

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to asbestos and silica claims; providing a
7 popular name; providing legislative findings; providing
8 purposes; providing definitions; requiring physical
9 impairment as an essential element of a claim; providing
10 criteria for prima facie evidence of physical impairment
11 for claims and certain actions; providing an exception;
12 providing additional requirements for evidence relating to
13 physical impairment; specifying absence of certain
14 presumptions at trial; providing procedures for claims and
15 certain actions; providing for consolidation; providing
16 for venue; providing for preliminary proceedings;
17 requiring new asbestos and silica claims to include
18 certain information; specifying certain limitation periods
19 for certain claims; specifying distinct causes of action
20 for certain conditions; limiting damages under certain
21 circumstances; prohibiting a general release from
22 liability; prohibiting award of punitive damages;
23 providing for collateral source payments; specifying

24 liability rules applicable to certain persons; providing
 25 construction; providing legislative intent; providing
 26 severability; providing application to certain civil
 27 actions; providing an effective date.

28

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

30

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

33 Section 2. Findings and purposes.--

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

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

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

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

45 (d) The diseases caused by asbestos often have long
 46 latency periods.

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

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

57 (g) Asbestos personal injury litigation can be unfair and
 58 inefficient, imposing a severe burden on litigants and taxpayers
 59 alike.

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

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

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

73 (k) The crush of asbestos litigation has been costly to
 74 employers, employees, litigants, and the court system. In 1982,
 75 the Johns-Manville Corporation, the nation's largest single
 76 supplier of asbestos-containing insulation products, declared
 77 bankruptcy due to the burden of the asbestos litigation. Since
 78 then, more than 70 other companies have declared bankruptcy due
 79 to the burden of asbestos litigation. It is estimated that

HB 1019

2005
CS

80 between 60,000 and 128,000 American workers already have lost
81 their jobs as a result of asbestos-related bankruptcies and that
82 the total number of jobs that will be lost due to asbestos-
83 related bankruptcies will eventually reach 432,000. Each worker
84 who loses his or her job due to an asbestos-related bankruptcy
85 loses between \$25,000 and \$50,000 in wages over his or her
86 career. Those workers also have seen the value of their 401(k)
87 retirement plans drop by 25 percent or more due the
88 bankruptcies.

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

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

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

104 (o) Silicosis was recognized as an occupational disease
105 many years ago. In fact, the American Foundrymen's Society has
106 distributed literature to its members warning of the dangers of
107 silica exposure for more than 100 years. By the 1930's, the

HB 1019

2005
CS

108 Federal Government had launched a silica-awareness campaign
109 which led to greater protection for workers exposed to silica
110 dust. As a result, the number of silica lawsuits filed each year
111 was relatively predictable. This has changed. The number of new
112 lawsuits alleging silica-related disease being filed each year
113 began to rise precipitously in recent years. For example,
114 America's largest supplier of industrial sand had more than
115 15,000 new claims in the first 6 months of 2003. This is 3 times
116 the number of claims it had in all of 2002 and more than 10
117 times the number of claims it had in all of 2001.

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

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

133 (r) Consolidations, joinders, and similar procedures to
134 which some courts have resorted in order to deal with the mass
135 of asbestos and silica cases can undermine the appropriate

HB 1019

2005
CS

136 functioning of the judicial process and further encourage the
137 filing of thousands of cases by exposed individuals who are not
138 yet sick and who may never become sick.

139 (s) Excessive, unpredictable, and often arbitrary damage
140 awards and unfair allocations of liability jeopardize the
141 financial well-being of many individuals, businesses, and entire
142 industries, particularly small businesses.

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

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

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

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

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

HB 1019

2005
CS

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

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

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

172 (1) "AMA Guides to the evaluation of permanent impairment"
 173 means the American Medical Association's Guides to the
 174 Evaluation of Permanent Impairment (Fifth Edition 2000) as
 175 modified by the American Medical Association.

176 (2) "Asbestos" means all minerals defined as asbestos in
 177 29 C.F.R. s. 1910, as amended.

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

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

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

194 (6) "Board-certified in internal medicine" means certified
 195 by the American Board of Internal Medicine or the American
 196 Osteopathic Board of Internal Medicine.

197 (7) "Board-certified in occupational medicine" means
 198 certified in the subspecialty of occupational medicine by the
 199 American Board of Preventive Medicine or the American
 200 Osteopathic Board of Preventive Medicine.

