

CHAMBER ACTION

1 The Judiciary 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.

HB 1019 CS

2005
CS

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 insulation products containing asbestos, 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

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 CS

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

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.

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.

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, products containing asbestos, or silica-
 225 containing products is the basis for an asbestos or silica
 226 claim.

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

230 (15) "FVC" means forced vital capacity which is the
 231 maximal volume of air expired with maximum effort from a
 232 position of full inspiration.

233 (16) "ILO scale" means the system for the classification
 234 of chest X rays set forth in the International Labour Office's
 235 Guidelines for the Use of ILO International Classification of
 236 Radiographs of Pneumoconioses (1980) as amended by the
 237 International Labour Office.

238 (17) "Lung cancer" means a malignant tumor in which the
 239 primary site of origin of the cancer is located inside of the
 240 lungs, but such term does not include an asbestos claim based
 241 upon mesothelioma.

242 (18) "Mesothelioma" means a malignant tumor with a primary
 243 site in the pleura or the peritoneum which has been diagnosed by
 244 a board-certified pathologist using standardized and accepted

245 criteria of microscopic morphology or appropriate staining
 246 techniques.

247 (19) "Nonmalignant condition" means any condition that is
 248 caused or may be caused by asbestos other than a diagnosed
 249 cancer.

250 (20) "Nonsmoker" means an exposed person who has not
 251 smoked cigarettes or any other tobacco products on a consistent
 252 and frequent basis within the last 15 years.

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

260 (22) "Predicted lower limit of normal" for any test means
 261 the fifth percentile of healthy populations based on age,
 262 height, and gender, as referenced in the AMA Guides to the
 263 Evaluation of Permanent Impairment.

264 (23) "Qualified physician" means a medical doctor who:

265 (a) Is currently a board-certified internist, oncologist,
 266 pathologist, pulmonary specialist, or radiologist, or specialist
 267 in occupational and environmental medicine.

268 (b) Has conducted a physical examination of the exposed
 269 person.

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

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

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

281 (f) Receives or received payment for the treatment of the
 282 exposed person from that person's health maintenance
 283 organization or other medical provider or from the exposed
 284 person or a member of the exposed person's family.

285 (24) "Radiological evidence of asbestosis" means a quality
 286 1 chest X ray under the ILO System of classification showing
 287 small, irregular opacities of s, t, or u, graded by a certified
 288 B-reader as at least 1/1 on the ILO scale. In a death case for
 289 which no pathology is available, the necessary radiologic
 290 findings may be made with a quality 2 film if a quality 1 film
 291 is not available.

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

299 (26) "Silica" means a respirable crystalline form of
 300 silicon dioxide, including, but not limited to, alpha, quartz,
 301 crystalite, and trydymite.

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

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

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

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

323 (31) "Substantial contributing factor" means:

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

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

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

333 (32) "Substantial occupational exposure" means employment
 334 for a cumulative period of at least 5 years in industries and
 335 occupations in which, for a substantial portion of a normal work
 336 year for that occupation, the exposed person did any of the
 337 following:

338 (a) Handled raw asbestos fibers;

339 (b) Fabricated products containing asbestos so that the
 340 person was exposed to raw asbestos fibers in the fabrication
 341 process;

342 (c) Altered, repaired, or otherwise worked with a product
 343 containing asbestos in a manner that exposed the person on a
 344 regular basis to asbestos fibers; or

345 (d) Worked in close proximity to other persons engaged in
 346 any of the activities described in paragraph (a), paragraph (b),
 347 or paragraph (c) in a manner that exposed the person on a
 348 regular basis to asbestos fibers.

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

352 (34) "Workers' compensation law" means a law respecting a
 353 program administered by a state or the United States to provide

354 benefits, funded by a responsible employer or its insurance
 355 carrier, for occupational diseases or injuries or for disability
 356 or death caused by occupational diseases or injuries. The term
 357 includes the Longshore and Harbor Workers' Compensation Act, 33
 358 U.S.C. 901-944, 948-950, and chapter 81 of Title 5, U.S.C., the
 359 Federal Employees Compensation Act, but does not include the Act
 360 of April 22, 1908, 45 U.S.C. 51 et seq., popularly referred to
 361 as the "Federal Employers' Liability Act."

