

1 A bill to be entitled

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

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Popular name.--This act may be cited as the  
28 "Asbestos and Silica Compensation Fairness Act of 2005."

29           Section 2. Findings and purposes.--  
 30           (1) FINDINGS.--The Legislature finds that:  
 31           (a) Asbestos is a mineral that was widely used prior to  
 32 the mid 1970's for insulation, fireproofing, and other purposes.  
 33           (b) Millions of American workers and others were exposed  
 34 to asbestos, especially during and after World War II and prior  
 35 to the advent of regulation by the Occupational Safety and  
 36 Health Administration in the early 1970's.  
 37           (c) Long-term exposure to asbestos has been associated  
 38 with various types of cancer, including mesothelioma and lung  
 39 cancer, as well as such nonmalignant conditions as asbestosis,  
 40 pleural plaques, and diffuse pleural thickening.  
 41           (d) The diseases caused by asbestos often have long  
 42 latency periods.  
 43           (e) Although the use of asbestos has dramatically declined  
 44 since the 1970's and workplace exposures have been regulated  
 45 since 1971 by the Occupational Safety and Health Administration,  
 46 past exposures will continue to result in significant claims of  
 47 death and disability as a result of such exposure.  
 48           (f) Exposure to asbestos has created a flood of litigation  
 49 in state and federal courts that the United States Supreme Court  
 50 has characterized as "an elephantine mass" of cases that "defies  
 51 customary judicial administration" [Ortiz v. Fibreboard  
 52 Corporation, 119 S. Ct. 2295, 2302 (1999)].  
 53           (g) Asbestos personal injury litigation can be unfair and  
 54 inefficient, imposing a severe burden on litigants and taxpayers  
 55 alike.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205 (a) Principally in the field of pathology.

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

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

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

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

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



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

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

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

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

238       (18) "Mesothelioma" means a malignant tumor with a primary  
239 site in the pleura or the peritoneum which has been diagnosed by  
240 a board-certified pathologist using standardized and accepted  
241 criteria of microscopic morphology or appropriate staining  
242 techniques.

243       (19) "Nonmalignant condition" means any condition that is  
244 caused or may be caused by asbestos other than a diagnosed  
245 cancer.

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

249       (21) "Pathological evidence of asbestosis" means a  
250 statement by a board-certified pathologist that more than one

251 representative section of lung tissue uninvolved with any other  
252 disease process demonstrates a pattern of peribronchiolar or  
253 parenchymal scarring in the presence of characteristic asbestos  
254 bodies and that there is no other more likely explanation for  
255 the presence of the fibrosis.

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

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

261 (a) Is currently a board-certified internist, oncologist,  
262 pathologist, pulmonary specialist, or radiologist, or specialist  
263 in occupational and environmental medicine.

264 (b) Has conducted a physical examination of the exposed  
265 person.

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

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

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

277 (f) Receives or received payment for the treatment of the  
278 exposed person from that person's health maintenance

279 organization or other medical provider or from the exposed  
280 person or a member of the exposed person's family.

281 (24) "Radiological evidence of asbestosis" means a quality  
282 1 chest X ray under the ILO System of classification showing  
283 small, irregular opacities of s, t, or u, graded by a certified  
284 B-reader as at least 1/1 on the ILO scale. In a death case for  
285 which no pathology is available, the necessary radiologic  
286 findings may be made with a quality 2 film if a quality 1 film  
287 is not available.

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

295 (26) "Silica" means a respirable crystalline form of  
296 silicon dioxide, including, but not limited to, alpha, quartz,  
297 crystalobalite, and trydymite.

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

307 by virtue of the payment of benefits under a workers'  
 308 compensation law.

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

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

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

319 (31) "Substantial contributing factor" means:

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

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

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

329 (32) "Substantial occupational exposure" means employment  
 330 for an extended period of time in industries and occupations in  
 331 which, for a substantial portion of a normal work year for that  
 332 occupation, the exposed person did any of the following:

333 (a) Handled raw asbestos fibers;

334 (b) Fabricated products containing asbestos so that the  
335 person was exposed to raw asbestos fibers in the fabrication  
336 process;

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

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

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

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

357 Section 4. Physical impairment.--

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

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

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

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

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

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

386           (c) Evidence verifying that a qualified physician, or  
387 someone working under the direct supervision and control of a  
388 qualified physician, has taken detailed medical and smoking

389 history, including a thorough review of the exposed person's  
390 past and present medical problems and their most probable cause.

