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A bill to be entitled
 An act relating to asbestos and silica claims; providing a popular name; providing legislative findings; providing purposes; providing definitions; requiring physical impairment as an essential element of a claim; providing criteria for prima facie evidence of physical impairment for claims and certain actions; providing an exception; providing additional requirements for evidence relating to physical impairment; specifying absence of certain presumptions at trial; providing procedures for claims and certain actions; providing for consolidation; providing for venue; providing for preliminary proceedings; requiring new asbestos and silica claims to include certain information; specifying certain limitation periods for certain claims; specifying distinct causes of action for certain conditions; limiting damages under certain circumstances; prohibiting a general release from liability; prohibiting award of punitive damages; providing for collateral source payments; specifying liability rules applicable to certain persons; providing construction; providing legislative intent; providing severability; providing application to certain civil actions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Popular name.--This act may be cited as the "Asbestos and Silica Compensation Fairness Act of 2005."

29 Section 2. Findings and purposes.--

30 (1) FINDINGS.--The Legislature finds that:

31 (a) Asbestos is a mineral that was widely used prior to the
32 mid 1970's for insulation, fireproofing, and other purposes.

33 (b) Millions of American workers and others were exposed to
34 asbestos, especially during and after World War II and prior to
35 the advent of regulation by the Occupational Safety and Health
36 Administration in the early 1970's.

37 (c) Long-term exposure to asbestos has been associated with
38 various types of cancer, including mesothelioma and lung cancer,
39 as well as such nonmalignant conditions as asbestosis, pleural
40 plaques, and diffuse pleural thickening.

41 (d) The diseases caused by asbestos often have long latency
42 periods.

43 (e) Although the use of asbestos has dramatically declined
44 since the 1970's and workplace exposures have been regulated
45 since 1971 by the Occupational Safety and Health Administration,
46 past exposures will continue to result in significant claims of
47 death and disability as a result of such exposure.

48 (f) Exposure to asbestos has created a flood of litigation
49 in state and federal courts that the United States Supreme Court
50 has characterized as "an elephantine mass" of cases that "defies
51 customary judicial administration" [Ortiz v. Fibreboard
52 Corporation, 119 S. Ct. 2295, 2302 (1999)].

53 (g) Asbestos personal injury litigation can be unfair and
54 inefficient, imposing a severe burden on litigants and taxpayers
55 alike.

56 (h) The extraordinary volume of nonmalignant asbestos cases
57 continues to strain state courts.

58 (i) The vast majority of asbestos claims are filed by
59 individuals who allege they have been exposed to asbestos and who
60 may have some physical sign of exposure but who suffer no present
61 asbestos-related impairment.

62 (j) The cost of compensating exposed individuals who are
63 not sick jeopardizes the ability of defendants to compensate
64 people with cancer and other serious asbestos-related diseases,
65 now and in the future; threatens the savings, retirement
66 benefits, and jobs of defendants' current and retired employees;
67 and adversely affects the communities in which these defendants
68 operate.

69 (k) The crush of asbestos litigation has been costly to
70 employers, employees, litigants, and the court system. In 1982,
71 the Johns-Manville Corporation, the nation's largest single
72 supplier of asbestos-containing insulation products, declared
73 bankruptcy due to the burden of the asbestos litigation. Since
74 then, more than 70 other companies have declared bankruptcy due
75 to the burden of asbestos litigation. It is estimated that
76 between 60,000 and 128,000 American workers already have lost
77 their jobs as a result of asbestos-related bankruptcies and that
78 the total number of jobs that will be lost due to asbestos-
79 related bankruptcies will eventually reach 432,000. Each worker
80 who loses his or her job due to an asbestos-related bankruptcy
81 loses between \$25,000 and \$50,000 in wages over his or her
82 career. Those workers also have seen the value of their 401(k)

83 retirement plans drop by 25 percent or more due the
84 bankruptcies.

85 (l) Additionally, it is estimated that asbestos litigation
86 has already cost over \$54 billion, with well over half of this
87 expense going to attorney's fees and other litigation costs. The
88 seriously ill too often find that the value of their recovery is
89 substantially reduced due to defendant bankruptcies and the
90 inefficiency of the litigation process.

91 (m) Silica is a naturally occurring mineral. The Earth's
92 crust is over 90 percent silica, and crystalline silica dust is
93 the primary component of sand, quartz, and granite.

94 (n) Silica-related illness, including silicosis, can occur
95 when silica is inhaled. To be inhaled, the silica particles must
96 be sufficiently small to be respirable. These tiny particles are
97 created when sand is pulverized in the sandblasting process and
98 may be found in the fine silica flour used in various foundry
99 processes.

