

CHAMBER ACTION

1 The Justice Council 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.

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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

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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

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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.

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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 trydimite.

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 an extended period of time in industries and occupations in
 335 which, for a substantial portion of a normal work year for that
 336 occupation, the exposed person did any of the following:

337 (a) Handled raw asbestos fibers;

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

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

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

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

351 (34) "Workers' compensation law" means a law respecting a
 352 program administered by a state or the United States to provide
 353 benefits, funded by a responsible employer or its insurance

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

361 Section 4. Physical impairment.--

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

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

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

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

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

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

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

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

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

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

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

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

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

417 (g) If the exposed person meets the requirements of
 418 paragraphs (a), (b), and (c), and if a qualified physician
 419 determines that the exposed person has a physical impairment, as
 420 demonstrated by meeting the criteria set forth in paragraph (d)
 421 and subparagraph (f)1., but the exposed person's chest X-ray
 422 does not demonstrate radiological evidence of asbestosis, the
 423 exposed person may meet the criteria of paragraph (e), if his or
 424 her chest X-ray is graded by a certified B-reader as at least
 425 1/0, and a qualified physician, relying on high-resolution
 426 computed tomography, determines to a reasonable degree of
 427 medical certainty that the exposed person has asbestosis and
 428 forms the conclusion set forth in paragraph (h).

429 (h) A conclusion by a qualified physician that the exposed
 430 person's medical findings and impairment were not more probably
 431 the result of causes other than the asbestos exposure revealed
 432 by the exposed person's employment and medical history. A
 433 conclusion which states that the medical findings and impairment
 434 are consistent with or compatible with exposure to asbestos does
 435 not meet the requirements of this paragraph.

436 (i) If a plaintiff files a civil action alleging a
 437 nonmalignant asbestos claim and that plaintiff alleges that the
 438 plaintiff's exposure to asbestos was the result of extended
 439 contact with another exposed person who, if the civil action had
 440 been filed by the other exposed person, would have met the
 441 requirements of paragraph (a) and the plaintiff alleges that the
 442 plaintiff had extended contact with the exposed person during
 443 the time period in which that exposed person met the
 444 requirements of paragraph (a), the plaintiff is considered to
 445 have satisfied the requirements of paragraph (a). The plaintiff
 446 in such a civil action must individually satisfy the
 447 requirements of this paragraph and paragraphs (b), (c), (d),
 448 (e), (f), (g), and (h).

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

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

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

461 (c) Depending on whether the exposed person has a history
 462 of smoking, the requirements of subparagraph 1. or subparagraph
 463 2.:

464 1. In the case of an exposed person who is a nonsmoker:
 465 a. Radiological or pathological evidence of asbestosis or
 466 diffuse pleural thickening or a qualified physician's diagnosis
 467 of asbestosis based on a chest X-ray graded by a certified B-
 468 reader as at least 1/0 on the ILO scale and high-resolution
 469 computed tomography supporting the diagnosis of asbestosis to a
 470 reasonable degree of medical certainty; or
 471 b. Evidence of the exposed person's substantial
 472 occupational exposure to asbestos. If a plaintiff files a civil
 473 action alleging an asbestos-related lung cancer claim, and that
 474 plaintiff alleges that the plaintiff's exposure to asbestos was
 475 the result of extended contact with another exposed person who,
 476 if the civil action had been filed by the other exposed person,
 477 would have met the substantial occupational exposure requirement
 478 of this subsection, and the plaintiff alleges that the plaintiff
 479 had extended contact with the exposed person during the time
 480 period in which that exposed person met the substantial
 481 occupational exposure requirement of this subsection, the
 482 plaintiff is considered to have satisfied the requirements of
 483 this sub-subparagraph. The plaintiff in such a civil action must
 484 individually satisfy the requirements of paragraph (a),
 485 paragraph (b), sub-subparagraph a. where appropriate,
 486 subparagraph 2. where appropriate, and paragraph (d).
 487 2. In the case of an exposed person who is a smoker, the
 488 criteria contained in sub-subparagraphs 1.a. and b. must be met.
 489 (d) A conclusion by a qualified physician that the exposed
 490 person's medical findings and impairment were not more probably
 491 the result of causes other than the asbestos exposure revealed

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

496
 497 If the exposed person is deceased, the qualified physician, or
 498 someone working under the direct supervision and control of a
 499 qualified physician, may obtain the evidence required in
 500 paragraph (b) and sub-subparagraph (c)1.b. from the person most
 501 knowledgeable about the alleged exposures that form the basis of
 502 the asbestos claim.

