

Bill No. HB 1019, 1st Eng.

Barcode 324490

CHAMBER ACTION

Senate

House

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11 Senator Webster moved the following amendment:

12
13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

15
16 and insert:

17 Section 1. Short title.--This act may be cited as the
18 "Asbestos and Silica Comm Fairness Act".

19 Section 2. Purpose.--It is the purpose of this act to:

20 (1) Give priority to true victims of asbestos and
21 silica, claimants who can demonstrate actual physical
22 impairment caused by exposure to asbestos or silica;

23 (2) Fully preserve the rights of claimants who were
24 exposed to asbestos or silica to pursue compensation if they
25 become impaired in the future as a result of the exposure;

26 (3) Enhance the ability of the judicial system to
27 supervise and control asbestos and silica litigation; and

28 (4) Conserve the scarce resources of the defendants to
29 allow compensation to cancer victims and others who are
30 physically impaired by exposure to asbestos or silica while
31 securing the right to similar compensation for those who may

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1 suffer physical impairment in the future.

2 Section 3. Definitions.--As used in this act, the
3 term:

4 (1) "AMA Guides to the Evaluation of Permanent
5 Impairment" means the American Medical Association's Guides to
6 the Evaluation of Permanent Impairment.

7 (2) "Asbestos" includes all minerals defined as
8 'asbestos' in 29 C.F.R. section 1910, as amended.

9 (3) "Asbestos claim" means a claim for damages or
10 other civil or equitable relief presented in a civil action,
11 arising out of, based on, or related to the health effects of
12 exposure to asbestos, including loss of consortium, wrongful
13 death, and any other derivative claim made by or on behalf of
14 an exposed person or a representative, spouse, parent, child,
15 or other relative of an exposed person. The term does not
16 include claims for benefits under a workers' compensation law
17 or veterans' benefits program, or claims brought by a person
18 as a subrogee by virtue of the payment of benefits under a
19 workers' compensation law.

20 (4) "Asbestosis" means bilateral diffuse interstitial
21 fibrosis of the lungs caused by inhalation of asbestos fibers.

22 (5) "Board-certified in internal medicine" means a
23 physician who is certified by the American Board of Internal
24 Medicine or the American Osteopathic Board of Internal
25 Medicine.

26 (6) "Board-certified in occupational medicine" means a
27 physician who is certified in the subspecialty of occupational
28 medicine by the American Board of Preventive Medicine or the
29 American Osteopathic Board of Preventive Medicine.

30 (7) "Board-certified in oncology" means a physician
31 who is certified in the subspecialty of medical oncology by

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1 the American Board of Internal Medicine or the American
2 Osteopathic Board of Internal Medicine.

3 (8) "Board-certified in pathology" means a physician
4 who holds primary certification in anatomic pathology or
5 clinical pathology from the American Board of Pathology or the
6 American Osteopathic Board of Internal Medicine and whose
7 professional practice:

8 (a) Is principally in the field of pathology; and

9 (b) Involves regular evaluation of pathology materials
10 obtained from surgical or postmortem specimens.

11 (9) "Board-certified in pulmonary medicine" means a
12 physician who is certified in the subspecialty of pulmonary
13 medicine by the American Board of Internal Medicine or the
14 American Osteopathic Board of Internal Medicine.

15 (10) "Bankruptcy proceeding" means a case brought
16 under Title 11, United State Code, or any related proceeding
17 as provided in section 157 of Title 28, United States Code.

18 (11) "Certified B-reader" means an individual
19 qualified as a "final" or "B-reader" under 42 C.F.R. section
20 37.51(b), as amended.

21 (12) "Civil action" means all suits or claims of a
22 civil nature in court, whether cognizable as cases at law or
23 in equity or in admiralty. The term does not include an action
24 relating to a workers' compensation law, or a proceeding for
25 benefits under a veterans' benefits program.

26 (13) "Exposed person" means a person whose exposure to
27 asbestos or to asbestos-containing products is the basis for
28 an asbestos claim.

29 (14) "FEV1" means forced expiratory volume in the
30 first second, which is the maximal volume of air expelled in
31 one second during performance of simple spirometric tests.

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1 (15) "FVC" means forced vital capacity, which is the
2 maximal volume of air expired with maximum effort from a
3 position of full inspiration.

4 (16) "ILO Scale" means the system for the
5 classification of chest x-rays set forth in the International
6 Labour Office's Guidelines for the Use of ILO International
7 Classification of Radiographs of Pneumoconioses.

8 (17) "Lung cancer" means a malignant tumor in which
9 the primary site of origin of the cancer is inside of the
10 lungs, but the term does not include an asbestos claim based
11 upon mesothelioma.

12 (18) "Mesothelioma" means a malignant tumor with a
13 primary site in the pleura or the peritoneum, which has been
14 diagnosed by a board-certified pathologist, using standardized
15 and accepted criteria of microscopic morphology or appropriate
16 staining techniques.

17 (19) "Nonmalignant condition" means any condition that
18 can be caused by asbestos or silica other than a diagnosed
19 cancer.

20 (20) "Nonsmoker" means the exposed person has not
21 smoked cigarettes or used other tobacco products on a
22 consistent and frequent basis within the last 15 years.

