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HB 1019, Engrossed 2

2005 Legislature

1 A bill to be entitled

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

22
23 WHEREAS, asbestos is a mineral that was widely used before
24 the mid 1970's for insulation, fireproofing, and other purposes,
25 and

26 WHEREAS, millions of American workers and others were
27 exposed to asbestos, especially during and after World War II

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28 | and before the advent of regulation by the Occupational Safety
 29 | and Health Administration in the early 1970's, and

30 | WHEREAS, long-term exposure to asbestos has been associated
 31 | with various types of cancer, including mesothelioma and lung
 32 | cancer, as well as such nonmalignant conditions as asbestosis,
 33 | pleural plaques, and diffuse pleural thickening, and

34 | WHEREAS, the diseases caused by asbestos often have long
 35 | latency periods, and

36 | WHEREAS, although the use of asbestos has dramatically
 37 | declined since the 1970's and workplace exposures have been
 38 | regulated since 1971 by the Occupational Safety and Health
 39 | Administration, past exposures will continue to result in
 40 | significant claims of death and disability as a result of such
 41 | exposure, and

42 | WHEREAS, exposure to asbestos has created a flood of
 43 | litigation in state and federal courts that the United States
 44 | Supreme Court in Ortiz v. Fibreboard Corporation, 119 S. Ct.
 45 | 2295, 2302 (1999), has characterized as an "elephantine mass" of
 46 | cases that "defies customary judicial administration," and

47 | WHEREAS, asbestos personal injury litigation can be unfair
 48 | and inefficient, imposing a severe burden on litigants and
 49 | taxpayers alike, and

50 | WHEREAS, the inefficiencies and societal costs of asbestos
 51 | litigation have been well documented in reports such as the RAND
 52 | Institutes study on Asbestos Litigation Costs and Compensation,
 53 | the study of Joseph E. Stiglitz on The Impact of Asbestos
 54 | Liabilities on Workers in Bankrupt Firms, Dr. Joseph Gitlin's
 55 | report from Johns Hopkins Medical School on Comparison of B

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56 Readers' Interpretations of Chest Radiographs for Asbestos
57 Related Changes, and the Report to the House of Delegates from
58 the American Bar Association Commission on Asbestos Litigation,
59 and

60 WHEREAS, the extraordinary volume of nonmalignant asbestos
61 cases continues to strain state courts, and

62 WHEREAS, 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, and

66 WHEREAS, the cost of compensating exposed individuals who
67 are 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, and

70 WHEREAS, the cost of compensating exposed individuals who
71 are not sick threatens the savings, retirement benefits, and
72 jobs of defendants' current and retired employees and adversely
73 affects the communities in which these defendants operate, and

74 WHEREAS, the crush of asbestos litigation has been costly
75 to employers, employees, litigants, and the court system, and

76 WHEREAS, in 1982, the Johns-Manville Corporation, the
77 nation's largest single supplier of insulation products
78 containing asbestos, declared bankruptcy due to the burden of
79 the asbestos litigation, and

80 WHEREAS, since 1982, more than 70 other companies have
81 declared bankruptcy due to the burden of asbestos litigation,
82 and

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83 WHEREAS, estimates show that between 60,000 and 128,000
84 American workers already have lost their jobs as a result of
85 asbestos-related bankruptcies and that the total number of jobs
86 that will be lost due to asbestos-related bankruptcies will
87 eventually reach 432,000, and

88 WHEREAS, each worker who loses his or her job due to an
89 asbestos-related bankruptcy loses between \$25,000 and \$50,000 in
90 wages over his or her career and loses 25 percent or more of the
91 value of his or her retirement plan, and

92 WHEREAS, asbestos litigation is estimated to have cost over
93 \$54 billion, with well over half of this expense going to
94 attorney's fees and other litigation costs, and

95 WHEREAS, the seriously ill too often find that the value of
96 their recovery is substantially reduced due to defendant
97 bankruptcies and the inefficiency of the litigation process, and