362 Section 4. Physical impairment.--

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

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

374 (a) Evidence verifying that a qualified physician, or
 375 someone working under the direct supervision and control of a
 376 qualified physician, has taken a detailed occupational and
 377 exposure history of the exposed person or, if such person is
 378 deceased, from a person who is knowledgeable about the exposures
 379 that form the basis of the nonmalignant asbestos claim,
 380 including:

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

383 2. Whether each place of employment involved exposures to
 384 airborne contaminants, including, but not limited to, asbestos
 385 fibers or other disease-causing dusts, that can cause pulmonary
 386 impairment and the nature, duration, and level of any such
 387 exposure.

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

391 (c) Evidence verifying that a qualified physician, or
 392 someone working under the direct supervision and control of a
 393 qualified physician, has taken detailed medical and smoking
 394 history, including a thorough review of the exposed person's
 395 past and present medical problems and their most probable cause.

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

401 (e) A diagnosis by a qualified physician of asbestosis or
 402 diffuse pleural thickening, based at a minimum on radiological
 403 or pathological evidence of asbestosis or radiological evidence
 404 of diffuse pleural thickening.

405 (f) A determination by a qualified physician that
 406 asbestosis or diffuse pleural thickening, rather than chronic
 407 obstructive pulmonary disease, is a substantial contributing

408 factor to the exposed person's physical impairment, based at a
 409 minimum on a determination that the exposed person has:

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

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

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

418 (g) A conclusion by a qualified physician that the exposed
 419 person's medical findings and impairment were not more probably
 420 the result of causes other than the asbestos exposure revealed
 421 by the exposed person's employment and medical history. A
 422 conclusion which states that the medical findings and impairment
 423 are consistent with or compatible with exposure to asbestos does
 424 not meet the requirements of this paragraph.

425 (h) If a plaintiff files a civil action alleging a
 426 nonmalignant asbestos claim and that plaintiff alleges that the
 427 plaintiff's exposure to asbestos was the result of extended
 428 contact with another exposed person who, if the civil action had
 429 been filed by the other exposed person, would have met the
 430 requirements of paragraph (a) and the plaintiff alleges that the
 431 plaintiff had extended contact with the exposed person during
 432 the time period in which that exposed person met the
 433 requirements of paragraph (a), the plaintiff is considered to
 434 have satisfied the requirements of paragraph (a). The plaintiff

435 in such a civil action must individually satisfy the
 436 requirements of paragraphs (b), (c), (d), (e), (f), and (g).

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

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

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

449 (c) Depending on whether the exposed person has a history
 450 of smoking, the requirements of subparagraph 1. or subparagraph
 451 2.:

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

453 a. Radiological or pathological evidence of asbestosis; or

454 b. Evidence of the exposed person's substantial
 455 occupational exposure to asbestos. If a plaintiff files a civil
 456 action alleging an asbestos-related lung cancer claim, and that
 457 plaintiff alleges that the plaintiff's exposure to asbestos was
 458 the result of extended contact with another exposed person who,
 459 if the civil action had been filed by the other exposed person,
 460 would have met the substantial occupational exposure requirement
 461 of this subsection, and the plaintiff alleges that the plaintiff
 462 had extended contact with the exposed person during the time

463 period in which that exposed person met the substantial
 464 occupational exposure requirement of this subsection, the
 465 plaintiff is considered to have satisfied the requirements of
 466 this sub-subparagraph. The plaintiff in such a civil action must
 467 individually satisfy the requirements of paragraph (a),
 468 paragraph (b), sub-subparagraph a. where appropriate,
 469 subparagraph 2. where appropriate, and paragraph (d).

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

472 (d) A conclusion by a qualified physician that the exposed
 473 person's medical findings and impairment were not more probably
 474 the result of causes other than the asbestos exposure revealed
 475 by the exposed person's employment and medical history. A
 476 conclusion that the medical findings and impairment are
 477 consistent with or compatible with exposure to asbestos does not
 478 meet the requirements of this paragraph.

479
 480 If the exposed person is deceased, the qualified physician, or
 481 someone working under the direct supervision and control of a
 482 qualified physician, may obtain the evidence required in
 483 paragraph (b) and sub-subparagraph (c)1.b. from the person most
 484 knowledgeable about the alleged exposures that form the basis of
 485 the asbestos claim.

486 (4) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED OTHER
 487 CANCER.--No person shall bring or maintain a civil action
 488 alleging an asbestos claim which is based upon cancer of the
 489 colon, rectum, larynx, pharynx, esophagus, or stomach in the

490 absence of a prima facie showing which shall include all of the
 491 following minimum requirements:

492 (a) A diagnosis by a qualified physician who is board
 493 certified in pathology, pulmonary medicine, or oncology, as
 494 appropriate for the type of cancer claimed, of primary cancer of
 495 the colon, rectum, larynx, pharynx, esophagus, or stomach and
 496 that exposure to asbestos was a substantial contributing factor
 497 to the condition.