23 (21) "Pathological evidence of asbestosis" means a
24 statement by a board-certified pathologist that more than one
25 representative section of lung tissue uninvolved with any
26 other disease process demonstrates a pattern of
27 peribronchiolar or parenchymal scarring in the presence of
28 characteristic asbestos bodies and that there is no other more
29 likely explanation for the presence of the fibrosis.

30 (22) "Predicted lower limit of normal" for any test
31 means the fifth percentile of healthy populations based on

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1 age, height, and gender, as referenced in the AMA Guides to
2 the Evaluation of Permanent Impairment.

3 (23) "Qualified physician" means a medical doctor,
4 who:

5 (a) Is a board-certified pathologist licensed to
6 practice and actively practices in this country who performed
7 services requested or authorized by a physician who:

8 1. Has conducted a physical examination of the exposed
9 person or, if the person is deceased, has reviewed all
10 available records relating to the exposed person's medical
11 condition;

12 2. Is actually treating or treated the exposed person,
13 and has or had a doctor-patient relationship with the person;
14 and

15 3. Is licensed to practice and actively practices in
16 this country; or

17 (b) Is a board-certified oncologist, pulmonary
18 specialist, or specialist in occupational and environmental
19 medicine who:

20 1. Has conducted a physical examination of the exposed
21 person or, if the person is deceased, has reviewed all
22 available records relating to the exposed person's medical
23 condition;

24 2. Is actually treating or treated the exposed person,
25 and has or had a doctor-patient relationship with the person;
26 and

27 3. Is licensed to practice and actively practices in
28 this country.

29 (24) "Radiological evidence of asbestosis" means a
30 quality 1 chest x-ray under the ILO System of classification
31 (in a death case where no pathology is available, the

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1 necessary radiologic findings may be made with a quality 2
2 film if a quality 1 film is not available) showing small,
3 irregular opacities (s, t, u) graded by a certified B-reader
4 as at least 1/1 on the ILO scale.

5 (25) "Radiological evidence of diffuse pleural
6 thickening" means a quality 1 chest x-ray under the ILO System
7 of classification (in a death case where no pathology is
8 available, the necessary radiologic findings may be made with
9 a quality 2 film if a quality 1 film is not available) showing
10 bilateral pleural thickening of at least B2 on the ILO scale
11 and blunting of at least one costophrenic angle.

12 (26) "Silica" means a respirable crystalline form of
13 silicon dioxide, including, but not limited to, alpha, quartz,
14 cristobalite, and trydmite.

15 (27) "Silica claim" means a claim for damages or other
16 civil or equitable relief presented in a civil action, arising
17 out of, based on, or related to the health effects of exposure
18 to silica, including loss of consortium, wrongful death, and
19 any other derivative claim made by or on behalf of an exposed
20 person or a representative, spouse, parent, child, or other
21 relative of an exposed person. The term does not include
22 claims for benefits under a workers' compensation law or
23 veterans' benefits program, or claims brought by a person as a
24 subrogee by virtue of the payment of benefits under a workers'
25 compensation law.

26 (28) "Silicosis" means nodular interstitial fibrosis
27 of the lungs caused by inhalation of silica.

28 (29) "Smoker" means a person who has smoked cigarettes
29 or used other tobacco products on a consistent and frequent
30 basis within the last 15 years.

31 (30) "Substantial occupational exposure" means

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1 employment for an extended period of time in industries and
2 occupations in which, for a substantial portion of a normal
3 work year for that occupation, the exposed person did any of
4 the following:

5 (a) Handled raw asbestos fibers;

6 (b) Fabricated asbestos-containing products so that
7 the person was exposed to raw asbestos fibers in the
8 fabrication process;

9 (c) Altered, repaired, or otherwise worked with an
10 asbestos-containing product in a manner that exposed the
11 person on a regular basis to asbestos fibers; or

12 (d) Worked in close proximity to other persons engaged
13 in any of the activities described in paragraphs (a)-(c) in a
14 manner that exposed the person on a regular basis to asbestos
15 fibers.

16 (31) "Veterans benefits program" means a program for
17 benefits in connection with military service administered by
18 the Veterans' Administration under Title 38, United States
19 Code.

20 (32) "Workers' compensation law" means a law
21 respecting a program administered by this state or the United
22 States to provide benefits, funded by a responsible employer
23 or its insurance carrier, for occupational diseases or
24 injuries or for disability or death caused by occupational
25 diseases or injuries. The term includes the Longshore and
26 Harbor Workers' Compensation Act, 33 U.S.C. sections 901-944,
27 948-950, and the Federal Employees Compensation Act, chapter
28 81 of Title 5, United States Code, but does not include the
29 Act of April 22, 1908, the Federal Employers Liability Act, 45
30 U.S.C. 51 et seq.

31 Section 4. Physical impairment.--

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1 (1) Physical impairment of the exposed person, to
 2 which asbestos or silica exposure was a substantial
 3 contributing factor, is an essential element of an asbestos or
 4 silica claim.