98 WHEREAS, silica is a naturally occurring mineral, and

99 WHEREAS, the Earth's crust is over 90 percent silica, and
100 crystalline silica dust is the primary component of sand,
101 quartz, and granite, and

102 WHEREAS, silica-related illness, including silicosis, can
103 occur when tiny silica particles are inhaled, and

104 WHEREAS, silicosis was recognized as an occupational
105 disease many years ago, and

106 WHEREAS, the American Foundrymen's Society has distributed
107 literature for more than 100 years to its members warning of the
108 dangers of silica exposure, and

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109 WHEREAS, the number of new lawsuits alleging silica-related
 110 disease being filed each year began to rise precipitously in
 111 recent years, and

112 WHEREAS, silica claims, like asbestos claims, often arise
 113 when an individual is identified as having markings on his or
 114 her lungs that are possibly consistent with silica exposure but
 115 the individual has no functional or physical impairment from any
 116 silica-related disease, and

117 WHEREAS, the Legislature finds that an overpowering public
 118 necessity requires it to act to prevent a silica-based
 119 litigation crisis, and

120 WHEREAS, concerns about statutes of limitations may prompt
 121 claimants who have been exposed to asbestos or silica but who do
 122 not have any current injury to bring premature lawsuits in order
 123 to protect against losing their rights to future compensation
 124 should they become impaired, and

125 WHEREAS, consolidations, joinders, and similar procedures
 126 to which some courts have resorted in order to deal with the
 127 mass of asbestos and silica cases can undermine the appropriate
 128 functioning of the judicial process and further encourage the
 129 filing of thousands of cases by exposed individuals who are not
 130 sick and who may never become sick, and

131 WHEREAS, punitive damage awards unfairly divert the
 132 resources of defendants from compensating genuinely impaired
 133 claimants and, given the lengthy history of asbestos and silica
 134 litigation and the regulatory and other restrictions on the use
 135 of asbestos and silica-containing products in the workplace, the

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136 legal justification for such awards, punishment, and deterrence
 137 is either inapplicable or inappropriate, and

138 WHEREAS, the Legislature finds that there is an
 139 overpowering public necessity to defer the claims of exposed
 140 individuals who are not sick in order to preserve, now and for
 141 the future, defendants' ability to compensate people who develop
 142 cancer and other serious asbestos-related and silica-related
 143 injuries and to safeguard the jobs, benefits, and savings of
 144 workers in this state and the well-being of the economy of this
 145 state, NOW, THEREFORE,

146
 147 Be It Enacted by the Legislature of the State of Florida:

148
 149 Section 1. Short title.--This act may be cited as the
 150 "Asbestos and Silica Compensation Fairness Act".

151 Section 2. Purpose.--It is the purpose of this act to:

152 (1) Give priority to true victims of asbestos and silica,
 153 claimants who can demonstrate actual physical impairment caused
 154 by exposure to asbestos or silica;

155 (2) Fully preserve the rights of claimants who were
 156 exposed to asbestos or silica to pursue compensation if they
 157 become impaired in the future as a result of the exposure;

158 (3) Enhance the ability of the judicial system to
 159 supervise and control asbestos and silica litigation; and

160 (4) Conserve the scarce resources of the defendants to
 161 allow compensation to cancer victims and others who are
 162 physically impaired by exposure to asbestos or silica while

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163 securing the right to similar compensation for those who may
 164 suffer physical impairment in the future.

165 Section 3. Definitions.--As used in this act, the term:

166 (1) "AMA Guides to the Evaluation of Permanent Impairment"
 167 means the American Medical Association's Guides to the
 168 Evaluation of Permanent Impairment.

169 (2) "Asbestos" includes all minerals defined as 'asbestos'
 170 in 29 C.F.R. section 1910, as amended.

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

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

184 (5) "Board-certified in internal medicine" means a
 185 physician who is certified by the American Board of Internal
 186 Medicine or the American Osteopathic Board of Internal Medicine.

