11/8/79

96th CONGRESS
1st Session

S. _____



IN THE SENATE OF THE UNITED STATES

Mr. Hart introduced the following bill; which was read twice and referred to the Committee on _____.

A BILL

To provide minimum standards under which State workers' compensation laws will provide prompt, adequate, exclusive and equitable compensation for occupational diseases or death resulting from exposure to asbestos, and for other purposes.

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

That this Act may be cited as the "Asbestos Health Hazards Compensation Act of 1979."

FINDINGS AND PURPOSE

Sec. 1. (a) The Congress finds that--

(1) a significant number of people suffer disability or death or both from occupational diseases caused by the inhalation or ingestion of asbestos;

(2) members of households of persons who are occupationally exposed to asbestos may suffer from asbestos-related disease;

(3) asbestos-related diseases occur among individuals employed in both the private sector and public sector. The federal government controlled the health and safety procedures and information given to workers in public workplace environments, and established product specifications, mandated standard warnings for the sale and use of asbestos products, and recommended and published threshold limit values in the workplace

environments of asbestos users in private industry;

(4) diseases arising from exposure to asbestos constitute a substantial burden upon interstate commerce and have an adverse effect on the public welfare;

(5) diseased and disabled workers and their survivors deserve, and the public interest will be best served by prompt, adequate, exclusive and equitable compensation;

(6) the primary method for providing such compensation, State laws governing occupational disease and disability, do not in many cases provide prompt, adequate exclusive and equitable compensation;

(7) all parties responsible for the occurrence of occupational asbestos disease, including the Federal Government, should participate in the compensation of individuals who suffer as a result of exposure from such disease;

(8) such participation should be in an equitable manner and should be the exclusive remedy for those suffering from an occupational asbestos disease; and

(9) an incremental approach, beginning with the model program authorized by this Act for the compensation of asbestos-related occupational disease and disability, will advance the objective of uniform minimum standards for State workers' compensation laws governing occupational disease.

(b) It is the purpose of this Act--

(1) to establish minimum standards by which State and Federal workers' compensation laws shall provide prompt, adequate, equitable, and exclusive compensation to--

(A) persons disabled by diseases resulting from occupational exposure to asbestos;

(B) persons disabled by diseases resulting from the occupational exposure to asbestos of a member of such persons' household; and

(C) dependents of a deceased person whose death resulted from occupational exposure to asbestos or the occupational exposure to asbestos of a member of such person's household.

(2) to provide a ~~Federal~~ for the federal government role, as one of the parties responsible for the provision of such compensation; and

(3) to provide a mechanism under which all responsible parties in a compensation program equitably share the cost of such compensation.

DEFINITIONS

Sec. 2. As used in this Act--

(1) The term "asbestos" means chrysotile, amosite and crocidolite and when they occur in fibrous form, tremolite, anthrophyllite and actinolite.

(2) The term "asbestos-related diseases" means asbestosis, mesothelioma of the pleura or peritoneum, bronchogenic cancer, cor pulmonale secondary to asbestosis, or any other disease which the Secretary determines results from exposure to asbestos, and adds to the above list by regulation. And provided further, that in promulgating any regulation adding to, altering or amending the list of asbestos-related diseases as defined herein the Secretary shall comply with the rule-making requirements of section 553 of Title 5, United States Code, and the hearing requirements of sections 556 and 557 of Title 5, United States Code. These sections shall apply as if the Secretary were the agency referred to therein.

(3) The term "claimant" means an individual who is eligible for compensation under this Act, as set forth in section 1(b)(1)(A)(B)(C).

(4) The term "affected person" means:

(A) a claimant disabled by an asbestos-related disease resulting from occupational exposure to asbestos;

(B) a claimant disabled by an asbestos-related disease resulting from the occupational exposure to asbestos of a member of such claimant's household; and

(C) a deceased person whose death from an asbestos related disease results from occupational exposure to the deceased person himself or to some member of his household.

(5) The term "child" means a natural or adopted child or a stepchild who--

(A) is unmarried; and

(B) (i) has not attained 18 years of age; or

(ii) is under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d)(d)(B)(ii) of the Social Security Act or, in the case of a student, before he ceased to be a student; or

(iii) is a student.