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

509 (a) A diagnosis by a qualified physician who is board
 510 certified in pathology, pulmonary medicine, or oncology, as
 511 appropriate for the type of cancer claimed, of primary cancer of
 512 the colon, rectum, larynx, pharynx, esophagus, or stomach and
 513 that exposure to asbestos was a substantial contributing factor
 514 to the condition.

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

518 (c) The requirement of:

519 1. Radiological or pathological evidence of asbestosis or
 520 diffuse pleural thickening or a qualified physician's diagnosis
 521 of asbestosis based on a chest X-ray graded by a certified B-
 522 reader as at least 1/0 on the ILO scale and high-resolution
 523 computed tomography supporting the diagnosis of asbestosis to a
 524 reasonable degree of medical certainty; or

525 2. Evidence of the exposed person's substantial
 526 occupational exposure to asbestos. If a plaintiff files a civil
 527 action alleging an asbestos claim which is based upon cancer of
 528 the colon, rectum, larynx, pharynx, esophagus, or stomach, and
 529 that plaintiff alleges that the plaintiff's exposure to asbestos
 530 was the result of extended contact with another exposed person
 531 who, if the civil action had been filed by the other exposed
 532 person, would have met the substantial occupational exposure
 533 requirement of this subsection, and the plaintiff alleges that
 534 the plaintiff had extended contact with the exposed person
 535 during the time period in which that exposed person met the
 536 substantial occupational exposure requirement of this
 537 subsection, the plaintiff is considered to have satisfied the
 538 requirements of this subparagraph. The plaintiff in such a civil
 539 action must individually satisfy the requirements of paragraph
 540 (a), paragraph (b), subparagraph 1. where appropriate, and
 541 paragraph (d).

542 (d) A conclusion by a qualified physician that the exposed
 543 person's medical findings and impairment were not more probably
 544 the result of causes other than the asbestos exposure revealed
 545 by the exposed person's employment and medical history. A
 546 conclusion that the medical findings and impairment are

547 consistent with or compatible with exposure to asbestos does not
 548 meet the requirements of this paragraph.

549
 550 If the exposed person is deceased, the qualified physician, or
 551 someone working under the direct supervision and control of a
 552 qualified physician, may obtain the evidence required in
 553 paragraph (b) and subparagraph (c)2. from the person most
 554 knowledgeable about the alleged exposures that form the basis of
 555 the asbestos claim.

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

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

565 (a) Evidence verifying that a qualified physician, or
 566 someone working under the direct supervision and control of a
 567 qualified physician, has taken a detailed occupational and
 568 exposure history of the exposed person or, if such person is
 569 deceased, from a person who is knowledgeable about the exposures
 570 that form the basis of the nonmalignant silica claim, including:

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

573 2. Whether each place of employment involved exposures to
 574 airborne contaminants, including, but not limited to, silica

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575 particles or other disease-causing dusts, that can cause
576 pulmonary impairment and the nature, duration, and level of any
577 such exposure.

578 (b) Evidence verifying that a qualified physician, or
579 someone working under the direct supervision and control of a
580 qualified physician, has taken detailed medical and smoking
581 history, including a thorough review of the exposed person's
582 past and present medical problems and their most probable cause,
583 and verifying a sufficient latency period for the applicable
584 stage of silicosis.

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

590 (d) A determination by a qualified physician that the
591 exposed person has:

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

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

603 (e) A conclusion by a qualified physician that the exposed
 604 person's medical findings and impairment were not more probably
 605 the result of causes other than silica exposure revealed by the
 606 exposed person's employment and medical history. A conclusion
 607 that the medical findings and impairment are consistent with or
 608 compatible with exposure to silica does not meet the
 609 requirements of this paragraph.