100 (o) Silicosis was recognized as an occupational disease
101 many years ago. In fact, the American Foundrymen's Society has
102 distributed literature to its members warning of the dangers of
103 silica exposure for more than 100 years. By the 1930's, the
104 Federal Government had launched a silica-awareness campaign
105 which led to greater protection for workers exposed to silica
106 dust. As a result, the number of silica lawsuits filed each year
107 was relatively predictable. This has changed. The number of new
108 lawsuits alleging silica-related disease being filed each year
109 began to rise precipitously in recent years. For example,
110 America's largest supplier of industrial sand had more than

111 15,000 new claims in the first 6 months of 2003. This is 3 times
112 the number of claims it had in all of 2002 and more than 10
113 times the number of claims it had in all of 2001.

114 (p) Silica claims, like asbestos claims, often arise when
115 an individual is identified as having markings on his or her
116 lungs that are possibly consistent with silica exposure but the
117 individual has no functional or physical impairment from any
118 silica-related disease. Recent studies indicate that these
119 individuals are being identified through the efforts of
120 attorneys being compensated by generating contingency fees, just
121 as with asbestos litigation. Therefore, it is necessary to
122 address silica-related litigation to avoid an asbestos-like
123 litigation crisis.

124 (q) Concerns about statutes of limitations may prompt
125 claimants who have been exposed to asbestos or silica but who
126 have no current injury to bring premature lawsuits in order to
127 protect against losing their rights to future compensation should
128 they become impaired.

129 (r) Consolidations, joinders, and similar procedures to
130 which some courts have resorted in order to deal with the mass of
131 asbestos and silica cases can undermine the appropriate
132 functioning of the judicial process and further encourage the
133 filing of thousands of cases by exposed individuals who are not
134 yet sick and who may never become sick.

135 (s) Excessive, unpredictable, and often arbitrary damage
136 awards and unfair allocations of liability jeopardize the
137 financial well-being of many individuals, businesses, and entire
138 industries, particularly small businesses.

139 (t) Punitive damage awards unfairly divert the resources of
 140 defendants from compensating genuinely impaired claimants and,
 141 given the lengthy history of asbestos and silica litigation and
 142 the regulatory and other restrictions on the use of asbestos and
 143 silica-containing products in the workplace, the legal
 144 justification for such awards, punishment, and deterrence is
 145 either inapplicable or inappropriate.

146 (u) The public interest requires deferring the claims of
 147 exposed individuals who are not sick in order to preserve, now
 148 and for the future, defendants' ability to compensate people who
 149 develop cancer and other serious asbestos-related and silica-
 150 related injuries and to safeguard the jobs, benefits, and savings
 151 of workers in this state and the well-being of the economy of
 152 this state.

153 (2) PURPOSES.--The purposes of this act are to:

154 (a) Give priority to true victims of asbestos and silica
 155 claimants who can demonstrate actual physical impairment caused
 156 by exposure to asbestos or silica.

157 (b) Fully preserve the rights of claimants who were exposed
 158 to asbestos or silica to pursue compensation should they become
 159 impaired in the future as a result of such exposure.

160 (c) Enhance the ability of the judicial system to supervise
 161 and control asbestos and silica litigation.

162 (d) Conserve the scarce resources of the defendants to
 163 allow compensation of cancer victims and others who are
 164 physically impaired by exposure to asbestos or silica while
 165 securing the right to similar compensation for those who may
 166 suffer physical impairment in the future.

167 Section 3. Definitions.--As used in this act:

168 (1) "AMA Guides to the evaluation of permanent impairment"
 169 means the American Medical Association's Guides to the Evaluation
 170 of Permanent Impairment (Fifth Edition 2000) as modified by the
 171 American Medical Association.

172 (2) "Asbestos" means all minerals defined as asbestos in 29
 173 C.F.R. s. 1910, as amended.

174 (3) "Asbestos claim" means any claim for damages or other
 175 civil or equitable relief presented in a civil action arising out
 176 of, based on, or related to the health effects of exposure to
 177 asbestos, including loss of consortium, wrongful death, and any
 178 other derivative claim made by or on behalf of any exposed person
 179 or any representative, spouse, parent, child, or other relative
 180 of any exposed person. The term does not include claims for
 181 benefits under a workers' compensation law or veterans' benefits
 182 program or claims brought by any person as a subrogee by virtue
 183 of the payment of benefits under a workers' compensation law.

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

186 (5) "Bankruptcy proceeding" means a case brought under
 187 Title 11, U.S.C., or any related proceeding as provided in
 188 section 157 of Title 28, U.S.C.

189 (6) "Board-certified in internal medicine" means certified
 190 by the American Board of Internal Medicine or the American
 191 Osteopathic Board of Internal Medicine.

192 (7) "Board-certified in occupational medicine" means
 193 certified in the subspecialty of occupational medicine by the

194 American Board of Preventive Medicine or the American
 195 Osteopathic Board of Preventive Medicine.

196 (8) "Board-certified in oncology" means certified in the
 197 subspecialty of medical oncology by the American Board of
 198 Internal Medicine or the American Osteopathic Board of Internal
 199 Medicine.

