney, as appropriate, for civil or criminal prosecution.

Amends the Occupational Safety and Health Act of 1970 to impose criminal penalties for willful violations of occupational standards for exposure to asbestos.

Directs the Administrator to assess employers or other individuals who violate asbestos laws for contributions to the Asbestos Injury Claims Resolution Fund.

Directs the United States Sentencing Commission to review and amend, as appropriate, federal sentencing guidelines for asbestos-related crimes to reflect changes in the law and to deter and punish future criminal activity.

(Sec. 409) Prohibits a health insurer from denying, terminating, or altering health care coverage for a claimant, or a beneficiary of a claimant, who participates in a medical monitoring program under this Act.

Title V: Asbestos Ban - (Sec. 501) Amends the Toxic Substances Control Act to require the Administrator of the Environmental Protection Agency (EPA) to promulgate proposed and final regulations to prohibit the manufacture, processing, or distribution in commerce of asbestos containing products.

Authorizes the Administrator to grant an exemption (for not to exceed five years) from the ban on asbestos containing

products to any individual, if the Administrator determines: (1) such exemption would not pose an unreasonable risk of injury to public health or the environment; and (2) the individual has made a good faith effort to find minerals to substitute for asbestos.

Exempts the Department of Defense (DOD) from the ban on asbestos containing products if the Secretary of Defense certifies that such products are necessary to DOD critical functions, that there is no other reasonably available alternative, and that the use of the product will not pose an unreasonable risk to health or the environment. Allows a similar exemption for the National Aeronautics and Space Administration (NASA).

Allows specific exemptions for: (1) asbestos diaphragms used to manufacture chlor-alkali and its derivatives; and (2) roofing cements, coatings, and mastics containing asbestos that are totally encapsulated with asphalt (subject to a review within 18 months by the Administrator).

Requires disposal of asbestos containing products within three years after the enactment of this Act, with certain exemptions.

(Sec. 502) Requires the Administrator to: (1) study the exposure risks associated with naturally occurring asbestos and to report to specified congressional committees on such study; (2) establish dust management guidelines, including model state regulations; (3) establish comprehensive protocols for testing for the presence of naturally occurring asbestos; and (4) issue educational materials, recommended best management practices, and recommended remedial measures for areas containing naturally occurring asbestos.

Authorizes the Administrator to award matching federal grants to states and municipalities for monitoring and remediation of naturally occurring asbestos.

Directs the Secretary of the Interior to acquire infrared mapping data for naturally occurring asbestos prioritizing certain California counties with significant amounts of naturally occurring asbestos.

Requires the Director of the National Institutes of Health to administer one or more research grants to study the health risks of exposure to naturally occurring asbestos.

Actions Timeline

- **Feb 14, 2006:** Considered by Senate. (consideration: CR S1140-1169)
- **Feb 14, 2006:** Motion to waive the Budget Act with respect to the measure rejected in Senate by Yea-Nay Vote. 58 - 41. Record Vote Number: 21. (consideration: CR S1168-1169)
- **Feb 14, 2006:** Motion by Senator Frist to reconsider the vote by which the motion to waive the Congressional Budget Act was rejected (Roll Call Vote No. 21) entered in Senate.
- **Feb 14, 2006:** Ruled out of order by the chair.
- **Feb 14, 2006:** Recommitted to Senate Committee on the Judiciary pursuant to section 312-F of the Congressional Budget Act.
- **Feb 14, 2006:** Cloture motion on the measure withdrawn by unanimous consent in Senate.
- **Feb 13, 2006:** Considered by Senate. (consideration: CR S1121-1122)
- **Feb 13, 2006:** Cloture motion on the measure presented in Senate. (consideration: CR S1122; text: CR S1122)
- **Feb 9, 2006:** Considered by Senate. (consideration: CR S879-898, S944-968)
- **Feb 9, 2006:** Committee amendments withdrawn.
- **Feb 9, 2006:** Point of order against the measure raised in Senate.
- **Feb 9, 2006:** Motion to waive the Budget Act with respect to the measure made in Senate.
- **Feb 8, 2006:** Measure laid before Senate by unanimous consent. (consideration: CR S786-837, S837-842, S843-848, S849-853; text of measure as reported in Senate: CR S786-825)
- **Feb 7, 2006:** Motion to proceed to measure considered in Senate. (consideration: CR S740-743, S744-758, S761-766)
- **Feb 7, 2006:** Cloture on the motion to proceed to consideration of measure invoked in Senate by Yea-Nay Vote. 98 - 1. Record Vote Number: 12. (consideration: CR S765-766; text: CR S765)
- **Feb 6, 2006:** Motion to proceed to consideration of measure made in Senate. (consideration: CR S697-698, S699-702, S703-720)
- **Feb 6, 2006:** Cloture motion on the motion to proceed to the measure presented in Senate. (consideration: CR S718; text: CR S718)
- **Nov 17, 2005:** Committee on the Judiciary. Hearings held. Hearings printed: S.Hrg. 109-276.
- **Jun 30, 2005:** By Senator Specter from Committee on the Judiciary filed written report. Report No. 109-97. Additional and Minority views filed.
- **Jun 30, 2005:** By Senator Specter from Committee on the Judiciary filed written report. Report No. 109-97. Additional and Minority views filed.
- **Jun 16, 2005:** Committee on the Judiciary. Reported by Senator Specter with amendments. Without written report.
- **Jun 16, 2005:** Committee on the Judiciary. Reported by Senator Specter with amendments. Without written report.
- **Jun 16, 2005:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 131.
- **May 26, 2005:** Committee on the Judiciary. Ordered to be reported with amendments favorably.
- **May 25, 2005:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **May 19, 2005:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **May 12, 2005:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **May 11, 2005:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **Apr 28, 2005:** Committee on the Judiciary. Committee consideration and Mark Up Session held.
- **Apr 26, 2005:** Committee on the Judiciary. Hearings held. Hearings printed: S.Hrg. 109-350.
- **Apr 19, 2005:** Introduced in Senate
- **Apr 19, 2005:** Sponsor introductory remarks on measure. (CR S3905-3908)
- **Apr 19, 2005:** Read twice and referred to the Committee on the Judiciary. (text of measure as introduced: CR S3908-3939)