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

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

616 1. Board certified in pulmonary medicine, internal
 617 medicine, oncology, or pathology, stating a diagnosis of the
 618 exposed person of silica-related lung cancer and stating that,
 619 to a reasonable degree of medical probability, exposure to
 620 silica was a substantial contributing factor to the diagnosed
 621 lung cancer; or

622 2. Board certified in pulmonary medicine, internal
 623 medicine, or pathology, stating a diagnosis of the exposed
 624 person of silica-related progressive massive fibrosis or acute
 625 silicoproteinosis, or silicosis complicated by documented
 626 tuberculosis.

627 (b) Evidence verifying that a qualified physician, or
 628 someone working under the direct supervision and control of a
 629 qualified physician, has taken a detailed occupational and
 630 exposure history of the exposed person or, if such person is

631 deceased, from a person who is knowledgeable about the exposures
 632 that form the basis of the nonmalignant silica claim, including:

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

635 2. Whether each place of employment involved exposures to
 636 airborne contaminants, including, but not limited to, silica
 637 particles or other disease-causing dusts, that can cause
 638 pulmonary impairment and the nature, duration, and level of any
 639 such exposure.

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

645 (d) A determination by a qualified physician that the
 646 exposed person has:

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

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

658 (e) A conclusion by a qualified physician that the exposed
 659 person's medical findings and impairment were not more probably
 660 the result of causes other than silica exposure revealed by the
 661 exposed person's employment and medical history. A conclusion
 662 that the medical findings and impairment are consistent with or
 663 compatible with exposure to silica does not meet the
 664 requirements of this paragraph.

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

668 (a) Comply with the technical recommendations for
 669 examinations, testing procedures, quality assurance, quality
 670 control, and equipment of the AMA Guides to the Evaluation of
 671 Permanent Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt.
 672 P. Appl., Part A, Sec. 3.00 E. and F., and the interpretive
 673 standards set forth in the official statement of the American
 674 Thoracic Society entitled "Lung function testing: selection of
 675 reference values and interpretive strategies" as published in
 676 American Review of Respiratory Disease, 1991, 144:1202-1218.

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

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

683 (9) NO PRESUMPTION AT TRIAL.--Presentation of prima facie
 684 evidence meeting the requirements of subsection (2), subsection

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685 (3), subsection (4), subsection (6), or subsection (7) shall
686 not:

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

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

691 (c) Be admissible at trial.

692 Section 5. Procedures.--

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

698 (2) VENUE.--A civil action alleging an asbestos or silica
699 claim may only be brought in the courts of this state if the
700 plaintiff is domiciled in this state or the exposure to asbestos
701 or silica that is a substantial contributing factor to the
702 physical impairment on which the claim is based occurred in this
703 state.

704 (3) PRELIMINARY PROCEEDINGS.--The plaintiff in any civil
705 action alleging an asbestos or silica claim shall file together
706 with the complaint or other initial pleading a written report
707 and supporting test results constituting prima facie evidence of
708 the exposed person's asbestos-related or silica-related physical
709 impairment meeting the requirements of subsections (2)-(7) of
710 section 4. For any asbestos or silica claim pending on the
711 effective date of this act, the plaintiff shall file such a
712 written report and supporting test results no later than 60 days

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713 after the effective date or no later than 30 days prior to the
714 commencement of trial. The defendant shall be afforded a
715 reasonable opportunity to challenge the adequacy of the
716 proffered prima facie evidence of asbestos-related impairment.
717 The plaintiff's claim shall be dismissed without prejudice upon
718 a finding of failure to make the required prima facie showing.

719 (4) NEW CLAIM REQUIRED INFORMATION.--All asbestos claims
720 and silica claims filed in this state on or after the effective
721 date of this act shall include, in addition to the report
722 required in subsection (3) and the information required in
723 subsection (2) of section 7, a sworn information form containing
724 the following information:

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

727 (b) If the claimant alleges exposure to asbestos or silica
728 through the testimony of another person or other than by direct
729 or bystander exposure to any product, the name, address, date of
730 birth, social security number, and marital status for each
731 person by which claimant alleges exposure, hereafter the "index
732 person," and the claimant's relationship to each person.

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

734 (d) The beginning and ending dates of each alleged
735 exposure as to each asbestos product or silica product for each
736 location at which the exposure allegedly took place for
737 plaintiff and for each index person.