200 (9) "Board-certified in pathology" means holding primary
 201 certification in anatomic pathology or clinical pathology from
 202 the American Board of Pathology or the American Osteopathic
 203 Board of Internal Medicine and with professional practice:

204 (a) Principally in the field of pathology.

205 (b) Involving regular evaluation of pathology materials
 206 obtained from surgical or postmortem specimens.

207 (10) "Board-certified in pulmonary medicine" means
 208 certified in the subspecialty of pulmonary medicine by the
 209 American Board of Internal Medicine or the American Osteopathic
 210 Board of Internal Medicine.

211 (11) "Certified B-reader" means an individual qualified as
 212 a final or B-reader under 42 C.F.R. s. 37.51(b), as amended.

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

218 (13) "Exposed person" means any person whose exposure to
 219 asbestos, silica, asbestos-containing products, or silica-
 220 containing products is the basis for an asbestos or silica claim.

221 (14) "Exposure years" means:

222 (a) Each single year of exposure prior to 1972 to be
 223 counted as one year.

224 (b) Each single year of exposure from 1972 through 1979 to
 225 be counted as one-half year.

226 (c) Exposure after 1979 not to be counted, except that each
 227 year from 1972 forward for which the plaintiff can establish
 228 exposure exceeding the Occupational Safety and Health
 229 Administration limit for 8-hour, time-weighted average airborne
 230 concentration for a substantial portion of the year to be counted
 231 as one year.

232 (15) "FEV1" means forced expiratory volume in the first
 233 second, which is the maximal volume of air expelled in one second
 234 during performance of simple spirometric tests.

235 (16) "FVC" means forced vital capacity which is the maximal
 236 volume of air expired with maximum effort from a position of full
 237 inspiration.

238 (17) "ILO scale" means the system for the classification of
 239 chest X rays set forth in the International Labour Office's
 240 Guidelines for the Use of ILO International Classification of
 241 Radiographs of Pneumoconioses (1980) as amended by the
 242 International Labour Office.

243 (18) "Lung cancer" means a malignant tumor in which the
 244 primary site of origin of the cancer is located inside of the
 245 lungs, but such term does not include an asbestos claim based
 246 upon mesothelioma.

247 (19) "Mesothelioma" means a malignant tumor with a primary
 248 site in the pleura or the peritoneum which has been diagnosed by
 249 a board-certified pathologist using standardized and accepted

250 criteria of microscopic morphology or appropriate staining
 251 techniques.

252 (20) "Nonmalignant condition" means any condition that is
 253 caused or may be caused by asbestos other than a diagnosed
 254 cancer.

255 (21) "Nonsmoker" means an exposed person who has not smoked
 256 cigarettes or used any other tobacco products within the last 15
 257 years.

258 (22) "Pathological evidence of asbestosis" means a
 259 statement by a board-certified pathologist that more than one
 260 representative section of lung tissue uninvolved with any other
 261 disease process demonstrates a pattern of peribronchiolar or
 262 parenchymal scarring in the presence of characteristic asbestos
 263 bodies and that there is no other more likely explanation for the
 264 presence of the fibrosis.

265 (23) "Predicted lower limit of normal" for any test means
 266 the fifth percentile of healthy populations based on age, height,
 267 and gender, as referenced in the AMA Guides to the Evaluation of
 268 Permanent Impairment.

269 (24) "Qualified physician" means a medical doctor who:

270 (a) Is currently a board-certified internist, oncologist,
 271 pathologist, pulmonary specialist, or radiologist, or specialist
 272 in occupational and environmental medicine.

273 (b) Has conducted a physical examination of the exposed
 274 person.

275 (c) Is actually treating or treated the exposed person and
 276 has or had a doctor-patient relationship with such person.

277 (d) Spends no more than 10 percent of his or her
278 professional practice time in providing consulting or expert
279 services in connection with actual or potential civil actions and
280 whose medical group, professional corporation, clinic, or other
281 affiliated group earns not more than 20 percent of its revenues
282 from providing such services.

283 (e) Is currently licensed to practice and actively
284 practices in the state in which the plaintiff resides or in which
285 the plaintiff's civil action was filed.

286 (f) Receives or received payment for the treatment of the
287 exposed person from that person's health maintenance organization
288 or other medical provider or from the exposed person or a member
289 of the exposed person's family.

290 (25) "Radiological evidence of asbestosis" means a quality
291 1 chest X ray under the ILO System of classification showing
292 small, irregular opacities of s, t, or u, graded by a certified
293 B-reader as at least 1/1 on the ILO scale. In a death case for
294 which no pathology is available, the necessary radiologic
295 findings may be made with a quality 2 film if a quality 1 film
296 is not available.

