

Bill No. HB 1019, 1st Eng.

Barcode 524102

CHAMBER ACTION

Senate

House

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Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

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

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

(4) Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while 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 currently a board-certified oncologist,
6 pathologist, pulmonary specialist, or specialist in
7 occupational and environmental medicine;

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

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

15 (d) Is currently licensed to practice and actively
16 practices in this country.

17 (24) "Radiological evidence of asbestosis" means a
18 quality 1 chest x-ray under the ILO System of classification
19 (in a death case where no pathology is available, the
20 necessary radiologic findings may be made with a quality 2
21 film if a quality 1 film is not available) showing small,
22 irregular opacities (s, t, u) graded by a certified B-reader
23 as at least 1/1 on the ILO scale.

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

31 (26) "Silica" means a respirable crystalline form of

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1 silicon dioxide, including, but not limited to, alpha, quartz,
2 crystalite, and trydrite.

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

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

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

19 (30) "Substantial occupational exposure" means
20 employment for an extended period of time in industries and
21 occupations in which, for a substantial portion of a normal
22 work year for that occupation, the exposed person did any of
23 the following:

24 (a) Handled raw asbestos fibers;

25 (b) Fabricated asbestos-containing products so that
26 the person was exposed to raw asbestos fibers in the
27 fabrication process;

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

31 (d) Worked in close proximity to other persons engaged

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1 in any of the activities described in paragraphs (a)-(c) in a
2 manner that exposed the person on a regular basis to asbestos
3 fibers.

4 (31) "Veterans benefits program" means a program for
5 benefits in connection with military service administered by
6 the Veterans' Administration under Title 38, United States
7 Code.

8 (32) "Workers' compensation law" means a law
9 respecting a program administered by this state or the United
10 States to provide benefits, funded by a responsible employer
11 or its insurance carrier, for occupational diseases or
12 injuries or for disability or death caused by occupational
13 diseases or injuries. The term includes the Longshore and
14 Harbor Workers' Compensation Act, 33 U.S.C. sections 901-944,
15 948-950, and the Federal Employees Compensation Act, chapter
16 81 of Title 5, United States Code, but does not include the
17 Act of April 22, 1908, the Federal Employers Liability Act, 45
18 U.S.C. 51 et seq.

19 Section 4. Physical impairment.--

20 (1) Physical impairment of the exposed person, to
21 which asbestos or silica exposure was a substantial
22 contributing factor, is an essential element of an asbestos or
23 silica claim.

24 (2) A person may not file or maintain a civil action
25 alleging a nonmalignant asbestos claim in the absence of a
26 prima facie showing of physical impairment as a result of a
27 medical condition to which exposure to asbestos was a
28 substantial contributing factor. The prima facie showing must
29 include all of the following requirements:

30 (a) Evidence verifying that a qualified physician, or
31 someone working under the direct supervision and control of a

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1 qualified physician, has taken a detailed occupational and
 2 exposure history of the exposed person or, if the person is
 3 deceased, from a person who is knowledgeable about the
 4 exposures that form the basis of the nonmalignant asbestos
 5 claim, including:

6 1. Identification of all of the exposed person's
 7 principal places of employment and exposures to airborne
 8 contaminants; and

9 2. Whether each place of employment involved exposures
 10 to airborne contaminants, including but not limited to
 11 asbestos fibers or other disease causing dusts, that can cause
 12 pulmonary impairment and the nature, duration and level of any
 13 such exposure.

14 (b) Evidence verifying that a qualified physician, or
 15 someone working under the direct supervision and control of a
 16 qualified physician, has taken detailed medical and smoking
 17 history, including a thorough review of the exposed person's
 18 past and present medical problems and their most probable
 19 cause.

20 (c) Evidence sufficient to demonstrate that at least
 21 10 years have elapsed between the date of first exposure to
 22 asbestos and the date the diagnosis is made.

23 (d) A determination by a qualified physician, on the
 24 basis of a medical examination and pulmonary function testing,
 25 that the exposed person has a permanent respiratory impairment
 26 rating of at least Class 2 as defined by and evaluated
 27 pursuant to the AMA Guides to the Evaluation of Permanent
 28 Impairment.