5 (2) A person may not file or maintain a civil action
 6 alleging a nonmalignant asbestos claim in the absence of a
 7 prima facie showing of physical impairment as a result of a
 8 medical condition to which exposure to asbestos was a
 9 substantial contributing factor. The prima facie showing must
 10 include all of the following requirements:

11 (a) Evidence verifying that a qualified physician, or
 12 someone working under the direct supervision and control of a
 13 qualified physician, has taken a detailed occupational and
 14 exposure history of the exposed person or, if the person is
 15 deceased, from a person who is knowledgeable about the
 16 exposures that form the basis of the nonmalignant asbestos
 17 claim, including:

18 1. Identification of all of the exposed person's
 19 principal places of employment and exposures to airborne
 20 contaminants; and

21 2. Whether each place of employment involved exposures
 22 to airborne contaminants, including but not limited to
 23 asbestos fibers or other disease causing dusts, that can cause
 24 pulmonary impairment and the nature, duration and level of any
 25 such exposure.

26 (b) Evidence verifying that a qualified physician, or
 27 someone working under the direct supervision and control of a
 28 qualified physician, has taken detailed medical and smoking
 29 history, including a thorough review of the exposed person's
 30 past and present medical problems and their most probable
 31 cause.

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1 (c) Evidence sufficient to demonstrate that at least
2 10 years have elapsed between the date of first exposure to
3 asbestos and the date the diagnosis is made.

4 (d) A determination by a qualified physician, on the
5 basis of a medical examination and pulmonary function testing,
6 that the exposed person has a permanent respiratory impairment
7 rating of at least Class 2 as defined by and evaluated
8 pursuant to the AMA Guides to the Evaluation of Permanent
9 Impairment.

10 (e) A diagnosis by a qualified physician of asbestosis
11 or diffuse pleural thickening, based at a minimum on
12 radiological or pathological evidence of asbestosis or
13 radiological evidence of diffuse pleural thickening.

14 (f) A determination by a qualified physician that
15 asbestosis or diffuse pleural thickening, rather than chronic
16 obstructive pulmonary disease, is a substantial contributing
17 factor to the exposed person's physical impairment, based at a
18 minimum on a determination that the exposed person has:

19 1. Total lung capacity, by plethysmography or timed
20 gas dilution, below the predicted lower limit of normal;

21 2. Forced vital capacity below the lower limit of
22 normal and a ratio of FEV1 to FVC that is equal to or greater
23 than the predicted lower limit of normal; or

24 3. A chest x-ray showing small, irregular opacities
25 (s, t, u) graded by a certified B-reader at least 2/1 on the
26 ILO scale.

27 (g) If the exposed person meets the requirements of
28 paragraphs (a), (b), and (c), and if a qualified physician
29 determines that the exposed person has a physical impairment,
30 as demonstrated by meeting the criteria set forth in
31 paragraphs (d) and (f)1. or 2., but the exposed person's chest

1 x-ray does not demonstrate radiological evidence of
 2 asbestosis, the exposed person may meet the criteria of
 3 paragraph (e) if his or her chest x-ray is graded by a
 4 certified B-reader as at least 1/0 and a qualified physician,
 5 relying on high-resolution computed tomography, determines to
 6 a reasonable degree of medical certainty that the exposed
 7 person has asbestosis and forms the conclusion set forth in
 8 paragraph (h).

9 (h) A conclusion by a qualified physician that the
 10 exposed person's medical findings and impairment were not more
 11 probably the result of causes other than the asbestos exposure
 12 revealed by the exposed person's employment and medical
 13 history. A diagnosis that states that the medical findings and
 14 impairment are "consistent with" or "compatible with" exposure
 15 to asbestos does not meet the requirements of this subsection.

16 (i) If a plaintiff files a civil action alleging a
 17 nonmalignant asbestos claim, and that plaintiff alleges that
 18 his or her exposure to asbestos was the result of extended
 19 contact with another exposed person who, if the civil action
 20 had been filed by the other exposed person, would have met the
 21 requirements of paragraph (a) and the plaintiff alleges that
 22 he or she had extended contact with the exposed person during
 23 the time period in which that exposed person met the
 24 requirements of paragraph (a), the plaintiff has satisfied the
 25 requirements of paragraph (a). The plaintiff in such a civil
 26 action must individually satisfy the requirements of
 27 paragraphs (b), (c), (d), (e), (f), (g), and (h).

28 (3) A person who is a smoker may not file or maintain
 29 a civil action alleging an asbestos claim which is based upon
 30 cancer of the lung, larynx, pharynx, or esophagus in the
 31 absence of a prima facie showing that includes all of the

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1 following requirements:

2 (a) A diagnosis by a qualified physician who is
3 board-certified in pathology, pulmonary medicine, or oncology,
4 as appropriate for the type of cancer claimed, of a primary
5 cancer of the lung, larynx, pharynx, or esophagus, and that
6 exposure to asbestos was a substantial contributing factor to
7 the condition.

8 (b) Evidence sufficient to demonstrate that at least
9 10 years have elapsed between the date of first exposure to
10 asbestos and the date of diagnosis of the cancer.

11 (c) Radiological or pathological evidence of
12 asbestosis or diffuse pleural thickening or a qualified
13 physician's diagnosis of asbestosis based on a chest x-ray
14 graded by a certified B-reader as at least 1/0 on the ILO
15 scale and high-resolution computed tomography supporting the
16 diagnosis of asbestosis to a reasonable degree of medical
17 certainty.