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

501 (c) The requirement of:

- 502 1. Radiological or pathological evidence of asbestosis; or
- 503 2. Evidence of the exposed person's substantial
 504 occupational exposure to asbestos. If a plaintiff files a civil
 505 action alleging an asbestos claim which is based upon cancer of
 506 the colon, rectum, larynx, pharynx, esophagus, or stomach, and
 507 that plaintiff alleges that the plaintiff's exposure to asbestos
 508 was the result of extended contact with another exposed person
 509 who, if the civil action had been filed by the other exposed
 510 person, would have met the substantial occupational exposure
 511 requirement of this subsection, and the plaintiff alleges that
 512 the plaintiff had extended contact with the exposed person
 513 during the time period in which that exposed person met the
 514 substantial occupational exposure requirement of this
 515 subsection, the plaintiff is considered to have satisfied the
 516 requirements of this subparagraph. The plaintiff in such a civil
 517 action must individually satisfy the requirements of paragraph

HB 1019 CS

2005
CS

518 (a), paragraph (b), subparagraph 1. where appropriate, and
 519 paragraph (d).

520 (d) A conclusion by a qualified physician that the exposed
 521 person's medical findings and impairment were not more probably
 522 the result of causes other than the asbestos exposure revealed
 523 by the exposed person's employment and medical history. A
 524 conclusion that the medical findings and impairment are
 525 consistent with or compatible with exposure to asbestos does not
 526 meet the requirements of this paragraph.

527
 528 If the exposed person is deceased, the qualified physician, or
 529 someone working under the direct supervision and control of a
 530 qualified physician, may obtain the evidence required in
 531 paragraph (b) and subparagraph (c)2. from the person most
 532 knowledgeable about the alleged exposures that form the basis of
 533 the asbestos claim.

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

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

543 (a) Evidence verifying that a qualified physician, or
 544 someone working under the direct supervision and control of a
 545 qualified physician, has taken a detailed occupational and

546 exposure history of the exposed person or, if such person is
 547 deceased, from a person who is knowledgeable about the exposures
 548 that form the basis of the nonmalignant silica claim, including:

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

551 2. Whether each place of employment involved exposures to
 552 airborne contaminants, including, but not limited to, silica
 553 particles or other disease-causing dusts, that can cause
 554 pulmonary impairment and the nature, duration, and level of any
 555 such exposure.

556 (b) Evidence verifying that a qualified physician, or
 557 someone working under the direct supervision and control of a
 558 qualified physician, has taken detailed medical and smoking
 559 history, including a thorough review of the exposed person's
 560 past and present medical problems and their most probable cause,
 561 and verifying a sufficient latency period for the applicable
 562 stage of silicosis.

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

568 (d) A determination by a qualified physician that the
 569 exposed person has:

570 1. A quality 1 chest X ray under the ILO System of
 571 classification and that the X ray has been read by a certified
 572 B-reader as showing, according to the ILO System of
 573 classification, bilateral nodular opacities of p, q, or r,

HB 1019 CS

2005
CS

574 occurring primarily in the upper lung fields, graded 1/1 or
 575 higher. In a death case for which no pathology is available, the
 576 necessary radiologic findings may be made with a quality 2 film
 577 if a quality 1 film is not available; or

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

581 (e) A conclusion by a qualified physician that the exposed
 582 person's medical findings and impairment were not more probably
 583 the result of causes other than silica exposure revealed by the
 584 exposed person's employment and medical history. A conclusion
 585 that the medical findings and impairment are consistent with or
 586 compatible with exposure to silica does not meet the
 587 requirements of this paragraph.

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

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

594 1. Board certified in pulmonary medicine, internal
 595 medicine, oncology, or pathology, stating a diagnosis of the
 596 exposed person of silica-related lung cancer and stating that,
 597 to a reasonable degree of medical probability, exposure to
 598 silica was a substantial contributing factor to the diagnosed
 599 lung cancer; or

600 2. Board certified in pulmonary medicine, internal
 601 medicine, or pathology, stating a diagnosis of the exposed

602 person of silica-related progressive massive fibrosis or acute
 603 silicoproteinosis, or silicosis complicated by documented
 604 tuberculosis.