29 (e) A diagnosis by a qualified physician of asbestosis
 30 or diffuse pleural thickening, based at a minimum on
 31 radiological or pathological evidence of asbestosis or

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1 radiological evidence of diffuse pleural thickening.

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

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

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

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

15 (g) If the exposed person meets the requirements of
16 paragraphs (a), (b), and (c), and if a qualified physician
17 determines that the exposed person has a physical impairment,
18 as demonstrated by meeting the criteria set forth in
19 paragraphs (d) and (f)1. or 2., but the exposed person's chest
20 x-ray does not demonstrate radiological evidence of
21 asbestosis, the exposed person may meet the criteria of
22 paragraph (e) if his or her chest x-ray is graded by a
23 certified B-reader as at least 1/0 and a qualified physician,
24 relying on high-resolution computed tomography, determines to
25 a reasonable degree of medical certainty that the exposed
26 person has asbestosis and forms the conclusion set forth in
27 paragraph (h).

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

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1 history. A diagnosis that states that the medical findings and
2 impairment are "consistent with" or "compatible with" exposure
3 to asbestos does not meet the requirements of this subsection.

4 (i) If a plaintiff files a civil action alleging a
5 nonmalignant asbestos claim, and that plaintiff alleges that
6 his or her exposure to asbestos was the result of extended
7 contact with another exposed person who, if the civil action
8 had been filed by the other exposed person, would have met the
9 requirements of paragraph (a) and the plaintiff alleges that
10 he or she had extended contact with the exposed person during
11 the time period in which that exposed person met the
12 requirements of paragraph (a), the plaintiff has satisfied the
13 requirements of paragraph (a). The plaintiff in such a civil
14 action must individually satisfy the requirements of
15 paragraphs (b), (c), (d), (e), (f), (g), and (h).

16 (3) A person who is a smoker may not file or maintain
17 a civil action alleging an asbestos claim which is based upon
18 cancer of the lung, larynx, pharynx, or esophagus in the
19 absence of a prima facie showing that includes all of the
20 following requirements:

21 (a) A diagnosis by a qualified physician who is
22 board-certified in pathology, pulmonary medicine, or oncology,
23 as appropriate for the type of cancer claimed, of a primary
24 cancer of the lung, larynx, pharynx, or esophagus, and that
25 exposure to asbestos was a substantial contributing factor to
26 the condition.

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

30 (c) Radiological or pathological evidence of
31 asbestosis or diffuse pleural thickening or a qualified

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

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

21 (e) If the exposed person is deceased, the qualified
 22 physician, or someone working under the direct supervision and
 23 control of a qualified physician, may obtain the evidence
 24 required in paragraph (b) and paragraph (d) from the person
 25 most knowledgeable about the alleged exposures that form the
 26 basis of the asbestos claim.

27 (f) 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 the asbestos 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
2 asbestos does not meet the requirements of this subsection.

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

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

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

16 (b) Evidence sufficient to demonstrate that at least
17 10 years have elapsed between the date of first exposure to
18 asbestos and the date of diagnosis of the cancer.

19 (c)1.a. Radiological or pathological evidence of
20 asbestosis or diffuse pleural thickening or a qualified
21 physician's diagnosis of asbestosis based on a chest x-ray
22 graded by a certified B-reader as at least 1/0 on the ILO
23 scale and high-resolution computed tomography supporting the
24 diagnosis of asbestosis to a reasonable degree of medical
25 certainty; or

26 b. Evidence of the exposed person's substantial
27 occupational exposure to asbestos. If a plaintiff files a
28 civil action alleging an asbestos-related claim based on
29 cancer of the colon, rectum, or stomach, and that plaintiff
30 alleges that his or her exposure to asbestos was the result of
31 extended contact with another exposed person who, if the civil

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1 action had been filed by the other exposed person, would have
 2 met the substantial occupational exposure requirement of this
 3 subsection, and the plaintiff alleges that he or she had
 4 extended contact with the exposed person during the time
 5 period in which that exposed person met the substantial
 6 occupational exposure requirement of this subsection, the
 7 plaintiff has satisfied the requirements of this
 8 sub-subparagraph. The plaintiff in such a civil action must
 9 individually satisfy the requirements of this subsection.