18 (d) Evidence of the exposed person's substantial
19 occupational exposure to asbestos. If a plaintiff files a
20 civil action alleging an asbestos-related claim based on
21 cancer of the lung, larynx, pharynx, or esophagus, and that
22 plaintiff alleges that his or her exposure to asbestos was the
23 result of extended contact with another exposed person who, if
24 the civil action had been filed by the other exposed person,
25 would have met the substantial occupational exposure
26 requirement of this subsection, and the plaintiff alleges that
27 he or she had extended contact with the exposed person during
28 the time period in which that exposed person met the
29 substantial occupational exposure requirement of this
30 subsection, the plaintiff has satisfied the requirements of
31 this paragraph. The plaintiff in such a civil action must

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1 individually satisfy the requirements of this subsection.

2 (e) If the exposed person is deceased, the qualified
3 physician, or someone working under the direct supervision and
4 control of a qualified physician, may obtain the evidence
5 required in paragraph (b) and paragraph (d) from the person
6 most knowledgeable about the alleged exposures that form the
7 basis of the asbestos claim.

8 (f) A conclusion by a qualified physician that the
9 exposed person's medical findings and impairment were not more
10 probably the result of causes other than the asbestos exposure
11 revealed by the exposed person's employment and medical
12 history. A conclusion that the medical findings and impairment
13 are "consistent with" or "compatible with" exposure to
14 asbestos does not meet the requirements of this subsection.

15 (4) In a civil action alleging an asbestos claim by a
16 nonsmoker based on cancer of the lung, larynx, pharynx, or
17 esophagus, a prima facie showing of an impairment due to
18 asbestos exposure is not required.

19 (5) A person may not file or maintain a civil action
20 alleging an asbestos claim which is based on cancer of the
21 colon, rectum, or stomach in the absence of a prima facie
22 showing that includes all of the following requirements:

23 (a) A diagnosis by a qualified physician who is
24 board-certified in pathology, pulmonary medicine, or oncology,
25 as appropriate for the type of cancer claimed, of cancer of
26 the colon, rectum, or stomach, and that exposure to asbestos
27 was a substantial contributing factor to the condition.

28 (b) Evidence sufficient to demonstrate that at least
29 10 years have elapsed between the date of first exposure to
30 asbestos and the date of diagnosis of the cancer.

31 (c)1.a. Radiological or pathological evidence of

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1 asbestosis or diffuse pleural thickening or a qualified
 2 physician's diagnosis of asbestosis based on a chest x-ray
 3 graded by a certified B-reader as at least 1/0 on the ILO
 4 scale and high-resolution computed tomography supporting the
 5 diagnosis of asbestosis to a reasonable degree of medical
 6 certainty; or

7 b. Evidence of the exposed person's substantial
 8 occupational exposure to asbestos. If a plaintiff files a
 9 civil action alleging an asbestos-related claim based on
 10 cancer of the colon, rectum, or stomach, and that plaintiff
 11 alleges that his or her exposure to asbestos was the result of
 12 extended contact with another exposed person who, if the civil
 13 action had been filed by the other exposed person, would have
 14 met the substantial occupational exposure requirement of this
 15 subsection, and the plaintiff alleges that he or she had
 16 extended contact with the exposed person during the time
 17 period in which that exposed person met the substantial
 18 occupational exposure requirement of this subsection, the
 19 plaintiff has satisfied the requirements of this
 20 sub-subparagraph. The plaintiff in such a civil action must
 21 individually satisfy the requirements of this subsection.

22 2. In the case of an exposed person who is a smoker,
 23 the criteria in sub-subparagraphs 1.a. and b. must be met.

24 3. If the exposed person is deceased, the qualified
 25 physician, or someone working under the direct supervision and
 26 control of a qualified physician, may obtain the evidence
 27 required in sub-subparagraph 1.b. and paragraph (b) from the
 28 person most knowledgeable about the alleged exposures that
 29 form the basis of the asbestos claim.

30 (d) A conclusion by a qualified physician that the
 31 exposed person's medical findings and impairment were not more

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1 probably the result of causes other than the asbestos exposure
 2 revealed by the exposed person's employment and medical
 3 history. A conclusion that the medical findings and impairment
 4 are "consistent with" or "compatible with" exposure to
 5 asbestos does not meet the requirements of this subsection.

6 (6) In a civil action alleging an asbestos claim based
 7 upon mesothelioma a prima facie showing of an impairment due
 8 to asbestos exposure is not required.

9 (7) A person may not file or maintain a civil action
 10 alleging a silicosis claim in the absence of a prima facie
 11 showing of physical impairment as a result of a medical
 12 condition to which exposure to silica was a substantial
 13 contributing factor. The prima facie showing must include all
 14 of the following requirements:

15 (a) Evidence verifying that a qualified physician, or
 16 someone working under the direct supervision and control of a
 17 qualified physician, has taken a detailed occupational and
 18 exposure history of the exposed person or, if the person is
 19 deceased, from a person who is knowledgeable about the
 20 exposures that form the basis of the nonmalignant silica
 21 claim, including:

22 1. All of the exposed person's principal places of
 23 employment and exposures to airborne contaminants; and

24 2. Whether each place of employment involved exposures
 25 to airborne contaminants, including but not limited to silica
 26 particles or other disease causing dusts, that can cause
 27 pulmonary impairment and the nature, duration, and level of
 28 any such exposure.