201 (8) "Board-certified in oncology" means certified in the
 202 subspecialty of medical oncology by the American Board of
 203 Internal Medicine or the American Osteopathic Board of Internal
 204 Medicine.

205 (9) "Board-certified in pathology" means holding primary
 206 certification in anatomic pathology or clinical pathology from
 207 the American Board of Pathology or the American Osteopathic
 208 Board of Internal Medicine and with professional practice:

209 (a) Principally in the field of pathology.

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

212 (10) "Board-certified in pulmonary medicine" means
 213 certified in the subspecialty of pulmonary medicine by the
 214 American Board of Internal Medicine or the American Osteopathic
 215 Board of Internal Medicine.

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

HB 1019

2005
CS

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

223 (13) "Exposed person" means any person whose exposure to
 224 asbestos, silica, asbestos-containing products, or silica-
 225 containing products is the basis for an asbestos or silica
 226 claim.

227 (14) "Exposure years" means:

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

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

232 (c) Exposure after 1979 not to be counted, except that
 233 each year from 1972 forward for which the plaintiff can
 234 establish exposure exceeding the Occupational Safety and Health
 235 Administration limit for 8-hour, time-weighted average airborne
 236 concentration for a substantial portion of the year to be
 237 counted as one year.

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

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

244 (17) "ILO scale" means the system for the classification
 245 of chest X rays set forth in the International Labour Office's

HB 1019

2005
CS

246 Guidelines for the Use of ILO International Classification of
 247 Radiographs of Pneumoconioses (1980) as amended by the
 248 International Labour Office.

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

253 (19) "Mesothelioma" means a malignant tumor with a primary
 254 site in the pleura or the peritoneum which has been diagnosed by
 255 a board-certified pathologist using standardized and accepted
 256 criteria of microscopic morphology or appropriate staining
 257 techniques.

258 (20) "Nonmalignant condition" means any condition that is
 259 caused or may be caused by asbestos other than a diagnosed
 260 cancer.

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

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

271 (23) "Predicted lower limit of normal" for any test means
 272 the fifth percentile of healthy populations based on age,

273 height, and gender, as referenced in the AMA Guides to the
 274 Evaluation of Permanent Impairment.

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

276 (a) Is currently a board-certified internist, oncologist,
 277 pathologist, pulmonary specialist, or radiologist, or specialist
 278 in occupational and environmental medicine.

279 (b) Has conducted a physical examination of the exposed
 280 person.

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

283 (d) Spends no more than 10 percent of his or her
 284 professional practice time in providing consulting or expert
 285 services in connection with actual or potential civil actions
 286 and whose medical group, professional corporation, clinic, or
 287 other affiliated group earns not more than 20 percent of its
 288 revenues from providing such services.

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

292 (f) Receives or received payment for the treatment of the
 293 exposed person from that person's health maintenance
 294 organization or other medical provider or from the exposed
 295 person or a member of the exposed person's family.

296 (25) "Radiological evidence of asbestosis" means a quality
 297 1 chest X ray under the ILO System of classification showing
 298 small, irregular opacities of s, t, or u, graded by a certified
 299 B-reader as at least 1/1 on the ILO scale. In a death case for
 300 which no pathology is available, the necessary radiologic

HB 1019

2005
CS

301 findings may be made with a quality 2 film if a quality 1 film
 302 is not available.

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

310 (27) "Silica" means a respirable crystalline form of
 311 silicon dioxide, including, but not limited to, alpha, quartz,
 312 crystalite, and trydymite.

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

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

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

328 (31) "State" means any state of the United States, the
 329 District of Columbia, the Commonwealth of Puerto Rico, the
 330 Northern Mariana Islands, the Virgin Islands, Guam, American
 331 Samoa, and any other territory or possession of the United
 332 States or any political subdivision of any of such governments.

333 (32) "Substantial contributing factor" means:

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

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

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

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

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

HB 1019

2005
CS

356 Section 4. Physical impairment.--

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

361 (2) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR
 362 NONMALIGNANT ASBESTOS CLAIMS.--No person shall bring or maintain
 363 a civil action alleging a nonmalignant asbestos claim in the
 364 absence of a prima facie showing of physical impairment as a
 365 result of a medical condition to which exposure to asbestos was
 366 a substantial contributing factor. Such a prima facie showing
 367 shall include:

368 (a) Evidence verifying that a qualified physician has
 369 taken a detailed occupational and exposure history of the
 370 exposed person or, if such person is deceased, from a person who
 371 is knowledgeable about the exposures that form the basis of the
 372 nonmalignant asbestos claim, including:

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

375 2. Whether each place of employment involved exposures to
 376 airborne contaminants, including, but not limited to, asbestos
 377 fibers or other disease-causing dusts, that can cause pulmonary
 378 impairment and the nature, duration, and level of any such
 379 exposure.