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

12 3. If the exposed person is deceased, the qualified
 13 physician, or someone working under the direct supervision and
 14 control of a qualified physician, may obtain the evidence
 15 required in sub-subparagraph 1.b. and paragraph (b) from the
 16 person most knowledgeable about the alleged exposures that
 17 form the basis of the asbestos claim.

18 (d) A conclusion by a qualified physician that the
 19 exposed person's medical findings and impairment were not more
 20 probably the result of causes other than the asbestos exposure
 21 revealed by the exposed person's employment and medical
 22 history. A conclusion that the medical findings and impairment
 23 are "consistent with" or "compatible with" exposure to
 24 asbestos does not meet the requirements of this subsection.

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

28 (7) A person may not file or maintain a civil action
 29 alleging a silicosis claim in the absence of a prima facie
 30 showing of physical impairment as a result of a medical
 31 condition to which exposure to silica was a substantial

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1 contributing factor. The prima facie showing must include all
2 of the following requirements:

3 (a) Evidence verifying that a qualified physician, or
4 someone working under the direct supervision and control of a
5 qualified physician, has taken a detailed occupational and
6 exposure history of the exposed person or, if the person is
7 deceased, from a person who is knowledgeable about the
8 exposures that form the basis of the nonmalignant silica
9 claim, including:

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

12 2. Whether each place of employment involved exposures
13 to airborne contaminants, including but not limited to silica
14 particles or other disease causing dusts, that can cause
15 pulmonary impairment and the nature, duration, and level of
16 any such exposure.

17 (b) Evidence verifying that a qualified physician, or
18 someone working under the direct supervision and control of a
19 qualified physician, has taken detailed medical and smoking
20 history, including a thorough review of the exposed person's
21 past and present medical problems and their most probable
22 cause, and verifying a sufficient latency period for the
23 applicable stage of silicosis.

24 (c) A determination by a qualified physician, on the
25 basis of a medical examination and pulmonary function testing,
26 that the exposed person has a permanent respiratory impairment
27 rating of at least Class 2 as defined by and evaluated
28 pursuant to the AMA Guides to the Evaluation of Permanent
29 Impairment.

30 (d) A determination by a qualified physician that the
31 exposed person has:

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

7 2. Pathological demonstration of classic silicotic
8 nodules exceeding one centimeter in diameter as published in
9 112 Archive of Pathology and Laboratory Medicine 7 (July
10 1988).

11
12 In a death case where no pathology is available, the necessary
13 radiologic findings may be made with a quality 2 film if a
14 quality 1 film is not available.

15 (e) A conclusion by a qualified physician that the
16 exposed person's medical findings and impairment were not more
17 probably the result of causes other than silica exposure
18 revealed by the exposed person's employment and medical
19 history. A conclusion that the medical findings and impairment
20 are "consistent with" or "compatible with" exposure to silica
21 does not meet the requirements of this subsection.

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

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

27 1. Board-certified in pulmonary medicine, internal
28 medicine, oncology, or pathology stating a diagnosis of the
29 exposed person of silica-related lung cancer and stating that,
30 to a reasonable degree of medical probability, exposure to
31 silica was a substantial contributing factor to the diagnosed

1 lung cancer; or

2 2. Board-certified in pulmonary medicine, internal
3 medicine, or pathology stating a diagnosis of the exposed
4 person of silica-related progressive massive fibrosis or acute
5 silicoproteinosis, or silicosis complicated by documented
6 tuberculosis.

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

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

16 2. Whether each place of employment involved exposures
17 to airborne contaminants, including but not limited to, silica
18 particles or other disease causing dusts, that can cause
19 pulmonary impairment and the nature, duration and level of any
20 such exposure.

21 (c) Evidence verifying that a qualified physician, or
22 someone working under the direct supervision and control of a
23 qualified physician, has taken detailed medical and smoking
24 history, including a thorough review of the exposed person's
25 past and present medical problems and their most probable
26 cause;

27 (d) A determination by a qualified physician that the
28 exposed person has:

29 1. A quality 1 chest x-ray under the ILO System of
30 classification and that the x-ray has been read by a certified
31 B-reader as showing, according to the ILO System of

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1 classification, bilateral nodular opacities (p, q, or r)
2 occurring primarily in the upper lung fields, graded 1/1 or
3 higher; or

4 2. Pathological demonstration of classic silicotic
5 nodules exceeding one centimeter in diameter as published in
6 112 Archive of Pathology and Laboratory Medicine 7 (July
7 1988).