(6) The term "compensation" means money or services made available under any applicable State or Federal workers' compensation law or pursuant to this Act to a claimant, including medical and rehabilitation services designed by the State or Federal agency carrying out the applicable State or Federal workers' compensation law.

(7) The term "dependent" means--

(A) a child of an affected person;

(B) a wife who is a member of the same household as the affected person or is receiving regular contributions from the affected person for her support or whose husband is an affected person who has been ordered by a court to contribute to her support or who meets the requirements of section 216(b)(1) or (2)

of the Social Security Act, or in the case of an individual who is a wife of a minor, the determination shall be made in accordance with section 216(h)(1) of the Social Security Act as if the affected person were an insured individual referred to in that Act, and such term also includes a divorced wife as defined in section 216(b)(1) of the Social Security Act who is receiving at least one-half of her support as determined in accordance with regulations prescribed by the Secretary from the affected person or is receiving substantial contributions from the affected person (pursuant to a written agreement), or there is in effect a court order for substantial contribution to her support from such affected persons.

(8) The term "total disability" has the meaning given it by the regulation of the Secretary. Such regulation shall provide that an affected person shall be considered totally disabled when by reason of an asbestos related disease his prior level of earnings had decreased 60 per centum. For purposes of this definition, an affected person's level of earnings shall be his average annual earnings over the highest three of the last five years preceding his application for benefits under this Act. The level of earnings of an affected person who has not been employed within that period shall be measured by his earning capacity as if he were not disabled.

(9) The term "partial disability" means a condition that results in less than total disability as defined in this Act.

(10) The term "responsible party" in each case shall

include any corporation, partnership, individual, joint venture or any other entity which with regard to the specific affected person involved--

(A)(i) employs or employed the individual filing a claim under this Act who has been occupationally exposed to asbestos, or employs or employed a member of the affected person's household who has been occupationally exposed to asbestos; or

(ii) engages or has engaged in the manufacture and first sale or import for sale or distribution of any product or substance containing asbestos or other toxic agent, which, by weight of reasonable scientific evidence, is determined to contribute to the incidence of asbestos-related disease, disability or death; and

(B) is determined by a State workers' compensation agency to have contributed to asbestos related disease or death or whose products contributed to asbestos-related disease or death for which compensation may be paid under this Act. Provided, however, that "responsible party" may include the Federal Government, any public agency of a State or a political subdivision thereof regardless of whether such government or agency qualifies under subparagraph (A) of this section.

(11) The term "State" means each of the several States,

the District of Col bia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(12) The term "State average weekly wage" means the average weekly earnings of workers on private payrolls within the State as determined by the Secretary of Labor.

(13) The term " State workers' compensation agency" means an agency, court or official designated in each State as responsible for the administration or enforcement of the workers' compensation laws of that State.

(14) The term "Federal workers' compensation agency" means an agency, court or official designated by the Federal government as responsible for the administration or enforcement of the Federal workers' compensation laws.

(15) The term "employee" means any individual employed by his or her employer or any individual who is treated as an employee for purposes of the workers' compensation law of any State or any Federal workers' compensation law, and for purposes of this Act shall include members of the household of employees occupationally exposed to asbestos.

(16) The term "State workers' compensation laws" means the laws of each State which provide compensation for death and disability resulting from occupational diseases.

(17) The term "Federal workers' compensation laws" means the laws of the Federal government which provide compensation for death and disability resulting from occupational diseases.

(18) The term "student" means a full-time student as defined in Section 202(d)(7) of the Social Security Act, or a student as defined in Section 8101(17) of Title 5, United States Code.

(19) The term "Secretary" means the Secretary of Labor.

(20) The term "widow" includes the wife living with or dependent for support on the affected person at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of Section 216(c) (1), (2),(3),(4), or (5) and Section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the widow of an affected person shall be made in accordance with Section 216(h)(1) of the Social Security Act as if such affected person were the insured individual referred to therein. Such term also includes a surviving divorced wife as defined in Section 216(d)(2) of the Social Security Act, who, for the month preceding the month in which the affected person died, was entitled to or receiving from the affected person at least one-half of her support as determined in accordance with regulations prescribed by the Secretary, or was receiving substantial contributions from the affected person (pursuant to written agreement), or there was in effect a court order for substantial contributions to her support from the affected person at the time of his death.