187 (6) "Board-certified in occupational medicine" means a
 188 physician who is certified in the subspecialty of occupational
 189 medicine by the American Board of Preventive Medicine or the
 190 American Osteopathic Board of Preventive Medicine.

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191 (7) "Board-certified in oncology" means a physician who is
 192 certified in the subspecialty of medical oncology by the
 193 American Board of Internal Medicine or the American Osteopathic
 194 Board of Internal Medicine.

195 (8) "Board-certified in pathology" means a physician who
 196 holds primary certification in anatomic pathology or clinical
 197 pathology from the American Board of Pathology or the American
 198 Osteopathic Board of Internal Medicine and whose professional
 199 practice:

200 (a) Is principally in the field of pathology; and

201 (b) Involves regular evaluation of pathology materials
 202 obtained from surgical or postmortem specimens.

203 (9) "Board-certified in pulmonary medicine" means a
 204 physician who is certified in the subspecialty of pulmonary
 205 medicine by the American Board of Internal Medicine or the
 206 American Osteopathic Board of Internal Medicine.

207 (10) "Bankruptcy proceeding" means a case brought under
 208 Title 11, United State Code, or any related proceeding as
 209 provided in section 157 of Title 28, United States Code.

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

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

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

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

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

227 (16) "ILO Scale" means the system for the classification
 228 of chest x-rays set forth in the International Labour Office's
 229 Guidelines for the Use of ILO International Classification of
 230 Radiographs of Pneumoconioses.

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

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

240 (19) "Nonmalignant condition" means any condition that can
 241 be caused by asbestos or silica other than a diagnosed cancer.

242 (20) "Nonsmoker" means the exposed person has not smoked
 243 cigarettes or used other tobacco products on a consistent and
 244 frequent basis within the last 15 years.

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245 (21) "Pathological evidence of asbestosis" means a
 246 statement by a board-certified pathologist that more than one
 247 representative section of lung tissue uninvolved with any other
 248 disease process demonstrates a pattern of peribronchiolar or
 249 parenchymal scarring in the presence of characteristic asbestos
 250 bodies and that there is no other more likely explanation for
 251 the presence of the fibrosis.

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

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

257 (a) Is a board-certified pathologist licensed to practice
 258 and actively practices in this country who performed services
 259 requested or authorized by a physician who:

260 1. Has conducted a physical examination of the exposed
 261 person or, if the person is deceased, has reviewed all available
 262 records relating to the exposed person's medical condition;

263 2. Is actually treating or treated the exposed person, and
 264 has or had a doctor-patient relationship with the person; and

265 3. Is licensed to practice and actively practices in this
 266 country; or

267 (b) Is a board-certified oncologist, pulmonary specialist,
 268 or specialist in occupational and environmental medicine who:

269 1. Has conducted a physical examination of the exposed
 270 person or, if the person is deceased, has reviewed all available
 271 records relating to the exposed person's medical condition;

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272 2. Is actually treating or treated the exposed person, and
273 has or had a doctor-patient relationship with the person; and

274 3. Is licensed to practice and actively practices in this
275 country.

276 (24) "Radiological evidence of asbestosis" means a quality
277 1 chest x-ray under the ILO System of classification (in a death
278 case where no pathology is available, the necessary radiologic
279 findings may be made with a quality 2 film if a quality 1 film
280 is not available) showing small, irregular opacities (s, t, u)
281 graded by a certified B-reader as at least 1/1 on the ILO scale.

282 (25) "Radiological evidence of diffuse pleural thickening"
283 means a quality 1 chest x-ray under the ILO System of
284 classification (in a death case where no pathology is available,
285 the necessary radiologic findings may be made with a quality 2
286 film if a quality 1 film is not available) showing bilateral
287 pleural thickening of at least B2 on the ILO scale and blunting
288 of at least one costophrenic angle.