8
9 In a death case where no pathology is available, the necessary
10 radiologic findings may be made with a quality 2 film if a
11 quality 1 film is not available.

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

19 (9) Evidence relating to physical impairment under
20 this section, including pulmonary function testing and
21 diffusing studies, must:

22 (a) Comply with the technical recommendations for
23 examinations, testing procedures, quality assurance, quality
24 control, and equipment of the AMA Guides to the Evaluation of
25 Permanent Impairment, as set forth in 2d C.F.R. Part 404,
26 subpart. P. Appl., part A, section 3.00 E. and F., and the
27 interpretive standards, set forth in the official statement of
28 the American Thoracic Society entitled "lung function testing:
29 selection of reference values and interpretive strategies" as
30 published in American Review of Respiratory Disease. 1991:
31 144:1202-1218;

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

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

7 (10) Presentation of prima facie evidence meeting the
8 requirements of subsection (2), (3), (5), or (6) of this
9 section may not:

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

13 (b) Be conclusive as to the liability of any
14 defendant; and

15 (c) Be admissible at trial.

16 Section 5. Claimant proceedings.--

17 (1) A civil action alleging an asbestos or silica
18 claim may be brought in the courts of this state if the
19 plaintiff is domiciled in this state or the exposure to
20 asbestos or silica that is a substantial contributing factor
21 to the physical impairment of the plaintiff on which the claim
22 is based occurred in this state.

23 (2) A plaintiff in a civil action alleging an asbestos
24 or silica claim must include with the complaint or other
25 initial pleading a written report and supporting test results
26 constituting prima facie evidence of the exposed person's
27 asbestos-related or silica-related physical impairment meeting
28 the requirements of subsection (2), subsection (3), subsection
29 (5), or subsection (6) of section 4. For any asbestos or
30 silica claim pending on the effective date of this act, the
31 plaintiff must file the report and supporting test results at

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1 least 30 days before setting a date for trial. The defendant
 2 must be afforded a reasonable opportunity to challenge the
 3 adequacy of the proffered prima facie evidence of
 4 asbestos-related impairment. The claim of the plaintiff shall
 5 be dismissed without prejudice upon a finding of failure to
 6 make the required prima facie showing.

7 (3) All asbestos claims and silica claims filed in
 8 this state on or after the effective date of this act must
 9 include, in addition to the written report described in
 10 subsection (3) of section 5 and the information required by
 11 subsection (2) of section 7, a sworn information form
 12 containing the following information:

13 (a) The claimant's name, address, date of birth,
 14 social security number, and marital status;

15 (b) If the claimant alleges exposure to asbestos or
 16 silica through the testimony of another person or alleges
 17 other than direct or bystander exposure to a product, the
 18 name, address, date of birth, social security number, marital
 19 status, for each person by which the claimant alleges
 20 exposure, hereinafter the "index person," and the claimant's
 21 relationship to each such person;

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

23 (d) The beginning and ending dates of each alleged
 24 exposure as to each asbestos product or silica product for
 25 each location at which exposure allegedly took place for the
 26 plaintiff and each index person;

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

29 (f) The specific condition related to asbestos or
 30 silica claimed to exist; and

31 (g) Any supporting documentation of the condition

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1 claimed to exist.

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

3 (1) Notwithstanding any other law, with respect to any
4 asbestos or silica claim not barred as of the effective date
5 of this act, the limitations period does not begin to run
6 until the exposed person discovers, or through the exercise of
7 reasonable diligence should have discovered, that he or she is
8 physically impaired by an asbestos-related or silica-related
9 condition.

10 (2) An asbestos or silica claim arising out of a
11 nonmalignant condition shall be a distinct cause of action
12 from an asbestos or silica claim relating to the same exposed
13 person arising out of asbestos-related or silica-related
14 cancer. Damages may not be awarded for fear or risk of cancer
15 in a civil action asserting an asbestos or silica claim.