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

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

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

392 (e) A diagnosis by a qualified physician of asbestosis or
 393 diffuse pleural thickening, based at a minimum on radiological
 394 or pathological evidence of asbestosis or radiological evidence
 395 of diffuse pleural thickening.

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

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

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

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

409 (g) A conclusion by a qualified physician that the exposed
 410 person's medical findings and impairment were not more probably

411 the result of causes other than the asbestos exposure revealed
 412 by the exposed person's employment and medical history. A
 413 conclusion which states that the medical findings and impairment
 414 are consistent with or compatible with exposure to asbestos does
 415 not meet the requirements of this paragraph.

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

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

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

428 (c) Depending on whether the exposed person has a history
 429 of smoking, the requirements of subparagraph 1. or subparagraph
 430 2.:

431 1. In the case of an exposed person who is a nonsmoker:
 432 a. Radiological or pathological evidence of asbestosis; or
 433 b. Evidence of occupational exposure to asbestos for the
 434 following minimum exposure periods in the specified occupations:

435 (I) Five exposure years for insulators, shipyard workers,
 436 workers in manufacturing plants handling raw asbestos,
 437 boilermakers, shipfitters, steamfitters, or other trades
 438 performing similar functions;

HB 1019

2005
CS

439 (II) Ten exposure years for utility and powerhouse
 440 workers, secondary manufacturing workers, or other trades
 441 performing similar functions; or

442 (III) Fifteen exposure years for general construction,
 443 maintenance workers, chemical and refinery workers, marine
 444 engine room personnel and other personnel on vessels, stationary
 445 engineers and firemen, railroad engine repair workers, or other
 446 trades performing similar functions.

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

449 (d) A conclusion by a qualified physician that the exposed
 450 person's medical findings and impairment were not more probably
 451 the result of causes other than the asbestos exposure revealed
 452 by the exposed person's employment and medical history. A
 453 conclusion that the medical findings and impairment are
 454 consistent with or compatible with exposure to asbestos does not
 455 meet the requirements of this paragraph.

456
 457 If the exposed person is deceased, the qualified physician may
 458 obtain the evidence required in paragraph (b) and sub-
 459 paragraph (c)1.b. from the person most knowledgeable about
 460 the alleged exposures that form the basis of the asbestos claim.

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

467 (a) A diagnosis by a qualified physician who is board
 468 certified in pathology, pulmonary medicine, or oncology, as
 469 appropriate for the type of cancer claimed, of primary cancer of
 470 the colon, rectum, larynx, pharynx, esophagus, or stomach and
 471 that exposure to asbestos was a substantial contributing factor
 472 to the condition.

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

476 (c) The requirement of:

- 477 1. Radiological or pathological evidence of asbestosis; or
- 478 2. Evidence of occupational exposure to asbestos for the
 479 following minimum exposure periods in the specified occupations:

- 480 a. Five exposure years for insulators, shipyard workers,
 481 workers in manufacturing plants handling raw asbestos,
 482 boilermakers, shipfitters, steamfitters, or other trades
 483 performing similar functions;

- 484 b. Ten exposure years for utility and powerhouse workers,
 485 secondary manufacturing workers, or other trades performing
 486 similar functions; or

- 487 c. Fifteen exposure years for general construction,
 488 maintenance workers, chemical and refinery workers, marine
 489 engine room personnel and other personnel on vessels, stationary
 490 engineers and firemen, railroad engine repair workers, or other
 491 trades performing similar functions.

492 (d) A conclusion by a qualified physician that the exposed
 493 person's medical findings and impairment were not more probably
 494 the result of causes other than the asbestos exposure revealed

495 by the exposed person's employment and medical history. A
 496 conclusion that the medical findings and impairment are
 497 consistent with or compatible with exposure to asbestos does not
 498 meet the requirements of this paragraph.

499
 500 If the exposed person is deceased, the qualified physician may
 501 obtain the evidence required in paragraph (b) and subparagraph
 502 (c)2. from the person most knowledgeable about the alleged
 503 exposures that form the basis of the asbestos claim.