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

292 (27) "Silica claim" means a claim for damages or other
293 civil or equitable relief presented in a civil action, arising
294 out of, based on, or related to the health effects of exposure
295 to silica, including loss of consortium, wrongful death, and any
296 other derivative claim made by or on behalf of an exposed person
297 or a representative, spouse, parent, child, or other relative of
298 an exposed person. The term does not include claims for benefits
299 under a workers' compensation law or veterans' benefits program,

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300 or claims brought by a person as a subrogee by virtue of the
 301 payment of benefits under a workers' compensation law.

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

304 (29) "Smoker" means a person who has smoked cigarettes or
 305 used other tobacco products on a consistent and frequent basis
 306 within the last 15 years.

307 (30) "Substantial occupational exposure" means employment
 308 for an extended period of time in industries and occupations in
 309 which, for a substantial portion of a normal work year for that
 310 occupation, the exposed person did any of the following:

311 (a) Handled raw asbestos fibers;

312 (b) Fabricated asbestos-containing products so that the
 313 person was exposed to raw asbestos fibers in the fabrication
 314 process;

315 (c) Altered, repaired, or otherwise worked with an
 316 asbestos-containing product in a manner that exposed the person
 317 on a regular basis to asbestos fibers; or

318 (d) Worked in close proximity to other persons engaged in
 319 any of the activities described in paragraphs (a)-(c) in a
 320 manner that exposed the person on a regular basis to asbestos
 321 fibers.

322 (31) "Veterans benefits program" means a program for
 323 benefits in connection with military service administered by the
 324 Veterans' Administration under Title 38, United States Code.

325 (32) "Workers' compensation law" means a law respecting a
 326 program administered by this state or the United States to
 327 provide benefits, funded by a responsible employer or its

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328 insurance carrier, for occupational diseases or injuries or for
329 disability or death caused by occupational diseases or injuries.
330 The term includes the Longshore and Harbor Workers' Compensation
331 Act, 33 U.S.C. sections 901-944, 948-950, and the Federal
332 Employees Compensation Act, chapter 81 of Title 5, United States
333 Code, but does not include the Act of April 22, 1908, the
334 Federal Employers Liability Act, 45 U.S.C. 51 et seq.

335 Section 4. Physical impairment.--

336 (1) Physical impairment of the exposed person, to which
337 asbestos or silica exposure was a substantial contributing
338 factor, is an essential element of an asbestos or silica claim.

339 (2) A person may not file or maintain a civil action
340 alleging a nonmalignant asbestos claim in the absence of a prima
341 facie showing of physical impairment as a result of a medical
342 condition to which exposure to asbestos was a substantial
343 contributing factor. The prima facie showing must include all of
344 the following requirements:

345 (a) Evidence verifying that a qualified physician, or
346 someone working under the direct supervision and control of a
347 qualified physician, has taken a detailed occupational and
348 exposure history of the exposed person or, if the person is
349 deceased, from a person who is knowledgeable about the exposures
350 that form the basis of the nonmalignant asbestos claim,
351 including:

352 1. Identification of all of the exposed person's principal
353 places of employment and exposures to airborne contaminants; and

354 2. Whether each place of employment involved exposures to
355 airborne contaminants, including but not limited to asbestos

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356 fibers or other disease causing dusts, that can cause pulmonary
357 impairment and the nature, duration and level of any such
358 exposure.

359 (b) Evidence verifying that a qualified physician, or
360 someone working under the direct supervision and control of a
361 qualified physician, has taken detailed medical and smoking
362 history, including a thorough review of the exposed person's
363 past and present medical problems and their most probable cause.

364 (c) Evidence sufficient to demonstrate that at least 10
365 years have elapsed between the date of first exposure to
366 asbestos and the date the diagnosis is made.

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

372 (e) A diagnosis by a qualified physician of asbestosis or
373 diffuse pleural thickening, based at a minimum on radiological
374 or pathological evidence of asbestosis or radiological evidence
375 of diffuse pleural thickening.