(21) The term "employer" means any person employing individuals and engaged in commerce or an industry affecting

commerce, and shall include the United States of America, or any State or political subdivision thereo

(22) In the case of a claimant who is a woman, references in this Act to the wife or widow of such affected person shall be deemed to refer to the husband or widower.

APPLICABILITY

Sec. 3. The provisions of this Act shall apply only to disability or death of an affected person resulting from such person's occupational exposure to asbestos, or resulting from the occupational exposure to asbestos of a member of such person's household.

STANDARDS FOR BENEFITS FOR DISABILITY OR DEATH RESULTING FROM EXPOSURE TO ASBESTOS

Sec. 4. The minimum standards for State and Federal workers' compensation for the purpose of this Act shall be as follows--

(1) Compensation for total disability shall be paid in any case in which, as a result of an asbestos-related disease, the affected person is totally disabled as defined in Section 2(7).

(2) Compensation for partial disability shall be paid in any case in which the affected person is partially disabled as a result of an asbestos-related disease and the post disability wage earning capacity of the affected person does not equal that person's gross weekly wage prior to the disability, taking into consideration age, training, and local conditions.

(3) Compensation for total disability, or death, due to an asbestos-related disease shall not be less than 66-2/3

per centum of the average gross weekly wage of the affected person for the highest three of the five years immediately preceding the beginning of total disability or prior to death. With respect to compensation under this Act, the State in which the claim is properly brought shall neither have nor enact a maximum weekly benefit that is less than 150 per centum of that State's average weekly wage. Provided however, that no compensation payable under this Act shall be less than 10 per centum in excess of the weekly compensation benefit which would have been payable to the employee, as defined in this Act, pursuant to the workers' compensation laws of the State in which the claim is filed and allowed or pursuant to an applicable Federal workers' compensation law, but for the provisions of this Act.

(4) Compensation for partial disability shall be not less than 66-2/3 per centum of the difference between the average gross weekly wage of the affected person for the highest three of the five years immediately preceding determination of partial disability and the wage earning capacity of the affected person after the disability taking into consideration age, training and local employment conditions. With respect to compensation under this Act, the State shall neither have nor enact a maximum weekly benefit for partial disability that is less than 150 per centum of the State average weekly wage. Provided however, that no compensation payable under this Act shall be less than 10 per centum in excess of the weekly compensation benefit which would have been payable to the employee, as defined in this

Act, pursuant to the workers' compensation laws of the tate in which the claim is filed and allowed or pursuant to an applicable Federal workers' compensation law, but for the provisions of this Act.

(5) Compensation provided for in subsection 3 and 4 of this section shall be increased by 50 per centum of the difference between the compensation provided under section 4(3) and 80 per centum of the average gross weekly wage of the affected person for the highest three of the five years immediately preceding the beginning of total disability or prior to death if the claimant has one dependent, and by 100 per centum of the difference if the claimant has two or more dependents, but compensation shall in no case be more than 80 per centum of the affected person's average weekly wage for the highest three of the five years immediately preceding the beginning of total disability or prior to death.

(6) Benefits shall be indexed on the basis of any change in the wage scale of the job which the affected person held and which the affected person would still hold if the affected person had not been disabled or had not died, except that benefits may be recomputed once the affected person attains the normal age of retirement or otherwise would have experienced a change in income if the claimant had remained on that job.

(7) There shall be no provisions providing for an exemption from or a waiver of liability for a responsible party and the standards shall apply uniformly to all responsible parties.

(8) Benefits shall be paid for the duration of the disability, or for the life of the claimant whichever is less without limitation as to the dollar amount or the period of payment.

(9) In addition to compensation for wage replacement, responsible parties shall pay for medical and rehabilitation benefits which are necessary and reasonable and such compensation shall be paid without limitation as to dollar amount or the period for providing such benefits.