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

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

513 (a) Evidence verifying that a qualified physician has
 514 taken a detailed occupational and exposure history of the
 515 exposed person or, if such person is deceased, from a person who
 516 is knowledgeable about the exposures that form the basis of the
 517 nonmalignant silica claim, including:

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

520 2. Whether each place of employment involved exposures to
 521 airborne contaminants, including, but not limited to, silica
 522 particles or other disease-causing dusts, that can cause

523 pulmonary impairment and the nature, duration, and level of any
 524 such exposure.

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

530 (c) A determination by a qualified physician, on the basis
 531 of a medical examination and pulmonary function testing, that
 532 the exposed person has a permanent respiratory impairment rating
 533 of at least Class 2 as defined by and evaluated pursuant to the
 534 AMA Guides to the Evaluation of Permanent Impairment.

535 (d) A determination by a qualified physician that the
 536 exposed person has:

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

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

548 (e) A conclusion by a qualified physician that the exposed
 549 person's medical findings and impairment were not more probably
 550 the result of causes other than silica exposure revealed by the

551 exposed person's employment and medical history. A conclusion
 552 that the medical findings and impairment are consistent with or
 553 compatible with exposure to asbestos does not meet the
 554 requirements of this paragraph.

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

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

561 1. Board certified in pulmonary medicine, internal
 562 medicine, oncology, or pathology, stating a diagnosis of the
 563 exposed person of silica-related lung cancer and stating that,
 564 to a reasonable degree of medical probability, exposure to
 565 silica was a substantial contributing factor to the diagnosed
 566 lung cancer; or

567 2. Board certified in pulmonary medicine, internal
 568 medicine, or pathology, stating a diagnosis of the exposed
 569 person of silica-related progressive massive fibrosis or acute
 570 silicoproteinosis, or silicosis complicated by documented
 571 tuberculosis.

572 (b) Evidence verifying that a qualified physician has
 573 taken a detailed occupational and exposure history of the
 574 exposed person or, if such person is deceased, from a person who
 575 is knowledgeable about the exposures that form the basis of the
 576 nonmalignant silica claim, including:

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

579 2. Whether each place of employment involved exposures to
 580 airborne contaminants, including, but not limited to, silica
 581 particles or other disease-causing dusts, that can cause
 582 pulmonary impairment and the nature, duration, and level of any
 583 such exposure.

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

588 (d) A determination by a qualified physician that the
 589 exposed person has:

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

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

601 (e) A conclusion by a qualified physician that the exposed
 602 person's medical findings and impairment were not more probably
 603 the result of causes other than silica exposure revealed by the
 604 exposed person's employment and medical history. A conclusion
 605 that the medical findings and impairment are consistent with or

606 compatible with exposure to asbestos does not meet the
 607 requirements of this paragraph.

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

611 (a) Comply with the technical recommendations for
 612 examinations, testing procedures, quality assurance, quality
 613 control, and equipment of the AMA Guides to the Evaluation of
 614 Permanent Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt.
 615 P. Appl., Part A, Sec. 3.00 E. and F., and the interpretive
 616 standards set forth in the official statement of the American
 617 Thoracic Society entitled "Lung function testing: selection of
 618 reference values and interpretive strategies" as published in
 619 American Review of Respiratory Disease, 1991, 144:1202-1218.

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

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

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

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

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

HB 1019

2005
CS

634 (c) Be admissible at trial.

635 Section 5. Procedures.--

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

641 (2) VENUE.--A civil action alleging an asbestos or silica
 642 claim may only be brought in the courts of this state if the
 643 plaintiff is domiciled in this state or the exposure to asbestos
 644 or silica that is a substantial contributing factor to the
 645 physical impairment on which the claim is based occurred in this
 646 state.

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

HB 1019

2005
CS

662 (4) NEW CLAIM REQUIRED INFORMATION.--All asbestos claims
 663 and silica claims filed in this state on or after the effective
 664 date of this act shall include, in addition to the report
 665 required in subsection (3) and the information required in
 666 subsection (2) of section 7, a sworn information form containing
 667 the following information:

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

670 (b) If the claimant alleges exposure to asbestos or silica
 671 through the testimony of another person or other than by direct
 672 or bystander exposure to any product, the name, address, date of
 673 birth, social security number, and marital status for each
 674 person by which claimant alleges exposure, hereafter the "index
 675 person," and the claimant's relationship to each person.