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

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

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

386 3. A chest x-ray showing small, irregular opacities (s, t,
 387 u) graded by a certified B-reader at least 2/1 on the ILO scale.

388 (g) If the exposed person meets the requirements of
 389 paragraphs (a), (b), and (c), and if a qualified physician
 390 determines that the exposed person has a physical impairment, as
 391 demonstrated by meeting the criteria set forth in paragraphs (d)
 392 and (f)1. or 2., but the exposed person's chest x-ray does not
 393 demonstrate radiological evidence of asbestosis, the exposed
 394 person may meet the criteria of paragraph (e) if his or her
 395 chest x-ray is graded by a certified B-reader as at least 1/0
 396 and a qualified physician, relying on high-resolution computed
 397 tomography, determines to a reasonable degree of medical
 398 certainty that the exposed person has asbestosis and forms the
 399 conclusion set forth in paragraph (h).

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

407 (i) If a plaintiff files a civil action alleging a
 408 nonmalignant asbestos claim, and that plaintiff alleges that his
 409 or her exposure to asbestos was the result of extended contact
 410 with another exposed person who, if the civil action had been

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411 filed by the other exposed person, would have met the
 412 requirements of paragraph (a) and the plaintiff alleges that he
 413 or she had extended contact with the exposed person during the
 414 time period in which that exposed person met the requirements of
 415 paragraph (a), the plaintiff has satisfied the requirements of
 416 paragraph (a). The plaintiff in such a civil action must
 417 individually satisfy the requirements of paragraphs (b), (c),
 418 (d), (e), (f), (g), and (h).

419 (3) A person who is a smoker may not file or maintain a
 420 civil action alleging an asbestos claim which is based upon
 421 cancer of the lung, larynx, pharynx, or esophagus in the absence
 422 of a prima facie showing that includes all of the following
 423 requirements:

424 (a) A diagnosis by a qualified physician who is board-
 425 certified in pathology, pulmonary medicine, or oncology, as
 426 appropriate for the type of cancer claimed, of a primary cancer
 427 of the lung, larynx, pharynx, or esophagus, and that exposure to
 428 asbestos was a substantial contributing factor to the condition.

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

432 (c) Radiological or pathological evidence of asbestosis or
 433 diffuse pleural thickening or a qualified physician's diagnosis
 434 of asbestosis based on a chest x-ray graded by a certified B-
 435 reader as at least 1/0 on the ILO scale and high-resolution
 436 computed tomography supporting the diagnosis of asbestosis to a
 437 reasonable degree of medical certainty.

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438 (d) Evidence of the exposed person's substantial
439 occupational exposure to asbestos. If a plaintiff files a civil
440 action alleging an asbestos-related claim based on cancer of the
441 lung, larynx, pharynx, or esophagus, and that plaintiff alleges
442 that his or her exposure to asbestos was the result of extended
443 contact with another exposed person who, if the civil action had
444 been filed by the other exposed person, would have met the
445 substantial occupational exposure requirement of this
446 subsection, and the plaintiff alleges that he or she had
447 extended contact with the exposed person during the time period
448 in which that exposed person met the substantial occupational
449 exposure requirement of this subsection, the plaintiff has
450 satisfied the requirements of this paragraph. The plaintiff in
451 such a civil action must individually satisfy the requirements
452 of this subsection.

453 (e) If the exposed person is deceased, the qualified
454 physician, or someone working under the direct supervision and
455 control of a qualified physician, may obtain the evidence
456 required in paragraph (b) and paragraph (d) from the person most
457 knowledgeable about the alleged exposures that form the basis of
458 the asbestos claim.

459 (f) A conclusion by a qualified physician that the exposed
460 person's medical findings and impairment were not more probably
461 the result of causes other than the asbestos exposure revealed
462 by the exposed person's employment and medical history. A
463 conclusion that the medical findings and impairment are
464 "consistent with" or "compatible with" exposure to asbestos does
465 not meet the requirements of this subsection.