(10) Any provision in State workers' compensation laws establishing barriers to compensation for occupational disease, disability or death to which this Act applies shall be void, including but not limited to, provisions relating to the time since the last exposure to asbestos or the time period from the last date of employment by any responsible party.

(11) Benefits shall be paid to the widow or widower of a claimant for life or until remarriage. If a widow or widower remarries, two years' benefits shall be paid by responsible parties in a lump sum to such widow or widower. If additional dependents exist after the death or remarriage of the widow or widower, 50 per centum of the benefits shall be paid to such dependents in equal shares until the dependents cease to be dependents.

(12) No responsible party may discriminate on the basis of race, creed, color, national origin, age, sex or handicapped condition against a claimant or any other person directly involved

in making a claim pursuant to this Act. No responsible party may discriminate against a claimant for exercising any right under this Act or exercising any right under applicable State or Federal workers' compensation laws.

(13) Any claimant who believes that he has been discharged or otherwise discriminated against by any responsible party covered by this Act in violation of Section 4, subsection 12 of this Act may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of Title 5 of the United States Code. Each hearing examiner presiding under this section shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of Title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems

appropriate,

including, but not limited to, the rehiring or reinstatement of the claimant to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's finding therein.

(14) Each employer shall make a reasonable effort to re-employ a rehabilitated affected person in a position commensurate with his age, training and medical condition.

(15) Any claim for benefits under this Act must be filed within three years after death or an initial medical determination of total disability due to the asbestos-related disease, whichever occurs first.

(16) Any claimant or responsible party may re-apply for

an increase or decrease in the level of benefits previously awarded under this Act based upon an increase or decrease in disability of the affected person.

(17) The Secretary shall by regulation prescribe minimum standards for determining whether an affected person is disabled due to asbestos-related disease; or whether the death of an affected person was due to asbestos-related disease. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this Act, but in no event later than one hundred twenty days after this Act is enacted. In promulgating such regulations the Secretary shall comply with the rulemaking requirements of section 553 of Title 5, United States Code, and the hearing requirements of sections 556 and 557 of Title 5, United States Code. These sections shall apply as if the Secretary were the agency referred to therein. Such regulations shall provide that claimants seeking benefits under this Act must demonstrate that such affected person has, in fact, contracted an asbestos-related disease. In making the determination that an affected person has contracted a disabling asbestos-related disease, all relevant evidence shall be considered, including the history of such person's exposure to asbestos including, but not limited to, medical tests such as blood gas studies, X-ray examination, pulmonary function studies, or physical performance tests, pathology studies, and medical histories, hospital records, physicians' reports and his spouse's affidavit, and in

the case of a deceased affected person, other appropriate affidavits competent and relevant to show the affected person's physical condition, and other supportive material. The Secretary shall accept the interpretation by a physician who is board certified or board eligible in the fields of preventive medicine/occupational health, pulmonary medicine or radiology of a chest roentgenogram which is of acceptable quality submitted in support of a claim for benefits under this title, if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except when the claim has been fradulently represented. Where there is no medical evidence, or where such evidence is insufficient in the case of a deceased affected person, affidavits may be considered as evidence to establish that an affected person was disabled due to asbestos-related disease or that his death was due to asbestos-related disease. The Secretary shall not make any determination that an affected person has not contracted an asbestos-related disease solely on the basis of a negative chest roentgenogram. In no event shall there be any presumption of asbestos-related disease based solely on the length or degree of exposure of an affected person to asbestos.

(18) No release from or waiver of compensation or medical or rehabilitation benefits for a claimant shall be permitted unless approved by the appropriate State or Federal workers' compensation agency as being in the best interest of that claimant.

(19) Compensation paid pursuant to this Act shall not be offset by any other benefits paid to claimants nor be considered as income for tax purposes.

PROCEDURE FOR THE DETERMINATION
AND ENFORCEMENT OF CLAIMS

Sec. 5 (a)(1) The Secretary shall, not later than 90 days after the date of enactment of this Act, and annually thereafter, review the State workers' compensation laws governing occupational disease for each State to determine whether such law meets the applicable standards contained in section 5 of this Act with respect to occupational disease, disability or death described in Section 3. If the Secretary determines that the State law meets all the requirements of Section 5, the Secretary shall certify each State compensation law in compliance and shall publish in the Federal Register a list of all such States.