29 (b) Evidence verifying that a qualified physician, or
 30 someone working under the direct supervision and control of a
 31 qualified physician, has taken detailed medical and smoking

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1 history, including a thorough review of the exposed person's
2 past and present medical problems and their most probable
3 cause, and verifying a sufficient latency period for the
4 applicable stage of silicosis.

5 (c) A determination by a qualified physician, on the
6 basis of a medical examination and pulmonary function testing,
7 that the exposed person has a permanent respiratory impairment
8 rating of at least Class 2 as defined by and evaluated
9 pursuant to the AMA Guides to the Evaluation of Permanent
10 Impairment.

11 (d) A determination by a qualified physician that the
12 exposed person has:

13 1. A quality 1 chest x-ray under the ILO System of
14 classification and that the x-ray has been read by a certified
15 B-reader as showing, according to the ILO System of
16 classification, bilateral nodular opacities (p, q, or r)
17 occurring primarily in the upper lung fields, graded 1/1 or
18 higher; or

19 2. Pathological demonstration of classic silicotic
20 nodules exceeding one centimeter in diameter as published in
21 112 Archive of Pathology and Laboratory Medicine 7 (July
22 1988).

23
24 In a death case where no pathology is available, the necessary
25 radiologic findings may be made with a quality 2 film if a
26 quality 1 film is not available.

27 (e) A conclusion by a qualified physician that the
28 exposed person's medical findings and impairment were not more
29 probably the result of causes other than silica exposure
30 revealed by the exposed person's employment and medical
31 history. A conclusion that the medical findings and impairment

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1 are "consistent with" or "compatible with" exposure to silica
2 does not meet the requirements of this subsection.

3 (8) A person may not file or maintain a civil action
4 alleging a silica claim other than as provided in subsection
5 (7), in the absence of a prima facie showing that includes all
6 of the following requirements:

7 (a) A report by a qualified physician who is:

8 1. Board-certified in pulmonary medicine, internal
9 medicine, oncology, or pathology stating a diagnosis of the
10 exposed person of silica-related lung cancer and stating that,
11 to a reasonable degree of medical probability, exposure to
12 silica was a substantial contributing factor to the diagnosed
13 lung cancer; or

14 2. Board-certified in pulmonary medicine, internal
15 medicine, or pathology stating a diagnosis of the exposed
16 person of silica-related progressive massive fibrosis or acute
17 silicoproteinosis, or silicosis complicated by documented
18 tuberculosis.

19 (b) Evidence verifying that a qualified physician, or
20 someone working under the direct supervision and control of a
21 qualified physician, has taken a detailed occupational and
22 exposure history of the exposed person or, if the person is
23 deceased, from a person who is knowledgeable about the
24 exposures that form the basis of the nonmalignant silica
25 claim, including:

26 1. All of the exposed person's principal places of
27 employment and exposures to airborne contaminants; and

28 2. Whether each place of employment involved exposures
29 to airborne contaminants, including but not limited to, silica
30 particles or other disease causing dusts, that can cause
31 pulmonary impairment and the nature, duration and level of any

1 such exposure.

2 (c) Evidence verifying that a qualified physician, or
3 someone working under the direct supervision and control of a
4 qualified physician, has taken detailed medical and smoking
5 history, including a thorough review of the exposed person's
6 past and present medical problems and their most probable
7 cause;

8 (d) A determination by a qualified physician that the
9 exposed person has:

10 1. A quality 1 chest x-ray under the ILO System of
11 classification and that the x-ray has been read by a certified
12 B-reader as showing, according to the ILO System of
13 classification, bilateral nodular opacities (p, q, or r)
14 occurring primarily in the upper lung fields, graded 1/1 or
15 higher; or

16 2. Pathological demonstration of classic silicotic
17 nodules exceeding one centimeter in diameter as published in
18 112 Archive of Pathology and Laboratory Medicine 7 (July
19 1988).

20
21 In a death case where no pathology is available, the necessary
22 radiologic findings may be made with a quality 2 film if a
23 quality 1 film is not available.

24 (e) A conclusion by a qualified physician that the
25 exposed person's medical findings and impairment were not more
26 probably the result of causes other than silica exposure
27 revealed by the exposed person's employment and medical
28 history. A conclusion that the medical findings and impairment
29 are "consistent with" or "compatible with" exposure to silica
30 does not meet the requirements of this subsection.

31 (9) Evidence relating to physical impairment under

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1 this section, including pulmonary function testing and
2 diffusing studies, must:

3 (a) Comply with the technical recommendations for
4 examinations, testing procedures, quality assurance, quality
5 control, and equipment of the AMA Guides to the Evaluation of
6 Permanent Impairment, as set forth in 2d C.F.R. Part 404,
7 subpart. P. Appl., part A, section 3.00 E. and F., and the
8 interpretive standards, set forth in the official statement of
9 the American Thoracic Society entitled "lung function testing:
10 selection of reference values and interpretive strategies" as
11 published in American Review of Respiratory Disease. 1991:
12 144:1202-1218;

13 (b) Not be obtained through testing or examinations
14 that violate any applicable law, regulation, licensing
15 requirement, or medical code of practice; and

16 (c) Not be obtained under the condition that the
17 exposed person retain legal services in exchange for the
18 examination, test, or screening.