605 (b) Evidence verifying that a qualified physician, or
 606 someone working under the direct supervision and control of a
 607 qualified physician, has taken a detailed occupational and
 608 exposure history of the exposed person or, if such person is
 609 deceased, from a person who is knowledgeable about the exposures
 610 that form the basis of the nonmalignant silica claim, including:

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

613 2. Whether each place of employment involved exposures to
 614 airborne contaminants, including, but not limited to, silica
 615 particles or other disease-causing dusts, that can cause
 616 pulmonary impairment and the nature, duration, and level of any
 617 such exposure.

618 (c) Evidence verifying that a qualified physician, or
 619 someone working under the direct supervision and control of a
 620 qualified physician, has taken detailed medical and smoking
 621 history, including a thorough review of the exposed person's
 622 past and present medical problems and their most probable cause.

623 (d) A determination by a qualified physician that the
 624 exposed person has:

625 1. A quality 1 chest X ray under the ILO System of
 626 classification and that the X ray has been read by a certified
 627 B-reader as showing, according to the ILO System of
 628 classification, bilateral nodular opacities of p, q, or r,
 629 occurring primarily in the upper lung fields, graded 1/1 or

630 higher. In a death case for which no pathology is available, the
 631 necessary radiologic findings may be made with a quality 2 film
 632 if a quality 1 film is not available; or

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

636 (e) A conclusion by a qualified physician that the exposed
 637 person's medical findings and impairment were not more probably
 638 the result of causes other than silica exposure revealed by the
 639 exposed person's employment and medical history. A conclusion
 640 that the medical findings and impairment are consistent with or
 641 compatible with exposure to silica does not meet the
 642 requirements of this paragraph.

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

646 (a) Comply with the technical recommendations for
 647 examinations, testing procedures, quality assurance, quality
 648 control, and equipment of the AMA Guides to the Evaluation of
 649 Permanent Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt.
 650 P. Appl., Part A, Sec. 3.00 E. and F., and the interpretive
 651 standards set forth in the official statement of the American
 652 Thoracic Society entitled "Lung function testing: selection of
 653 reference values and interpretive strategies" as published in
 654 American Review of Respiratory Disease, 1991, 144:1202-1218.

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

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

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

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

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

669 (c) Be admissible at trial.

670 Section 5. Procedures.--

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

676 (2) VENUE.--A civil action alleging an asbestos or silica
 677 claim may only be brought in the courts of this state if the
 678 plaintiff is domiciled in this state or the exposure to asbestos
 679 or silica that is a substantial contributing factor to the
 680 physical impairment on which the claim is based occurred in this
 681 state.

682 (3) PRELIMINARY PROCEEDINGS.--The plaintiff in any civil
 683 action alleging an asbestos or silica claim shall file together
 684 with the complaint or other initial pleading a written report
 685 and supporting test results constituting prima facie evidence of

HB 1019 CS

2005
CS

686 the exposed person's asbestos-related or silica-related physical
687 impairment meeting the requirements of subsections (2)-(7) of
688 section 4. For any asbestos or silica claim pending on the
689 effective date of this act, the plaintiff shall file such a
690 written report and supporting test results no later than 60 days
691 after the effective date or no later than 30 days prior to the
692 commencement of trial. The defendant shall be afforded a
693 reasonable opportunity to challenge the adequacy of the
694 proffered prima facie evidence of asbestos-related impairment.
695 The plaintiff's claim shall be dismissed without prejudice upon
696 a finding of failure to make the required prima facie showing.

697 (4) NEW CLAIM REQUIRED INFORMATION.--All asbestos claims
698 and silica claims filed in this state on or after the effective
699 date of this act shall include, in addition to the report
700 required in subsection (3) and the information required in
701 subsection (2) of section 7, a sworn information form containing
702 the following information:

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

705 (b) If the claimant alleges exposure to asbestos or silica
706 through the testimony of another person or other than by direct
707 or bystander exposure to any product, the name, address, date of
708 birth, social security number, and marital status for each
709 person by which claimant alleges exposure, hereafter the "index
710 person," and the claimant's relationship to each person.

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

712 (d) The beginning and ending dates of each alleged
713 exposure as to each asbestos product or silica product for each

714 location at which the exposure allegedly took place for
715 plaintiff and for each index person.

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

718 (f) The specific condition related to asbestos or silica
719 claimed to exist.

720 (g) Any supporting documentation of the condition claimed
721 to exist.