(2) Any State workers' compensation laws certified under the provisions of paragraph (1) of this subsection shall govern the disposition of compensation for occupational diseases or death to which this Act applies.

(3) In any State in which the State workers' compensation laws are not certified under paragraph (1) of this subsection, the State workers' compensation agency shall apply the standards prescribed under Section 5 in any case to which this Act applies.

(b) (1) In any proceeding before a State or Federal workers' compensation agency subject to the provisions of this Act, the agency shall--

(A) hear, determine and adjudicate the claim promptly;

(B) designate each responsible party in accordance with State law and the provisions of this Act;

(C) make every effort to assure that benefits and compensation are paid to the claimant without delay; and

(D) assure that disputes regarding the responsibility for paying the benefits and compensation in no way delays such payment to individual claimants.

(2) Any responsible party or on its own behalf the State or Federal workers' compensation agency may in accordance with the procedural provisions of State or Federal law petition to have every responsible party involved in the claim included in the proceeding to adjudicate the claim and to have the order or award adjudged against each responsible party and to have any award or benefits apportioned between responsible parties pursuant to the provisions of Section 6.

(3) (a) In any proceeding to which paragraph (2) of this subsection applies, the workers' compensation agency shall designate the last private or public employer who exposed the affected person to asbestos to pay compensation to the claimant and shall require other responsible parties, subject to the order or award, to reimburse such employer. When the agency is unable to locate or designate such employer, the agency shall designate a single responsible party to pay compensation to the claimant and shall require other responsible parties, subject to the order or award, to reimburse the designated party. The claimant shall be paid promptly and such payment shall not be affected by or be dependent on other responsible parties reimbursing such last employer or designated party.

(b) The contribution of the employer as described in Section

5(b)(3)(a) to the compensation paid shall be an amount equal to that it would have been paid to the employee as defined in this Act, pursuant to the workers compensation laws of the State in which the claim is filed and allowed or pursuant to an applicable Federal workers compensation law, but for the provisions of the Act, with no rights to subrogation. Where there is no employer designated, this contribution shall be apportioned according to the provisions of 5(b)(3)(c).

(c) Responsible parties shall make a contribution to the compensation paid in an amount equal to the difference between the employer's contribution as computed pursuant to Section 5(b)(3)(b) and the full compensation paid pursuant to thie Act.

COMMISSION TO ESTABLISH FACTORS FOR APPORTIONMENT

Section 6. (a) A Commission is hereby established to deveop the determining factors, with their attendant ranges of liability, to be used in apportionment proceedings before State or Federal workers compensation agencies. The Commission shall include the following members:

-The Chief Executive Officers or their designees of the two largest companies in the asbestos industry as determined by market share, and the Chief Executive Officer or his designee of a third company in the asbestos industry.

-The directors of two State workers' compensation agencies. One to be chosen by the three CEO's above, and

and one to be chosen by the Secretary of Labor,

-One appointee of the Secretary of Labor

-One appointee of the Attorney General

-One appointee of the Secretary of HEW

-Two members appointed by the President with special expertise, one to be representative of the insurance industry and one to be representative of the business community.

-A chairman of the commission to be appointed by the President with the advice and consent of at least 7 members listed above.

(b) In establishing the determining factors and ranges of liability for each, the Commission shall have the power to conduct hearings and obtain all relevant information.

(c) The factors established by the Commission shall mandate a meaningful Federal role and in this regard shall include but not limited to the following:

-the party responsible for control of the workplace environment

-the party responsible for recommending and publishing safe exposure limits for the workplace environment

-the party responsible at common law or through legislation or regulation for assuring adequate product warning labels

-the party responsible for evaluating the product to minimize the potential for human injury

-the party responsible for establishing the criteria to which product specifications were designed and products

manufactured.