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

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

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

23 (2) At the time a complaint is filed in a civil action
24 alleging an asbestos or silica claim, the plaintiff must file
25 a verified written report with the court which discloses the
26 total amount of any collateral source payments received,
27 including payments that the plaintiff will receive in the
28 future, as a result of settlements or judgments based upon the
29 same claim. For any asbestos or silica claim pending on the
30 effective date of this act, the plaintiff shall file a
31 verified written report within 60 days after the effective

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1 date of this act, or at least 30 days before trial. Further,
 2 the plaintiff must update the reports on a regular basis
 3 during the course of the proceeding until a final judgment is
 4 entered in the case. The court shall permit setoff, based on
 5 the collateral source payment information provided, in
 6 accordance with the laws of this state as of the effective
 7 date of this act.

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

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

13 1.a. The product that allegedly caused the harm that
 14 is the subject of the complaint was sold, rented, or leased by
 15 the product seller;

16 b. The product seller failed to exercise reasonable
 17 care with respect to the product; and

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

20 2.a. The product seller made an express warranty
 21 applicable to the product that allegedly caused the harm that
 22 is the subject of the complaint, independent of any express
 23 warranty made by the manufacturer as to the same product;

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

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

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

29 b. The intentional wrongdoing caused the harm that is
 30 the subject of the complaint.

31 (b) For the purpose of sub-subparagraph 1.b., a

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1 product seller may not be considered to have failed to
2 exercise reasonable care with respect to a product based upon
3 an alleged failure to inspect the product, if:

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

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

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

13 Section 9. Miscellaneous provisions.--

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

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

20 (a) Affect the rights of any party in bankruptcy
21 proceedings; or

22 (b) Affect the ability of any person who is able to
23 make a showing that the person satisfies the claim criteria
24 for compensable claims or demands under a trust established
25 under a plan of reorganization under Chapter 11 of the United
26 States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim
27 or demand against that trust.

28 (3) It is the intent of the Legislature that this law
29 render the utmost comity and respect to the constitutional
30 prerogatives of the judiciary of this state, and nothing in
31 this act should be construed as any effort to impinge upon

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1 those prerogatives. To that end, if the Florida Supreme Court
 2 enters a final judgment concluding or declaring that any
 3 provision of this act improperly encroaches on the authority
 4 of the court to adopt the rules of practice and procedure in
 5 the courts of this state, the Legislature intends that any
 6 such provision be construed as a request for a rule change
 7 under Section 2, Article V, of the State Constitution and not
 8 as a mandatory legislative directive.

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

13 (5) If any provision of this act or the application
 14 thereof to any person or circumstance is held invalid, the
 15 invalidity does not affect other provisions or application of
 16 the act which can be given effect without the invalid
 17 provision or application, and to this end the provisions of
 18 this act are declared severable.

19 Section 10. This act shall take effect July 1, 2005.
 20 Because the act expressly preserves the right of all injured
 21 persons to recover full compensatory damages for their loss,
 22 it does not impair vested rights. In addition, because it
 23 enhances the ability of the most seriously ill to receive a
 24 prompt recovery, it is remedial in nature. Therefore, the act
 25 shall apply to any civil action asserting an asbestos claim in
 26 which trial has not commenced as of the effective date of this
 27 act.

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 29
 30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

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3 and insert:

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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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action for certain conditions; limiting damages

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under certain circumstances; prohibiting a

23

general release from liability; prohibiting

24

award of punitive damages; providing for

25

collateral source payments; specifying

26

liability rules applicable to certain persons;

27

providing for construction; providing

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severability; providing application to certain

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civil actions; providing an effective date.

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WHEREAS, asbestos is a mineral that was widely used

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1 before the mid 1970's for insulation, fireproofing, and other
2 purposes, and

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

7 WHEREAS, long-term exposure to asbestos has been
8 associated with various types of cancer, including
9 mesothelioma and lung cancer, as well as such nonmalignant
10 conditions as asbestosis, pleural plaques, and diffuse pleural
11 thickening, and

12 WHEREAS, the diseases caused by asbestos often have
13 long latency periods, and

14 WHEREAS, although the use of asbestos has dramatically
15 declined since the 1970's and workplace exposures have been
16 regulated since 1971 by the Occupational Safety and Health
17 Administration, past exposures will continue to result in
18 significant claims of death and disability as a result of such
19 exposure, and