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

723 (1) STATUTE OF LIMITATIONS.--Notwithstanding any other
724 provision of law, with respect to any asbestos or silica claim
725 not barred as of the effective date of this act, the limitations
726 period shall not begin to run until the exposed person
727 discovers, or through the exercise of reasonable diligence
728 should have discovered, that the he or she is physically
729 impaired by an asbestos-related or silica-related condition, as
730 defined in section 4.

731 (2) TWO-DISEASE RULE.--An asbestos or silica claim arising
732 out of a nonmalignant condition shall be a distinct cause of
733 action from an asbestos or silica claim relating to the same
734 exposed person arising out of asbestos-related or silica-related
735 cancer. No damages shall be awarded for fear or risk of cancer
736 in any civil action asserting an asbestos or silica claim.

737 (3) GENERAL RELEASES FROM LIABILITY PROHIBITED.--No
738 settlement of a nonmalignant asbestos or silica claim concluded
739 after the date of enactment shall require, as a condition of
740 settlement, release of any future claim for asbestos-related or
741 silica-related cancer.

742 Section 7. Scope of liability, damages.--
 743 (1) PUNITIVE DAMAGES.--No punitive damages shall be
 744 awarded in any civil action alleging an asbestos or silica
 745 claim.
 746 (2) COLLATERAL SOURCE PAYMENTS.--At the time a complaint
 747 is filed in a civil action alleging an asbestos or silica claim,
 748 the plaintiff must file a verified written report with the court
 749 that discloses the total amount of any collateral source
 750 payments received, including payments which the plaintiff will
 751 receive in the future, as a result of settlements or judgments
 752 based upon the same claim. For any asbestos or silica claim
 753 pending on the date of enactment of this act, the plaintiff
 754 shall file such verified written report no later than 60 days
 755 after the date of enactment or no later than 30 days prior to
 756 trial. Further, the plaintiff shall be required to update such
 757 reports on a regular basis during the course of the proceeding
 758 until a final judgment is entered in the case. The court shall
 759 permit setoff, based on the collateral source payment
 760 information provided, in accordance with the laws of this state
 761 as of the effective date of this act.
 762 Section 8. Liability rules applicable to product sellers,
 763 renters, and lessors.--
 764 (1)(a) In general.--In any civil action alleging an
 765 asbestos or silica claim, a product seller other than a
 766 manufacturer shall be liable to a plaintiff only if the
 767 plaintiff establishes that:

768 1.a. The product that allegedly caused the harm that is
 769 the subject of the complaint was sold, rented, or leased by the
 770 product seller;

771 b. The product seller failed to exercise reasonable care
 772 with respect to the product; and

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

775 2.a. The product seller made an express warranty
 776 applicable to the product that allegedly caused the harm that is
 777 the subject of the complaint, independent of any express
 778 warranty made by the manufacturer as to the same product;

779 b. The product failed to conform to the warranty; and
 780 c. The failure of the product to conform to the warranty
 781 caused the harm to the exposed person; or

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

784 b. The intentional wrongdoing caused the harm that is the
 785 subject of the complaint.

786 (b) Reasonable opportunity for inspection.--For the
 787 purposes of subparagraph (1)(a)1., a product seller shall not be
 788 considered to have failed to exercise reasonable care with
 789 respect to a product based upon an alleged failure to inspect
 790 the product, if:

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

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

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

800 Section 9. Miscellaneous provisions.--

801 (1) This act shall not be construed to affect the scope or
 802 operation of any workers' compensation law or veterans' benefit
 803 program, to affect the exclusive remedy or subrogation
 804 provisions of any such law, or to authorize any lawsuit which is
 805 barred by any such provision of law.

806 (2) It is the intent of this act and the Legislature to
 807 accord the utmost comity and respect to the constitutional
 808 prerogatives of the judiciary of this state and nothing in this
 809 act should be construed as any effort to impinge upon those
 810 prerogatives. To that end, if the Florida Supreme Court enters a
 811 final judgment concluding or declaring that any provision of
 812 this act improperly encroaches upon the court's authority to
 813 determine the rules of practice and procedure in the courts of
 814 this state, the Legislature hereby declares its intent that any
 815 such provision be construed as a request for a rule change
 816 pursuant to s. 2, Art. 5 of the State Constitution and not as a
 817 mandatory legislative directive.

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

HB 1019 CS

2005
CS

823 (4) If any provision of this act or the application
824 thereof to any person or circumstance is held invalid, the
825 invalidity does not affect other provisions or application of
826 the act which can be given effect without the invalid provision
827 or application, and to this end the provisions of this act are
828 declared severable.

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