(e) The determining factors promulgated by the Commission must be approved by at least eight of the eleven members. The Commission shall report to Congress within 9 months of the date the Commission's last member is appointed, and the Commission's report will be final and will go into effect 60 days thereafter, unless Congress shall disapprove it.

Section 7. (a)(1) any claimant or responsible party who is aggrieved by an order or award of a State or Federal workers' compensation agency, insofar as it fails to award compensation at least equivalent to the minimum standards of section 4 may within ninety days after

such order or award is issued file a petition for review of the State or Federal workers' compensation agency's order or award, insofar as it fails to award such compensation, or awards such compensation not in accordance with the provisions of this Act, with the Benefits Review Board (hereinafter referred to in this section as the "Board") established in Section 21 of the Longshoremen's and Harbor Workers' Compensation Act, (Act of March 4, 1927) (hereinafter referred to as the "Longshore Act"), as amended, or as it may be amended from time to time.

(2) In review proceedings under this section, the decision of the Board shall be based upon the evidence in the record before the State or Federal workers' compensation agency except that the Board, in its discretion, may (i) in any case in which the State or Federal workers' compensation agency has refused to assert jurisdiction over the claim, refer the case to the Office of Workers Compensation Programs of the Department of Labor for processing in accordance with the provisions of the Longshore Act, or (ii) in any case where the State or Federal agency has refused to assert jursidiction over the claim or has otherwise precluded the introduction of such evidence permit the parties to

submit additional relevant evidence in a hearing before an administrative law judge in accordance with Sections 19 and 21 of the Longshore Act.

(3) Where new evidence is not submitted, the findings of fact by the State workers' compensation agency, insofar as they involved eligibility for the minimum standards of Section 4 shall be conclusive if supported by substantial evidence on the record as a whole. Findings of fact and conclusions of law in the determination of the State workers' compensation agency on issues covered solely by State law shall be conclusive, and not subject to review in any proceeding under this section.

(4) Where the Board finds that the employer has failed to provide the minimum standards of Section 4 to which the petitioner is entitled, the petitioner shall be awarded such compensation together with the reasonable costs and expenses of litigation, including reasonable attorney's fees.

(5) Where the Board finds that the full amount assessed for compensation is in excess of the provisions of this Act, the amount shall be adjusted in accordance with said provisions.

(6) Where the Board finds that the claimant is not entitled to benefits under the provisions of this Act, no compensation shall be paid.

(7) Any order issued by the Board shall be enforceable and reviewable by a United States court of appeals in accordance with Section 21 of the Longshore Act.

(b) (1) Any responsible party aggrieved by an apportionment order or award of a State workers' compensation agency may appeal the decision of the State workers' compensation agency in accordance with procedures established by State law.

(2) In addition to any procedures prescribed by State law for appeal by responsible parties under Section 7 (b)(1) of this Act with the consent of all responsible parties subject to an order or an award of a State workers' compensation agency, the agency may submit the issues contained in the appeal to binding arbitration. Any order for binding arbitration or any agreement for binding arbitration under the provisions of this subparagraph shall be carried out in accordance with State law.

(c) (1) In any proceeding subject to subsection (a) of this section in which the Federal Government is one of the responsible parties, the provisions of this Act shall apply.

(2) In any such proceeding whenever there is contribution by more than one responsible party in an order or an award of a State workers' compensation agency and one of the responsible parties is the Federal Government, the State workers' compensation agency may order the Federal Government to make contributions in proportion to its share of responsibility.

EXCLUSIVITY AND THIRD PARTY LIABILITY

Sec. 8 (a)(1) The compensation to which a claimant is entitled under the applicable State or Federal workers' compensation laws or otherwise under this Act shall constitute the claimant's exclusive remedy against the employer, the employer's insurer or collective bargaining agent of the employer's employees, or any employee, officer, director, or agent of such employer, insurer, or collective bargaining agent (while acting within the scope of his or her employment) for any illness, injury, or death resulting from an asbestos-related disease.