20 WHEREAS, exposure to asbestos has created a flood of
21 litigation in state and federal courts that the United States
22 Supreme Court in Ortiz v. Fibreboard Corporation, 119 S. Ct.
23 2295, 2302 (1999), has characterized as an "elephantine mass"
24 of cases that "defies customary judicial administration," and

25 WHEREAS, asbestos personal injury litigation can be
26 unfair and inefficient, imposing a severe burden on litigants
27 and taxpayers alike, and

28 WHEREAS, the inefficiencies and societal costs of
29 asbestos litigation have been well documented in reports such
30 as the RAND Institutes study on Asbestos Litigation Costs and
31 Compensation, the study of Joseph E. Stiglitz on The Impact of

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1 Asbestos Liabilities on Workers in Bankrupt Firms, Dr. Joseph
 2 Gitlin's report from Johns Hopkins Medical School on
 3 Comparison of B Readers' Interpretations of Chest Radiographs
 4 for Asbestos Related Changes, and the Report to the House of
 5 Delegates from the American Bar Association Commission on
 6 Asbestos Litigation, and

7 WHEREAS, the extraordinary volume of nonmalignant
 8 asbestos cases continues to strain state courts, and

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

13 WHEREAS, the cost of compensating exposed individuals
 14 who are not sick jeopardizes the ability of defendants to
 15 compensate people with cancer and other serious
 16 asbestos-related diseases, now and in the future, and

17 WHEREAS, the cost of compensating exposed individuals
 18 who are not sick threatens the savings, retirement benefits,
 19 and jobs of defendants' current and retired employees and
 20 adversely affects the communities in which these defendants
 21 operate, and

22 WHEREAS, the crush of asbestos litigation has been
 23 costly to employers, employees, litigants, and the court
 24 system, and

25 WHEREAS, in 1982, the Johns-Manville Corporation, the
 26 nation's largest single supplier of insulation products
 27 containing asbestos, declared bankruptcy due to the burden of
 28 the asbestos litigation, and

29 WHEREAS, since 1982, more than 70 other companies have
 30 declared bankruptcy due to the burden of asbestos litigation,
 31 and

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1 WHEREAS, estimates show that between 60,000 and 128,000
 2 American workers already have lost their jobs as a result of
 3 asbestos-related bankruptcies and that the total number of
 4 jobs that will be lost due to asbestos-related bankruptcies
 5 will eventually reach 432,000, and

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

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

13 WHEREAS, the seriously ill too often find that the
 14 value of their recovery is substantially reduced due to
 15 defendant bankruptcies and the inefficiency of the litigation
 16 process, and

17 WHEREAS, silica is a naturally occurring mineral, and

18 WHEREAS, the Earth's crust is over 90 percent silica,
 19 and crystalline silica dust is the primary component of sand,
 20 quartz, and granite, and

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

23 WHEREAS, silicosis was recognized as an occupational
 24 disease many years ago, and

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

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

31 WHEREAS, silica claims, like asbestos claims, often

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1 arise when an individual is identified as having markings on
2 his or her lungs that are possibly consistent with silica
3 exposure but the individual has no functional or physical
4 impairment from any silica-related disease, and

5 WHEREAS, the Legislature finds that an overpowering
6 public necessity requires it to act to prevent a silica-based
7 litigation crisis, and

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

13 WHEREAS, consolidations, joinders, and similar
14 procedures to which some courts have resorted in order to deal
15 with the mass of asbestos and silica cases can undermine the
16 appropriate functioning of the judicial process and further
17 encourage the filing of thousands of cases by exposed
18 individuals who are not sick and who may never become sick,
19 and

20 WHEREAS, punitive damage awards unfairly divert the
21 resources of defendants from compensating genuinely impaired
22 claimants and, given the lengthy history of asbestos and
23 silica litigation and the regulatory and other restrictions on
24 the use of asbestos and silica-containing products in the
25 workplace, the legal justification for such awards,
26 punishment, and deterrence is either inapplicable or
27 inappropriate, and

28 WHEREAS, the Legislature finds that there is an
29 overpowering public necessity to defer the claims of exposed
30 individuals who are not sick in order to preserve, now and for
31 the future, defendants' ability to compensate people who

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1 develop cancer and other serious asbestos-related and
2 silica-related injuries and to safeguard the jobs, benefits,
3 and savings of workers in this state and the well-being of the
4 economy of this state, NOW, THEREFORE,

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