19 (10) Presentation of prima facie evidence meeting the
20 requirements of subsection (2), (3), (5), or (6) of this
21 section may not:

22 (a) Result in any presumption at trial that the
23 exposed person is impaired by an asbestos-related or
24 silica-related condition;

25 (b) Be conclusive as to the liability of any
26 defendant; and

27 (c) Be admissible at trial.

28 Section 5. Claimant proceedings.--

29 (1) A civil action alleging an asbestos or silica
30 claim may be brought in the courts of this state if the
31 plaintiff is domiciled in this state or the exposure to

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1 asbestos or silica that is a substantial contributing factor
2 to the physical impairment of the plaintiff on which the claim
3 is based occurred in this state.

4 (2) A plaintiff in a civil action alleging an asbestos
5 or silica claim must include with the complaint or other
6 initial pleading a written report and supporting test results
7 constituting prima facie evidence of the exposed person's
8 asbestos-related or silica-related physical impairment meeting
9 the requirements of subsection (2), subsection (3), subsection
10 (5), or subsection (6) of section 4. For any asbestos or
11 silica claim pending on the effective date of this act, the
12 plaintiff must file the report and supporting test results at
13 least 30 days before setting a date for trial. The defendant
14 must be afforded a reasonable opportunity to challenge the
15 adequacy of the proffered prima facie evidence of
16 asbestos-related impairment. The claim of the plaintiff shall
17 be dismissed without prejudice upon a finding of failure to
18 make the required prima facie showing.

19 (3) All asbestos claims and silica claims filed in
20 this state on or after the effective date of this act must
21 include, in addition to the written report described in
22 subsection (3) of section 5 and the information required by
23 subsection (2) of section 7, a sworn information form
24 containing the following information:

25 (a) The claimant's name, address, date of birth, and
26 marital status;

27 (b) If the claimant alleges exposure to asbestos or
28 silica through the testimony of another person or alleges
29 other than direct or bystander exposure to a product, the
30 name, address, date of birth, marital status, for each person
31 by which the claimant alleges exposure, hereinafter the "index

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1 person," and the claimant's relationship to each such person;

2 (c) The specific location of each alleged exposure;

3 (d) The beginning and ending dates of each alleged
4 exposure as to each asbestos product or silica product for
5 each location at which exposure allegedly took place for the
6 plaintiff and each index person;

7 (e) The occupation and name of the employer of the
8 exposed person at the time of each alleged exposure;

9 (f) The specific condition related to asbestos or
10 silica claimed to exist; and

11 (g) Any supporting documentation of the condition
12 claimed to exist.

13 Section 6. Statute of limitations; two-disease rule.--

14 (1) Notwithstanding any other law, with respect to any
15 asbestos or silica claim not barred as of the effective date
16 of this act, the limitations period does not begin to run
17 until the exposed person discovers, or through the exercise of
18 reasonable diligence should have discovered, that he or she is
19 physically impaired by an asbestos-related or silica-related
20 condition.

21 (2) An asbestos or silica claim arising out of a
22 nonmalignant condition shall be a distinct cause of action
23 from an asbestos or silica claim relating to the same exposed
24 person arising out of asbestos-related or silica-related
25 cancer. Damages may not be awarded for fear or risk of cancer
26 in a civil action asserting an asbestos or silica claim.

27 (3) A settlement of a nonmalignant asbestos or silica
28 claim concluded after the effective date of this act may not
29 require, as a condition of settlement, the release of any
30 future claim for asbestos-related or silica-related cancer.

31 Section 7. Scope of liability; damages.--

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1 (1) Punitive damages may not be awarded in any civil
2 action alleging an asbestos or silica claim.

3 (2) At the time a complaint is filed in a civil action
4 alleging an asbestos or silica claim, the plaintiff must file
5 a verified written report with the court which discloses the
6 total amount of any collateral source payments received,
7 including payments that the plaintiff will receive in the
8 future, as a result of settlements or judgments based upon the
9 same claim. For any asbestos or silica claim pending on the
10 effective date of this act, the plaintiff shall file a
11 verified written report within 60 days after the effective
12 date of this act, or at least 30 days before trial. Further,
13 the plaintiff must update the reports on a regular basis
14 during the course of the proceeding until a final judgment is
15 entered in the case. The court shall permit setoff, based on
16 the collateral source payment information provided, in
17 accordance with the laws of this state as of the effective
18 date of this act.

19 Section 8. Liability rules applicable to protect
20 sellers, renters, and lessors.--

21 (1)(a) In a civil action alleging an asbestos or
22 silica claim, a product seller other than a manufacturer is
23 liable to a plaintiff only if the plaintiff establishes that:

24 1.a. The product that allegedly caused the harm that
25 is the subject of the complaint was sold, rented, or leased by
26 the product seller;

27 b. The product seller failed to exercise reasonable
28 care with respect to the product; and

29 c. The failure to exercise reasonable care was a
30 proximate cause of the harm to the exposed person;

31 2.a. The product seller made an express warranty

1 applicable to the product that allegedly caused the harm that
2 is the subject of the complaint, independent of any express
3 warranty made by the manufacturer as to the same product;

4 b. The product failed to conform to the warranty; and

5 c. The failure of the product to conform to the
6 warranty caused the harm to the exposed person; or

7 3.a. The product seller engaged in intentional
8 wrongdoing, as determined under the law of this state; and

9 b. The intentional wrongdoing caused the harm that is
10 the subject of the complaint.