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

396 (e) A diagnosis by a qualified physician of asbestosis or  
397 diffuse pleural thickening, based at a minimum on radiological  
398 or pathological evidence of asbestosis or radiological evidence  
399 of diffuse pleural thickening.

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

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

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

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

413 (g) If the exposed person meets the requirements of  
414 paragraphs (a), (b), and (c), and if a qualified physician  
415 determines that the exposed person has a physical impairment, as  
416 demonstrated by meeting the criteria set forth in paragraph (d)

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

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

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



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

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

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

457 (c) Depending on whether the exposed person has a history  
458 of smoking, the requirements of subparagraph 1. or subparagraph  
459 2.:

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

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

467 b. Evidence of the exposed person's substantial  
468 occupational exposure to asbestos. If a plaintiff files a civil  
469 action alleging an asbestos-related lung cancer claim, and that  
470 plaintiff alleges that the plaintiff's exposure to asbestos was  
471 the result of extended contact with another exposed person who,  
472 if the civil action had been filed by the other exposed person,

473 would have met the substantial occupational exposure requirement  
474 of this subsection, and the plaintiff alleges that the plaintiff  
475 had extended contact with the exposed person during the time  
476 period in which that exposed person met the substantial  
477 occupational exposure requirement of this subsection, the  
478 plaintiff is considered to have satisfied the requirements of  
479 this sub-subparagraph. The plaintiff in such a civil action must  
480 individually satisfy the requirements of paragraph (a),  
481 paragraph (b), sub-subparagraph a. where appropriate,  
482 subparagraph 2. where appropriate, and paragraph (d).

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

485 (d) A conclusion by a qualified physician that the exposed  
486 person's medical findings and impairment were not more probably  
487 the result of causes other than the asbestos exposure revealed  
488 by the exposed person's employment and medical history. A  
489 conclusion that the medical findings and impairment are  
490 consistent with or compatible with exposure to asbestos does not  
491 meet the requirements of this paragraph.

492  
493 If the exposed person is deceased, the qualified physician, or  
494 someone working under the direct supervision and control of a  
495 qualified physician, may obtain the evidence required in  
496 paragraph (b) and sub-subparagraph (c)1.b. from the person most  
497 knowledgeable about the alleged exposures that form the basis of  
498 the asbestos claim.

499 (4) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED OTHER  
500 CANCER.--No person shall bring or maintain a civil action

501 alleging an asbestos claim which is based upon cancer of the  
502 colon, rectum, larynx, pharynx, esophagus, or stomach in the  
503 absence of a prima facie showing which shall include all of the  
504 following minimum requirements:

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

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

514 (c) The requirement of:

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

521 2. Evidence of the exposed person's substantial  
522 occupational exposure to asbestos. If a plaintiff files a civil  
523 action alleging an asbestos claim which is based upon cancer of  
524 the colon, rectum, larynx, pharynx, esophagus, or stomach, and  
525 that plaintiff alleges that the plaintiff's exposure to asbestos  
526 was the result of extended contact with another exposed person  
527 who, if the civil action had been filed by the other exposed  
528 person, would have met the substantial occupational exposure

529 requirement of this subsection, and the plaintiff alleges that  
530 the plaintiff had extended contact with the exposed person  
531 during the time period in which that exposed person met the  
532 substantial occupational exposure requirement of this  
533 subsection, the plaintiff is considered to have satisfied the  
534 requirements of this subparagraph. The plaintiff in such a civil  
535 action must individually satisfy the requirements of paragraph  
536 (a), paragraph (b), subparagraph 1. where appropriate, and  
537 paragraph (d).

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

545  
546 If the exposed person is deceased, the qualified physician, or  
547 someone working under the direct supervision and control of a  
548 qualified physician, may obtain the evidence required in  
549 paragraph (b) and subparagraph (c)2. from the person most  
550 knowledgeable about the alleged exposures that form the basis of  
551 the asbestos claim.

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

555 (6) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA  
556 CLAIMS.--No person shall bring or maintain a civil action

557 alleging a silica claim in the absence of a prima facie showing  
558 of physical impairment as a result of a medical condition to  
559 which exposure to silica was a substantial contributing factor.  
560 Such prima facie showing shall include:

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

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

569 2. Whether each place of employment involved exposures to  
570 airborne contaminants, including, but not limited to, silica  
571 particles or other disease-causing dusts, that can cause  
572 pulmonary impairment and the nature, duration, and level of any  
573 such exposure.

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

581 (c) A determination by a qualified physician, on the basis  
582 of a medical examination and pulmonary function testing, that  
583 the exposed person has a permanent respiratory impairment rating

584 of at least Class 2 as defined by and evaluated pursuant to the  
 585 AMA Guides to the Evaluation of Permanent Impairment.