297 (26) "Radiological evidence of diffuse pleural thickening"
298 means a quality 1 chest X ray under the ILO System of
299 classification showing bilateral pleural thickening of at least
300 B2 on the ILO scale and blunting of at least one costophrenic
301 angle. In a death case for which no pathology is available, the
302 necessary radiologic findings may be made with a quality 2 film
303 if a quality 1 film is not available.

304 (27) "Silica" means a respirable crystalline form of
305 silicon dioxide, including, but not limited to, alpha, quartz,
306 crystalite, and trydmitite.

307 (28) "Silica claim" means any claim for damages or other
308 civil or equitable relief presented in a civil action arising out
309 of, based on, or related to the health effects of exposure to
310 silica, including loss of consortium, wrongful death, and any
311 other derivative claim made by or on behalf of any exposed person
312 or any representative, spouse, parent, child, or other relative
313 of any exposed person. The term does not include claims for
314 benefits under a workers' compensation law or veterans' benefits
315 program or claims brought by any person as a subrogee by virtue
316 of the payment of benefits under a workers' compensation law.

317 (29) "Silicosis" means nodular interstitial fibrosis of
318 the lungs caused by inhalation of silica.

319 (30) "Smoker" means a person who has smoked cigarettes or
320 used other tobacco products within the last 15 years.

321 (31) "State" means any state of the United States, the
322 District of Columbia, the Commonwealth of Puerto Rico, the
323 Northern Mariana Islands, the Virgin Islands, Guam, American
324 Samoa, and any other territory or possession of the United States
325 or any political subdivision of any of such governments.

326 (32) "Substantial contributing factor" means:

327 (a) Exposure to asbestos or silica is the predominate cause
328 of the physical impairment alleged in the claim.

329 (b) The exposure to asbestos or silica took place on a
330 regular basis over an extended period of time and in close
331 proximity to the exposed person.

332 (c) A qualified physician has determined with a reasonable
 333 degree of medical certainty that the physical impairment of the
 334 exposed person would not have occurred but for the asbestos or
 335 silica exposure.

336 (33) "Veterans' benefits program" means any program for
 337 benefits in connection with military service administered by the
 338 Veterans' Administration under Title 38, U.S.C.

339 (34) "Workers' compensation law" means a law respecting a
 340 program administered by a state or the United States to provide
 341 benefits, funded by a responsible employer or its insurance
 342 carrier, for occupational diseases or injuries or for disability
 343 or death caused by occupational diseases or injuries. The term
 344 includes the Longshore and Harbor Workers' Compensation Act, 33
 345 U.S.C. 901-944, 948-950, and chapter 81 of Title 5, U.S.C., the
 346 Federal Employees Compensation Act, but does not include the Act
 347 of April 22, 1908, 45 U.S.C. 51 et seq., popularly referred to as
 348 the "Federal Employers' Liability Act."

349 Section 4. Physical impairment.--

350 (1) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.--Physical
 351 impairment of the exposed person, to which asbestos or silica
 352 exposure was a substantial contributing factor, shall be an
 353 essential element of an asbestos or silica claim.

354 (2) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR
 355 NONMALIGNANT ASBESTOS CLAIMS.--No person shall bring or maintain
 356 a civil action alleging a nonmalignant asbestos claim in the
 357 absence of a prima facie showing of physical impairment as a
 358 result of a medical condition to which exposure to asbestos was a

359 substantial contributing factor. Such a prima facie showing shall
 360 include:

361 (a) Evidence verifying that a qualified physician has taken
 362 a detailed occupational and exposure history of the exposed
 363 person or, if such person is deceased, from a person who is
 364 knowledgeable about the exposures that form the basis of the
 365 nonmalignant asbestos claim, including:

366 1. Identification of all of the exposed person's principal
 367 places of employment and exposures to airborne contaminants.

368 2. Whether each place of employment involved exposures to
 369 airborne contaminants, including, but not limited to, asbestos
 370 fibers or other disease-causing dusts, that can cause pulmonary
 371 impairment and the nature, duration, and level of any such
 372 exposure.

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

376 (c) Evidence verifying that a qualified physician has taken
 377 detailed medical and smoking history, including a thorough review
 378 of the exposed person's past and present medical problems and
 379 their most probable cause.

380 (d) A determination by a qualified physician, on the basis
 381 of a medical examination and pulmonary function testing, that the
 382 exposed person has a permanent respiratory impairment rating of
 383 at least Class 2 as defined by and evaluated pursuant to the AMA
 384 Guides to the Evaluation of Permanent Impairment.

385 (e) A diagnosis by a qualified physician of asbestosis or
 386 diffuse pleural thickening, based at a minimum on radiological or

387 pathological evidence of asbestosis or radiological evidence of
 388 diffuse pleural thickening.