11 (b) For the purpose of sub-subparagraph 1.b., a
12 product seller may not be considered to have failed to
13 exercise reasonable care with respect to a product based upon
14 an alleged failure to inspect the product, if:

15 1. The failure occurred because there was no
16 reasonable opportunity to inspect the product; or

17 2. The inspection, in the exercise of reasonable care,
18 would not have revealed the aspect of the product which
19 allegedly caused the exposed person's impairment.

20 (2) In a civil action alleging an asbestos or silica
21 claim, a person engaged in the business of renting or leasing
22 a product is not liable for the tortious act of another solely
23 by reason of ownership of that product.

24 Section 9. Miscellaneous provisions.--

25 (1) This act does not affect the scope or operation of
26 any workers' compensation law or veterans' benefit program,
27 affect the exclusive remedy or subrogation provisions of the
28 law, or authorize any lawsuit which is barred by law.

29 (2) Nothing in this act is intended to, and nothing in
30 this act shall be interpreted to:

31 (a) Affect the rights of any party in bankruptcy

1 proceedings; or

2 (b) Affect the ability of any person who is able to
3 make a showing that the person satisfies the claim criteria
4 for compensable claims or demands under a trust established
5 under a plan of reorganization under Chapter 11 of the United
6 States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim
7 or demand against that trust.

8 (3) It is the intent of the Legislature that this law
9 render the utmost comity and respect to the constitutional
10 prerogatives of the judiciary of this state, and nothing in
11 this act should be construed as any effort to impinge upon
12 those prerogatives. To that end, if the Florida Supreme Court
13 enters a final judgment concluding or declaring that any
14 provision of this act improperly encroaches on the authority
15 of the court to adopt the rules of practice and procedure in
16 the courts of this state, the Legislature intends that any
17 such provision be construed as a request for a rule change
18 under Section 2, Article V, of the State Constitution and not
19 as a mandatory legislative directive.

20 (4) This act may not be interpreted to prevent any
21 person from bringing or maintaining an asbestos claim based on
22 nonoccupational exposure where such person would be otherwise
23 able to bring or maintain a claim under this act.

24 (5) If any provision of this act or the application
25 thereof to any person or circumstance is held invalid, the
26 invalidity does not affect other provisions or application of
27 the act which can be given effect without the invalid
28 provision or application, and to this end the provisions of
29 this act are declared severable.

30 Section 10. This act shall take effect July 1, 2005.
31 Because the act expressly preserves the right of all injured

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1 persons to recover full compensatory damages for their loss,
 2 it does not impair vested rights. In addition, because it
 3 enhances the ability of the most seriously ill to receive a
 4 prompt recovery, it is remedial in nature. Therefore, the act
 5 shall apply to any civil action asserting an asbestos claim in
 6 which trial has not commenced as of the effective date of this
 7 act.

8
9

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

13

14 and insert:

15

 A bill to be entitled

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 An act relating to asbestos and silica claims;

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 providing a short title; providing purposes;

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 providing definitions; requiring physical

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 impairment as an essential element of a claim;

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 providing criteria for prima facie evidence of

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 physical impairment for claims and certain

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 actions; providing exceptions; providing

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 additional requirements for evidence relating

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 to physical impairment; specifying absence of

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 certain presumptions at trial; providing

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 procedures for claims and certain actions;

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 providing for venue; providing for preliminary

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 proceedings; requiring asbestos and silica

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 claims to include certain information;

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 specifying certain limitation periods for

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 certain claims; specifying distinct causes of

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1 action for certain conditions; limiting damages
 2 under certain circumstances; prohibiting a
 3 general release from liability; prohibiting
 4 award of punitive damages; providing for
 5 collateral source payments; specifying
 6 liability rules applicable to certain persons;
 7 providing for construction; providing
 8 severability; providing application to certain
 9 civil actions; providing an effective date.

10

11 WHEREAS, asbestos is a mineral that was widely used
 12 before the mid 1970's for insulation, fireproofing, and other
 13 purposes, and

14 WHEREAS, millions of American workers and others were
 15 exposed to asbestos, especially during and after World War II
 16 and before the advent of regulation by the Occupational Safety
 17 and Health Administration in the early 1970's, and

18 WHEREAS, long-term exposure to asbestos has been
 19 associated with various types of cancer, including
 20 mesothelioma and lung cancer, as well as such nonmalignant
 21 conditions as asbestosis, pleural plaques, and diffuse pleural
 22 thickening, and

23 WHEREAS, the diseases caused by asbestos often have
 24 long latency periods, and

25 WHEREAS, although the use of asbestos has dramatically
 26 declined since the 1970's and workplace exposures have been
 27 regulated since 1971 by the Occupational Safety and Health
 28 Administration, past exposures will continue to result in
 29 significant claims of death and disability as a result of such
 30 exposure, and

31 WHEREAS, exposure to asbestos has created a flood of

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1 litigation in state and federal courts that the United States
 2 Supreme Court in Ortiz v. Fibreboard Corporation, 119 S. Ct.
 3 2295, 2302 (1999), has characterized as an "elephantine mass"
 4 of cases that "defies customary judicial administration," and