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

740 (f) The specific condition related to asbestos or silica
741 claimed to exist.

742 (g) Any supporting documentation of the condition claimed
743 to exist.

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

745 (1) STATUTE OF LIMITATIONS.--Notwithstanding any other
746 provision of law, with respect to any asbestos or silica claim
747 not barred as of the effective date of this act, the limitations
748 period shall not begin to run until the exposed person
749 discovers, or through the exercise of reasonable diligence
750 should have discovered, that the he or she is physically
751 impaired by an asbestos-related or silica-related condition, as
752 defined in section 4.

753 (2) TWO-DISEASE RULE.--An asbestos or silica claim arising
754 out of a nonmalignant condition shall be a distinct cause of
755 action from an asbestos or silica claim relating to the same
756 exposed person arising out of asbestos-related or silica-related
757 cancer. No damages shall be awarded for fear or risk of cancer
758 in any civil action asserting an asbestos or silica claim.

759 (3) GENERAL RELEASES FROM LIABILITY PROHIBITED.--No
760 settlement of a nonmalignant asbestos or silica claim concluded
761 after the date of enactment shall require, as a condition of
762 settlement, release of any future claim for asbestos-related or
763 silica-related cancer.

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

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

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768 (2) COLLATERAL SOURCE PAYMENTS.--At the time a complaint
 769 is filed in a civil action alleging an asbestos or silica claim,
 770 the plaintiff must file a verified written report with the court
 771 that discloses the total amount of any collateral source
 772 payments received, including payments which the plaintiff will
 773 receive in the future, as a result of settlements or judgments
 774 based upon the same claim. For any asbestos or silica claim
 775 pending on the date of enactment of this act, the plaintiff
 776 shall file such verified written report no later than 60 days
 777 after the date of enactment or no later than 30 days prior to
 778 trial. Further, the plaintiff shall be required to update such
 779 reports on a regular basis during the course of the proceeding
 780 until a final judgment is entered in the case. The court shall
 781 permit setoff, based on the collateral source payment
 782 information provided, in accordance with the laws of this state
 783 as of the effective date of this act.

784 Section 8. Liability rules applicable to product sellers,
 785 renters, and lessors.--

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

790 1.a. The product that allegedly caused the harm that is
 791 the subject of the complaint was sold, rented, or leased by the
 792 product seller;

793 b. The product seller failed to exercise reasonable care
 794 with respect to the product; and

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

797 2.a. The product seller made an express warranty
 798 applicable to the product that allegedly caused the harm that is
 799 the subject of the complaint, independent of any express
 800 warranty made by the manufacturer as to the same product;

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

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

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

806 b. The intentional wrongdoing caused the harm that is the
 807 subject of the complaint.

808 (b) Reasonable opportunity for inspection.--For the
 809 purposes of subparagraph (1)(a)1., a product seller shall not be
 810 considered to have failed to exercise reasonable care with
 811 respect to a product based upon an alleged failure to inspect
 812 the product, if:

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

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

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

822 Section 9. Miscellaneous provisions.--

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823 (1) This act shall not be construed to affect the scope or
 824 operation of any workers' compensation law or veterans' benefit
 825 program, to affect the exclusive remedy or subrogation
 826 provisions of any such law, or to authorize any lawsuit which is
 827 barred by any such provision of law.

828 (2) It is the intent of this act and the Legislature to
 829 accord the utmost comity and respect to the constitutional
 830 prerogatives of the judiciary of this state and nothing in this
 831 act should be construed as any effort to impinge upon those
 832 prerogatives. To that end, if the Florida Supreme Court enters a
 833 final judgment concluding or declaring that any provision of
 834 this act improperly encroaches upon the court's authority to
 835 determine the rules of practice and procedure in the courts of
 836 this state, the Legislature hereby declares its intent that any
 837 such provision be construed as a request for a rule change
 838 pursuant to s. 2, Art. 5 of the State Constitution and not as a
 839 mandatory legislative directive.

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

845 (4) If any provision of this act or the application
 846 thereof to any person or circumstance is held invalid, the
 847 invalidity does not affect other provisions or application of
 848 the act which can be given effect without the invalid provision
 849 or application, and to this end the provisions of this act are
 850 declared severable.

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