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

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

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

399 3. A chest X ray showing small, irregular opacities of s,
 400 t, or u, graded by a certified B-reader at least 2/1 on the ILO
 401 scale.

402 (g) A conclusion by a qualified physician that the exposed
 403 person's medical findings and impairment were not more probably
 404 the result of causes other than the asbestos exposure revealed by
 405 the exposed person's employment and medical history. A conclusion
 406 which states that the medical findings and impairment are
 407 consistent with or compatible with exposure to asbestos does not
 408 meet the requirements of this paragraph.

409 (3) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR
 410 ASBESTOS-RELATED LUNG CANCER.--No person shall bring or maintain
 411 a civil action alleging an asbestos claim which is based upon
 412 lung cancer in the absence of a prima facie showing which shall
 413 include all of the following minimum requirements:

414 (a) A diagnosis by a qualified physician, who is board
415 certified in pathology, pulmonary medicine, or oncology, of a
416 primary lung cancer and that exposure to asbestos was a
417 substantial contributing factor to the condition.

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

421 (c) Depending on whether the exposed person has a history
422 of smoking, the requirements of subparagraph 1. or subparagraph
423 2.:

424 1. In the case of an exposed person who is a nonsmoker:

425 a. Radiological or pathological evidence of asbestosis; or

426 b. Evidence of occupational exposure to asbestos for the
427 following minimum exposure periods in the specified occupations:

428 (I) Five exposure years for insulators, shipyard workers,
429 workers in manufacturing plants handling raw asbestos,
430 boilermakers, shipfitters, steamfitters, or other trades
431 performing similar functions;

432 (II) Ten exposure years for utility and powerhouse workers,
433 secondary manufacturing workers, or other trades performing
434 similar functions; or

435 (III) Fifteen exposure years for general construction,
436 maintenance workers, chemical and refinery workers, marine engine
437 room personnel and other personnel on vessels, stationary
438 engineers and firemen, railroad engine repair workers, or other
439 trades performing similar functions.

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

442 (d) A conclusion by a qualified physician that the exposed
 443 person's medical findings and impairment were not more probably
 444 the result of causes other than the asbestos exposure revealed by
 445 the exposed person's employment and medical history. A conclusion
 446 that the medical findings and impairment are consistent with or
 447 compatible with exposure to asbestos does not meet the
 448 requirements of this paragraph.

449
 450 If the exposed person is deceased, the qualified physician may
 451 obtain the evidence required in paragraph (b) and sub-
 452 paragraph (c)1.b. from the person most knowledgeable about the
 453 alleged exposures that form the basis of the asbestos claim.

454 (4) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED OTHER
 455 CANCER.--No person shall bring or maintain a civil action
 456 alleging an asbestos claim which is based upon cancer of the
 457 colon, rectum, larynx, pharynx, esophagus, or stomach in the
 458 absence of a prima facie showing which shall include all of the
 459 following minimum requirements:

460 (a) A diagnosis by a qualified physician who is board
 461 certified in pathology, pulmonary medicine, or oncology, as
 462 appropriate for the type of cancer claimed, of primary cancer of
 463 the colon, rectum, larynx, pharynx, esophagus, or stomach and
 464 that exposure to asbestos was a substantial contributing factor
 465 to the condition.

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

469 (c) The requirement of:

470 1. Radiological or pathological evidence of asbestosis; or
471 2. Evidence of occupational exposure to asbestos for the
472 following minimum exposure periods in the specified occupations:
473 a. Five exposure years for insulators, shipyard workers,
474 workers in manufacturing plants handling raw asbestos,
475 boilermakers, shipfitters, steamfitters, or other trades
476 performing similar functions;
477 b. Ten exposure years for utility and powerhouse workers,
478 secondary manufacturing workers, or other trades performing
479 similar functions; or
480 c. Fifteen exposure years for general construction,
481 maintenance workers, chemical and refinery workers, marine engine
482 room personnel and other personnel on vessels, stationary
483 engineers and firemen, railroad engine repair workers, or other
484 trades performing similar functions.
485 (d) A conclusion by a qualified physician that the exposed
486 person's medical findings and impairment were not more probably
487 the result of causes other than the asbestos exposure revealed by
488 the exposed person's employment and medical history. A conclusion
489 that the medical findings and impairment are consistent with or
490 compatible with exposure to asbestos does not meet the
491 requirements of this paragraph.
492
493 If the exposed person is deceased, the qualified physician may
494 obtain the evidence required in paragraph (b) and subparagraph
495 (c)2. from the person most knowledgeable about the alleged
496 exposures that form the basis of the asbestos claim.

497 (5) NO PRIMA FACIE REQUIREMENT FOR MESOTHELIOMA.--In a
 498 civil action alleging an asbestos claim based upon mesothelioma,
 499 no prima facie showing is required.