(2) No person or persons entitled to file a claim for benefits pursuant to applicable State or Federal workers' compensation laws and/or pursuant to this Act or who would have been entitled to file such a claim but for the expiration of limitation of action periods as set forth in this Act shall be allowed to recover against a present or former (i) manufacturer, distributor, seller, contractor, or applicator of asbestos fibers, or materials, (ii) the United States of America, (iii) the insurers of these entities in (i) and (ii), or (iii) a union which has represented such persons for collective bargaining or the parent organization of such union,

for damages, including but not limited to actual, consequential or survivorship, for bodily injury or death caused by an asbestos-related disease, loss of consortium, or for exemplary or punitive damages relating to such exposure.

(3) No responsible party may maintain any action for indemnity, contribution or other monetary damages against any party immune from suit under subsections 8 (a)(1) and 8 (a)(2) of this Section.

(4)(a)No employer may maintain any action for indemnity, contribution or other monetary damages against any party immune from suit under subsections 8(a)(1) and 8(a)(2) for any sums paid to the employee as workers' compensation benefits pursuant to applicable State or Federal workers' compensation laws or the provisions of this Act.

(b) Any responsible party which does not promptly pay the compensation or provide for the benefits in the order or award of the State or Federal workers' compensation agency may be sued in a court of law for damages resulting from disability or death caused by an asbestos-related disease.

(c) Notwithstanding any other provision of law, or any other law, in any civil action for liability against a third party arising out of any action to which subsection (a) of this Section

applies, the provisions of this Section shall govern the rights of the claimant and of each responsible party.

RESPONSIBILITY AND INSURANCE
FOR RESPONSIBLE PARTIES

Sec. 9 (a) Every responsible party shall comply with orders or awards of the appropriate State workers' compensation agency made in accordance with the provisions of this Act.

(b) Every employer who--

(1) has reason to believe that the employer is a responsible party under the provisions of this Act;

(2) is located within a State in which the State workers' compensation laws are not certified under the provisions of Section 5 of this Act; or

(3) is located in a State in which the State workers' compensation laws are certified under Section 5 of this Act, but the employer is not subject to such laws, shall obtain and keep current insurance for the payment of compensation required by this Act.

(c) Each contractor of insurance under which compensation benefits are provided to or for employees of any responsible party made to cover occupational diseases, disabilities or deaths as a result of exposure to asbestos shall be deemed to provide benefits in accordance with the minimum standards contained in Section 4 of this Act.

(d) Any policies or contracts of insurance issued by a carrier to indemnify and/or defend a responsible party which policies or contracts of insurance would be applicable to claims against any responsible party for damages due to an asbestos-related disease shall be applicable to any contribution required or otherwise determined to be due from a responsible party under this Act.

(e) Any responsible party who fails to comply with the provisions of this section shall be subject to a civil penalty not to exceed $

Sec.10. (a) The Secretary may prescribe such rules, regulations and guidelines under this Act as he deems necessary. All such rules, regulations and guidelines shall be published in the Federal Register at least 30 days prior to their effective date.

(b) The Secretary may make such grants, contracts, or agreements, establish such procedures, and make such payments, in installments and advance by way of reimbursement, or otherwise allocate or expend funds made available under this Act as he deems necessary to carry out the provisions of this Act. The Secretary may make necessary adjustments in payments on account of overpayments or underpayments.

(c) The Secretary is authorized, by cooperative agreement to carry out the duties of a responsible party under this Act for each department and agency of the Federal Government.

AUTHORIZATION OF APPROPRIATIONS

Sec. 11. There are authorized to be appropriated $ to carry out the provisions of this Act, including the payment of compensation as a responsible party.

EFFECTIVE DATE

Sec. 12. The provisions of this Act shall become effective upon enactment of this legislation.

Sec. 13. Any claimant who, as of the effective date of this Act, has pending in any Federal Court or any court in any of the several states, an action at common law to recover damages on account of any asbestos-related disease, as defined in Section 2 of this Act, may elect, within 180 days from and after the effective date of this Act, and upon first dismissing with prejudice such action at common law, to proceed under the provisions of this Act. Any claimant not so electing, or who has pursued such claim to a successful final determination in an action at law or settlement, or who files and pursues to a final determination an action at common law to recover damages on account of any asbestos-related disease after December 1, 1979, shall not be entitled to benefits under this Act.

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