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

677 (d) The beginning and ending dates of each alleged
 678 exposure as to each asbestos product or silica product for each
 679 location at which the exposure allegedly took place for
 680 plaintiff and for each index person.

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

683 (f) The specific condition related to asbestos or silica
 684 claimed to exist.

685 (g) Any supporting documentation of the condition claimed
 686 to exist.

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

688 (1) STATUTE OF LIMITATIONS.--Notwithstanding any other
 689 provision of law, with respect to any asbestos or silica claim

HB 1019

2005
CS

690 not barred as of the effective date of this act, the limitations
 691 period shall not begin to run until the exposed person
 692 discovers, or through the exercise of reasonable diligence
 693 should have discovered, that the he or she is physically
 694 impaired by an asbestos-related or silica-related condition, as
 695 defined in section 4.

696 (2) TWO-DISEASE RULE.--An asbestos or silica claim arising
 697 out of a nonmalignant condition shall be a distinct cause of
 698 action from an asbestos or silica claim relating to the same
 699 exposed person arising out of asbestos-related or silica-related
 700 cancer. No damages shall be awarded for fear or risk of cancer
 701 in any civil action asserting an asbestos or silica claim.

702 (3) GENERAL RELEASES FROM LIABILITY PROHIBITED.--No
 703 settlement of a nonmalignant asbestos or silica claim concluded
 704 after the date of enactment shall require, as a condition of
 705 settlement, release of any future claim for asbestos-related or
 706 silica-related cancer.

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

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

711 (2) COLLATERAL SOURCE PAYMENTS.--At the time a complaint
 712 is filed in a civil action alleging an asbestos or silica claim,
 713 the plaintiff must file a verified written report with the court
 714 that discloses the total amount of any collateral source
 715 payments received, including payments which the plaintiff will
 716 receive in the future, as a result of settlements or judgments
 717 based upon the same claim. For any asbestos or silica claim

HB 1019

2005
CS

718 pending on the date of enactment of this act, the plaintiff
 719 shall file such verified written report no later than 60 days
 720 after the date of enactment or no later than 30 days prior to
 721 trial. Further, the plaintiff shall be required to update such
 722 reports on a regular basis during the course of the proceeding
 723 until a final judgment is entered in the case. The court shall
 724 permit setoff, based on the collateral source payment
 725 information provided, in accordance with the laws of this state
 726 as of the effective date of this act.

727 Section 8. Liability rules applicable to product sellers,
 728 renters, and lessors.--

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

733 1.a. The product that allegedly caused the harm that is
 734 the subject of the complaint was sold, rented, or leased by the
 735 product seller;

736 b. The product seller failed to exercise reasonable care
 737 with respect to the product; and

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

740 2.a. The product seller made an express warranty
 741 applicable to the product that allegedly caused the harm that is
 742 the subject of the complaint, independent of any express
 743 warranty made by the manufacturer as to the same product;

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

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

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

749 b. The intentional wrongdoing caused the harm that is the
 750 subject of the complaint.

751 (b) Reasonable opportunity for inspection.--For the
 752 purposes of subparagraph (1)(a)1., a product seller shall not be
 753 considered to have failed to exercise reasonable care with
 754 respect to a product based upon an alleged failure to inspect
 755 the product, if:

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

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

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

765 Section 9. Miscellaneous provisions.--

766 (1) This act shall not be construed to affect the scope or
 767 operation of any workers' compensation law or veterans' benefit
 768 program, to affect the exclusive remedy or subrogation
 769 provisions of any such law, or to authorize any lawsuit which is
 770 barred by any such provision of law.

771 (2) It is the intent of this act and the Legislature to
 772 accord the utmost comity and respect to the constitutional

HB 1019

2005
CS

773 prerogatives of the judiciary of this state and nothing in this
 774 act should be construed as any effort to impinge upon those
 775 prerogatives. To that end, if the Florida Supreme Court enters a
 776 final judgment concluding or declaring that any provision of
 777 this act improperly encroaches upon the court's authority to
 778 determine the rules of practice and procedure in the courts of
 779 this state, the Legislature hereby declares its intent that any
 780 such provision be construed as a request for a rule change
 781 pursuant to s. 2, Art. 5 of the State Constitution and not as a
 782 mandatory legislative directive.

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

788 (4) If any provision of this act or the application
 789 thereof to any person or circumstance is held invalid, the
 790 invalidity does not affect other provisions or application of
 791 the act which can be given effect without the invalid provision
 792 or application, and to this end the provisions of this act are
 793 declared severable.

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