500 (6) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA
 501 CLAIMS.--No person shall bring or maintain a civil action
 502 alleging a silica claim in the absence of a prima facie showing
 503 of physical impairment as a result of a medical condition to
 504 which exposure to silica was a substantial contributing factor.
 505 Such prima facie showing shall include:

506 (a) Evidence verifying that a qualified physician has taken
 507 a detailed occupational and exposure history of the exposed
 508 person or, if such person is deceased, from a person who is
 509 knowledgeable about the exposures that form the basis of the
 510 nonmalignant silica claim, including:

511 1. All of the exposed person's principal places of
 512 employment and exposures to airborne contaminants.

513 2. Whether each place of employment involved exposures to
 514 airborne contaminants, including, but not limited to, silica
 515 particles or other disease-causing dusts, that can cause
 516 pulmonary impairment and the nature, duration, and level of any
 517 such exposure.

518 (b) Evidence verifying that a qualified physician has taken
 519 detailed medical and smoking history, including a thorough review
 520 of the exposed person's past and present medical problems and
 521 their most probable cause, and verifying a sufficient latency
 522 period for the applicable stage of silicosis.

523 (c) A determination by a qualified physician, on the basis
 524 of a medical examination and pulmonary function testing, that the

525 exposed person has a permanent respiratory impairment rating of
 526 at least Class 2 as defined by and evaluated pursuant to the AMA
 527 Guides to the Evaluation of Permanent Impairment.

528 (d) A determination by a qualified physician that the
 529 exposed person has:

530 1. A quality 1 chest X ray under the ILO System of
 531 classification and that the X ray has been read by a certified
 532 B-reader as showing, according to the ILO System of
 533 classification, bilateral nodular opacities of p, q, or r,
 534 occurring primarily in the upper lung fields, graded 1/1 or
 535 higher. In a death case for which no pathology is available, the
 536 necessary radiologic findings may be made with a quality 2 film
 537 if a quality 1 film is not available; or

538 2. Pathological demonstration of classic silicotic nodules
 539 exceeding 1 centimeter in diameter as published in 112 Archive
 540 of Pathology and Laboratory Medicine 7 (July 1988).

541 (e) A conclusion by a qualified physician that the exposed
 542 person's medical findings and impairment were not more probably
 543 the result of causes other than silica exposure revealed by the
 544 exposed person's employment and medical history. A conclusion
 545 that the medical findings and impairment are consistent with or
 546 compatible with exposure to asbestos does not meet the
 547 requirements of this paragraph.

548 (7) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR OTHER
 549 SILICA-RELATED DISEASES.--No person shall bring or maintain a
 550 civil action alleging any silica claim other than as provided in
 551 subsection (6) in the absence of a prima facie showing which
 552 shall include the following minimum requirements:

553 (a) A report by a qualified physician who is:
 554 1. Board certified in pulmonary medicine, internal
 555 medicine, oncology, or pathology, stating a diagnosis of the
 556 exposed person of silica-related lung cancer and stating that,
 557 to a reasonable degree of medical probability, exposure to
 558 silica was a substantial contributing factor to the diagnosed
 559 lung cancer; or
 560 2. Board certified in pulmonary medicine, internal
 561 medicine, or pathology, stating a diagnosis of the exposed
 562 person of silica-related progressive massive fibrosis or acute
 563 silicoproteinosis, or silicosis complicated by documented
 564 tuberculosis.
 565 (b) Evidence verifying that a qualified physician has taken
 566 a detailed occupational and exposure history of the exposed
 567 person or, if such person is deceased, from a person who is
 568 knowledgeable about the exposures that form the basis of the
 569 nonmalignant silica claim, including:
 570 1. All of the exposed person's principal places of
 571 employment and exposures to airborne contaminants.
 572 2. Whether each place of employment involved exposures to
 573 airborne contaminants, including, but not limited to, silica
 574 particles or other disease-causing dusts, that can cause
 575 pulmonary impairment and the nature, duration, and level of any
 576 such exposure.
 577 (c) Evidence verifying that a qualified physician has taken
 578 detailed medical and smoking history, including a thorough review
 579 of the exposed person's past and present medical problems and
 580 their most probable cause.

581 (d) A determination by a qualified physician that the
 582 exposed person has:

583 1. A quality 1 chest X ray under the ILO System of
 584 classification and that the X ray has been read by a certified
 585 B-reader as showing, according to the ILO System of
 586 classification, bilateral nodular opacities of p, q, or r,
 587 occurring primarily in the upper lung fields, graded 1/1 or
 588 higher. In a death case for which no pathology is available, the
 589 necessary radiologic findings may be made with a quality 2 film
 590 if a quality 1 film is not available; or

591 2. Pathological demonstration of classic silicotic nodules
 592 exceeding 1 centimeter in diameter as published in 112 Archive
 593 of Pathology and Laboratory Medicine 7 (July 1988).