586 (d) A determination by a qualified physician that the  
 587 exposed person has:

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

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

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

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

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

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

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

623 (b) Evidence verifying that a qualified physician, or  
624 someone working under the direct supervision and control of a  
625 qualified physician, has taken a detailed occupational and  
626 exposure history of the exposed person or, if such person is  
627 deceased, from a person who is knowledgeable about the exposures  
628 that form the basis of the nonmalignant silica claim, including:

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

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

636 (c) Evidence verifying that a qualified physician, or  
637 someone working under the direct supervision and control of a  
638 qualified physician, has taken detailed medical and smoking

639 history, including a thorough review of the exposed person's  
640 past and present medical problems and their most probable cause.

641 (d) A determination by a qualified physician that the  
642 exposed person has:

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

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

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

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

664 (a) Comply with the technical recommendations for  
665 examinations, testing procedures, quality assurance, quality  
666 control, and equipment of the AMA Guides to the Evaluation of



667 Permanent Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt.  
668 P. Appl., Part A, Sec. 3.00 E. and F., and the interpretive  
669 standards set forth in the official statement of the American  
670 Thoracic Society entitled "Lung function testing: selection of  
671 reference values and interpretive strategies" as published in  
672 American Review of Respiratory Disease, 1991, 144:1202-1218.

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

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

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

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

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

687 (c) Be admissible at trial.

688 Section 5. Procedures.--

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

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

700        (3) PRELIMINARY PROCEEDINGS.--The plaintiff in any civil  
 701 action alleging an asbestos or silica claim shall file together  
 702 with the complaint or other initial pleading a written report  
 703 and supporting test results constituting prima facie evidence of  
 704 the exposed person's asbestos-related or silica-related physical  
 705 impairment meeting the requirements of subsections (2)-(7) of  
 706 section 4. For any asbestos or silica claim pending on the  
 707 effective date of this act, the plaintiff shall file such a  
 708 written report and supporting test results no later than 60 days  
 709 after the effective date or no later than 30 days prior to the  
 710 commencement of trial. The defendant shall be afforded a  
 711 reasonable opportunity to challenge the adequacy of the  
 712 proffered prima facie evidence of asbestos-related impairment.  
 713 The plaintiff's claim shall be dismissed without prejudice upon  
 714 a finding of failure to make the required prima facie showing.

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

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

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

729 | (c) The specific location of each alleged exposure.

730 | (d) The beginning and ending dates of each alleged  
 731 | exposure as to each asbestos product or silica product for each  
 732 | location at which the exposure allegedly took place for  
 733 | plaintiff and for each index person.

734 | (e) The occupation and name of employer of the exposed  
 735 | person at the time of each alleged exposure.

736 | (f) The specific condition related to asbestos or silica  
 737 | claimed to exist.

738 | (g) Any supporting documentation of the condition claimed  
 739 | to exist.

740 | Section 6. Statute of limitation; two-disease rule.--

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

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

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

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

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

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

777 permit setoff, based on the collateral source payment  
778 information provided, in accordance with the laws of this state  
779 as of the effective date of this act.

780 Section 8. Liability rules applicable to product sellers,  
781 renters, and lessors.--

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

786 1.a. The product that allegedly caused the harm that is  
787 the subject of the complaint was sold, rented, or leased by the  
788 product seller;

789 b. The product seller failed to exercise reasonable care  
790 with respect to the product; and

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

793 2.a. The product seller made an express warranty  
794 applicable to the product that allegedly caused the harm that is  
795 the subject of the complaint, independent of any express  
796 warranty made by the manufacturer as to the same product;

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

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

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

802 b. The intentional wrongdoing caused the harm that is the  
803 subject of the complaint.

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

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

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

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

818        Section 9. Miscellaneous provisions.--

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

824        (2) It is the intent of this act and the Legislature to  
825 accord the utmost comity and respect to the constitutional  
826 prerogatives of the judiciary of this state and nothing in this  
827 act should be construed as any effort to impinge upon those  
828 prerogatives. To that end, if the Florida Supreme Court enters a  
829 final judgment concluding or declaring that any provision of  
830 this act improperly encroaches upon the court's authority to  
831 determine the rules of practice and procedure in the courts of

832 this state, the Legislature hereby declares its intent that any  
833 such provision be construed as a request for a rule change  
834 pursuant to s. 2, Art. 5 of the State Constitution and not as a  
835 mandatory legislative directive.

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

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

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