5 WHEREAS, asbestos personal injury litigation can be
 6 unfair and inefficient, imposing a severe burden on litigants
 7 and taxpayers alike, and

8 WHEREAS, the inefficiencies and societal costs of
 9 asbestos litigation have been well documented in reports such
 10 as the RAND Institutes study on Asbestos Litigation Costs and
 11 Compensation, the study of Joseph E. Stiglitz on The Impact of
 12 Asbestos Liabilities on Workers in Bankrupt Firms, Dr. Joseph
 13 Gitlin's report from Johns Hopkins Medical School on
 14 Comparison of B Readers' Interpretations of Chest Radiographs
 15 for Asbestos Related Changes, and the Report to the House of
 16 Delegates from the American Bar Association Commission on
 17 Asbestos Litigation, and

18 WHEREAS, the extraordinary volume of nonmalignant
 19 asbestos cases continues to strain state courts, and

20 WHEREAS, the vast majority of asbestos claims are filed
 21 by individuals who allege they have been exposed to asbestos
 22 and who may have some physical sign of exposure but who suffer
 23 no present asbestos-related impairment, and

24 WHEREAS, the cost of compensating exposed individuals
 25 who are not sick jeopardizes the ability of defendants to
 26 compensate people with cancer and other serious
 27 asbestos-related diseases, now and in the future, and

28 WHEREAS, the cost of compensating exposed individuals
 29 who are not sick threatens the savings, retirement benefits,
 30 and jobs of defendants' current and retired employees and
 31 adversely affects the communities in which these defendants

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1 operate, and

2 WHEREAS, the crush of asbestos litigation has been
3 costly to employers, employees, litigants, and the court
4 system, and

5 WHEREAS, in 1982, the Johns-Manville Corporation, the
6 nation's largest single supplier of insulation products
7 containing asbestos, declared bankruptcy due to the burden of
8 the asbestos litigation, and

9 WHEREAS, since 1982, more than 70 other companies have
10 declared bankruptcy due to the burden of asbestos litigation,
11 and

12 WHEREAS, estimates show that between 60,000 and 128,000
13 American workers already have lost their jobs as a result of
14 asbestos-related bankruptcies and that the total number of
15 jobs that will be lost due to asbestos-related bankruptcies
16 will eventually reach 432,000, and

17 WHEREAS, each worker who loses his or her job due to an
18 asbestos-related bankruptcy loses between \$25,000 and \$50,000
19 in wages over his or her career and loses 25 percent or more
20 of the value of his or her retirement plan, and

21 WHEREAS, asbestos litigation is estimated to have cost
22 over \$54 billion, with well over half of this expense going to
23 attorney's fees and other litigation costs, and

24 WHEREAS, the seriously ill too often find that the
25 value of their recovery is substantially reduced due to
26 defendant bankruptcies and the inefficiency of the litigation
27 process, and

28 WHEREAS, silica is a naturally occurring mineral, and

29 WHEREAS, the Earth's crust is over 90 percent silica,
30 and crystalline silica dust is the primary component of sand,
31 quartz, and granite, and

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1 WHEREAS, silica-related illness, including silicosis,
2 can occur when tiny silica particles are inhaled, and

3 WHEREAS, silicosis was recognized as an occupational
4 disease many years ago, and

5 WHEREAS, the American Foundrymen's Society has
6 distributed literature for more than 100 years to its members
7 warning of the dangers of silica exposure, and

8 WHEREAS, the number of new lawsuits alleging
9 silica-related disease being filed each year began to rise
10 precipitously in recent years, and

11 WHEREAS, silica claims, like asbestos claims, often
12 arise when an individual is identified as having markings on
13 his or her lungs that are possibly consistent with silica
14 exposure but the individual has no functional or physical
15 impairment from any silica-related disease, and

16 WHEREAS, the Legislature finds that an overpowering
17 public necessity requires it to act to prevent a silica-based
18 litigation crisis, and

19 WHEREAS, concerns about statutes of limitations may
20 prompt claimants who have been exposed to asbestos or silica
21 but who do not have any current injury to bring premature
22 lawsuits in order to protect against losing their rights to
23 future compensation should they become impaired, and

24 WHEREAS, consolidations, joinders, and similar
25 procedures to which some courts have resorted in order to deal
26 with the mass of asbestos and silica cases can undermine the
27 appropriate functioning of the judicial process and further
28 encourage the filing of thousands of cases by exposed
29 individuals who are not sick and who may never become sick,
30 and

31 WHEREAS, punitive damage awards unfairly divert the

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1 resources of defendants from compensating genuinely impaired
2 claimants and, given the lengthy history of asbestos and
3 silica litigation and the regulatory and other restrictions on
4 the use of asbestos and silica-containing products in the
5 workplace, the legal justification for such awards,
6 punishment, and deterrence is either inapplicable or
7 inappropriate, and

8 WHEREAS, the Legislature finds that there is an
9 overpowering public necessity to defer the claims of exposed
10 individuals who are not sick in order to preserve, now and for
11 the future, defendants' ability to compensate people who
12 develop cancer and other serious asbestos-related and
13 silica-related injuries and to safeguard the jobs, benefits,
14 and savings of workers in this state and the well-being of the
15 economy of this state, NOW, THEREFORE,

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