594 (e) A conclusion by a qualified physician that the exposed
 595 person's medical findings and impairment were not more probably
 596 the result of causes other than silica exposure revealed by the
 597 exposed person's employment and medical history. A conclusion
 598 that the medical findings and impairment are consistent with or
 599 compatible with exposure to asbestos does not meet the
 600 requirements of this paragraph.

601 (8) COMPLIANCE WITH TECHNICAL STANDARDS.--Evidence relating
 602 to physical impairment under this section, including pulmonary
 603 function testing and diffusing studies, shall:

604 (a) Comply with the technical recommendations for
 605 examinations, testing procedures, quality assurance, quality
 606 control, and equipment of the AMA Guides to the Evaluation of
 607 Permanent Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt.
 608 P. Appl., Part A, Sec. 3.00 E. and F., and the interpretive

609 standards set forth in the official statement of the American
 610 Thoracic Society entitled "Lung function testing: selection of
 611 reference values and interpretive strategies" as published in
 612 American Review of Respiratory Disease, 1991, 144:1202-1218.

613 (b) Not be obtained through testing or examinations that
 614 violate any applicable law, regulation, licensing requirement, or
 615 medical code of practice.

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

619 (9) NO PRESUMPTION AT TRIAL.--Presentation of prima facie
 620 evidence meeting the requirements of subsection (2), subsection
 621 (3), subsection (4), subsection (6), or subsection (7) shall not:

622 (a) Result in any presumption at trial that the exposed
 623 person is impaired by an asbestos-related or silica-related
 624 condition.

625 (b) Be conclusive as to the liability of any defendant.

626 (c) Be admissible at trial.

627 Section 5. Procedures.--

628 (1) CONSOLIDATION.--A court may consolidate for trial any
 629 number and type of asbestos or silica claims with consent of all
 630 the parties. In the absence of such consent, the court may
 631 consolidate for trial only asbestos or silica claims relating to
 632 the same exposed person and members of his or her household.

633 (2) VENUE.--A civil action alleging an asbestos or silica
 634 claim may only be brought in the courts of this state if the
 635 plaintiff is domiciled in this state or the exposure to asbestos
 636 or silica that is a substantial contributing factor to the

637 physical impairment on which the claim is based occurred in this
638 state.

639 (3) PRELIMINARY PROCEEDINGS.--The plaintiff in any civil
640 action alleging an asbestos or silica claim shall file together
641 with the complaint or other initial pleading a written report and
642 supporting test results constituting prima facie evidence of the
643 exposed person's asbestos-related or silica-related physical
644 impairment meeting the requirements of subsections (2)-(7) of
645 section 4. For any asbestos or silica claim pending on the
646 effective date of this act, the plaintiff shall file such a
647 written report and supporting test results no later than 60 days
648 after the effective date or no later than 30 days prior to the
649 commencement of trial. The defendant shall be afforded a
650 reasonable opportunity to challenge the adequacy of the proffered
651 prima facie evidence of asbestos-related impairment. The
652 plaintiff's claim shall be dismissed without prejudice upon a
653 finding of failure to make the required prima facie showing.

654 (4) NEW CLAIM REQUIRED INFORMATION.--All asbestos claims
655 and silica claims filed in this state on or after the effective
656 date of this act shall include, in addition to the report
657 required in subsection (3) and the information required in
658 subsection (2) of section 7, a sworn information form containing
659 the following information:

660 (a) The claimant's name, address, date of birth, social
661 security number, and marital status.

662 (b) If the claimant alleges exposure to asbestos or silica
663 through the testimony of another person or other than by direct
664 or bystander exposure to any product, the name, address, date of

665 birth, social security number, and marital status for each
 666 person by which claimant alleges exposure, hereafter the "index
 667 person," and the claimant's relationship to each person.

668 (c) The specific location of each alleged exposure.

669 (d) The beginning and ending dates of each alleged
 670 exposure as to each asbestos product or silica product for each
 671 location at which the exposure allegedly took place for
 672 plaintiff and for each index person.

673 (e) The occupation and name of employer of the exposed
 674 person at the time of each alleged exposure.

675 (f) The specific condition related to asbestos or silica
 676 claimed to exist.

677 (g) Any supporting documentation of the condition claimed
 678 to exist.

679 Section 6. Statute of limitation; two-disease rule.--

680 (1) STATUTE OF LIMITATIONS.--Notwithstanding any other
 681 provision of law, with respect to any asbestos or silica claim
 682 not barred as of the effective date of this act, the limitations
 683 period shall not begin to run until the exposed person discovers,
 684 or through the exercise of reasonable diligence should have
 685 discovered, that the he or she is physically impaired by an
 686 asbestos-related or silica-related condition, as defined in
 687 section 4.

688 (2) TWO-DISEASE RULE.--An asbestos or silica claim arising
 689 out of a nonmalignant condition shall be a distinct cause of
 690 action from an asbestos or silica claim relating to the same
 691 exposed person arising out of asbestos-related or silica-related

692 cancer. No damages shall be awarded for fear or risk of cancer in
693 any civil action asserting an asbestos or silica claim.

694 (3) GENERAL RELEASES FROM LIABILITY PROHIBITED.--No
695 settlement of a nonmalignant asbestos or silica claim concluded
696 after the date of enactment shall require, as a condition of
697 settlement, release of any future claim for asbestos-related or
698 silica-related cancer.

699 Section 7. Scope of liability, damages.--

700 (1) PUNITIVE DAMAGES.--No punitive damages shall be awarded
701 in any civil action alleging an asbestos or silica claim.

702 (2) COLLATERAL SOURCE PAYMENTS.--At the time a complaint is
703 filed in a civil action alleging an asbestos or silica claim, the
704 plaintiff must file a verified written report with the court that
705 discloses the total amount of any collateral source payments
706 received, including payments which the plaintiff will receive in
707 the future, as a result of settlements or judgments based upon
708 the same claim. For any asbestos or silica claim pending on the
709 date of enactment of this act, the plaintiff shall file such
710 verified written report no later than 60 days after the date of
711 enactment or no later than 30 days prior to trial. Further, the
712 plaintiff shall be required to update such reports on a regular
713 basis during the course of the proceeding until a final judgment
714 is entered in the case. The court shall ensure that the
715 information contained in the initial and updated reports is
716 treated as privileged and confidential and that the contents of
717 the verified written reports shall not be disclosed to anyone
718 except the other parties to the action. The court shall permit
719 setoff, based on the collateral source payment information

720 provided, in accordance with the laws of this state as of the
721 effective date of this act.

722 Section 8. Liability rules applicable to product sellers,
723 renters, and lessors.--

724 (1)(a) In general.--In any civil action alleging an
725 asbestos or silica claim, a product seller other than a
726 manufacturer shall be liable to a plaintiff only if the plaintiff
727 establishes that:

728 1.a. The product that allegedly caused the harm that is the
729 subject of the complaint was sold, rented, or leased by the
730 product seller;

731 b. The product seller failed to exercise reasonable care
732 with respect to the product; and

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

735 2.a. The product seller made an express warranty applicable
736 to the product that allegedly caused the harm that is the subject
737 of the complaint, independent of any express warranty made by the
738 manufacturer as to the same product;

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

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

742 3.a. The product seller engaged in intentional wrongdoing,
743 as determined under applicable state law; and

744 b. The intentional wrongdoing caused the harm that is the
745 subject of the complaint.

746 (b) Reasonable opportunity for inspection.--For the
747 purposes of subparagraph (1)(a)1., a product seller shall not be

748 considered to have failed to exercise reasonable care with
749 respect to a product based upon an alleged failure to inspect the
750 product, if:

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

753 2. The inspection, in the exercise of reasonable care,
754 would not have revealed the aspect of the product that allegedly
755 caused the exposed person's impairment.

756 (2) In any civil action alleging an asbestos or silica
757 claim, a person engaged in the business of renting or leasing a
758 product shall not be liable for the tortious act of another
759 solely by reason of ownership of that product.

760 Section 9. Miscellaneous provisions.--

761 (1) This act shall not be construed to affect the scope or
762 operation of any workers' compensation law or veterans' benefit
763 program, to affect the exclusive remedy or subrogation provisions
764 of any such law, or to authorize any lawsuit which is barred by
765 any such provision of law.

766 (2) It is the intent of this act and the Legislature to
767 accord the utmost comity and respect to the constitutional
768 prerogatives of the judiciary of this state and nothing in this
769 act should be construed as any effort to impinge upon those
770 prerogatives. To that end, if the Florida Supreme Court enters a
771 final judgment concluding or declaring that any provision of
772 this act improperly encroaches upon the court's authority to
773 determine the rules of practice and procedure in the courts of
774 this state, the Legislature hereby declares its intent that any
775 such provision be construed as a request for a rule change

776 pursuant to s. 2, Art. 5 of the State Constitution and not as a
777 mandatory legislative directive.

778 (3) This act expressly preserves the right of all injured
779 persons to recover full compensatory damages for their loss and
780 therefore does not impair vested rights. In addition, this act
781 enhances the ability of the most seriously ill to receive a
782 prompt recovery and therefore is remedial in nature.

783 (4) If any provision of this act or the application
784 thereof to any person or circumstance is held invalid, the
785 invalidity does not affect other provisions or application of
786 the act which can be given effect without the invalid provision
787 or application, and to this end the provisions of this act are
788 declared severable.

789 Section 10. This act shall take effect upon becoming a law
790 and shall apply to any civil action asserting an asbestos or
791 silica claim in which trial has not commenced as of the
792 effective date of this act.