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466 (4) In a civil action alleging an asbestos claim by a
467 nonsmoker based on cancer of the lung, larynx, pharynx, or
468 esophagus, a prima facie showing of an impairment due to
469 asbestos exposure is not required.

470 (5) A person may not file or maintain a civil action
471 alleging an asbestos claim which is based on cancer of the
472 colon, rectum, or stomach in the absence of a prima facie
473 showing that includes all of the following requirements:

474 (a) A diagnosis by a qualified physician who is board-
475 certified in pathology, pulmonary medicine, or oncology, as
476 appropriate for the type of cancer claimed, of cancer of the
477 colon, rectum, or stomach, and that exposure to asbestos was a
478 substantial contributing factor to the condition.

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

482 (c)1.a. Radiological or pathological evidence of
483 asbestosis or diffuse pleural thickening or a qualified
484 physician's diagnosis of asbestosis based on a chest x-ray
485 graded by a certified B-reader as at least 1/0 on the ILO scale
486 and high-resolution computed tomography supporting the diagnosis
487 of asbestosis to a reasonable degree of medical certainty; or

488 b. Evidence of the exposed person's substantial
489 occupational exposure to asbestos. If a plaintiff files a civil
490 action alleging an asbestos-related claim based on cancer of the
491 colon, rectum, or stomach, and that plaintiff alleges that his
492 or her exposure to asbestos was the result of extended contact
493 with another exposed person who, if the civil action had been

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494 filed by the other exposed person, would have met the
495 substantial occupational exposure requirement of this
496 subsection, and the plaintiff alleges that he or she had
497 extended contact with the exposed person during the time period
498 in which that exposed person met the substantial occupational
499 exposure requirement of this subsection, the plaintiff has
500 satisfied the requirements of this sub-subparagraph. The
501 plaintiff in such a civil action must individually satisfy the
502 requirements of this subsection.

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

505 3. If the exposed person is deceased, the qualified
506 physician, or someone working under the direct supervision and
507 control of a qualified physician, may obtain the evidence
508 required in sub-subparagraph 1.b. and paragraph (b) from the
509 person most knowledgeable about the alleged exposures that form
510 the basis of the asbestos claim.

511 (d) A conclusion by a qualified physician that the exposed
512 person's medical findings and impairment were not more probably
513 the result of causes other than the asbestos exposure revealed
514 by the exposed person's employment and medical history. A
515 conclusion that the medical findings and impairment are
516 "consistent with" or "compatible with" exposure to asbestos does
517 not meet the requirements of this subsection.

518 (6) In a civil action alleging an asbestos claim based
519 upon mesothelioma a prima facie showing of an impairment due to
520 asbestos exposure is not required.

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521 (7) A person may not file or maintain a civil action
522 alleging a silicosis claim in the absence of a prima facie
523 showing of physical impairment as a result of a medical
524 condition to which exposure to silica was a substantial
525 contributing factor. The prima facie showing must include all of
526 the following requirements:

527 (a) Evidence verifying that a qualified physician, or
528 someone working under the direct supervision and control of a
529 qualified physician, has taken a detailed occupational and
530 exposure history of the exposed person or, if the person is
531 deceased, from a person who is knowledgeable about the exposures
532 that form the basis of the nonmalignant silica claim, including:

533 1. All of the exposed person's principal places of
534 employment and exposures to airborne contaminants; and

535 2. Whether each place of employment involved exposures to
536 airborne contaminants, including but not limited to silica
537 particles or other disease causing dusts, that can cause
538 pulmonary impairment and the nature, duration, and level of any
539 such exposure.

540 (b) Evidence verifying that a qualified physician, or
541 someone working under the direct supervision and control of a
542 qualified physician, has taken detailed medical and smoking
543 history, including a thorough review of the exposed person's
544 past and present medical problems and their most probable cause,
545 and verifying a sufficient latency period for the applicable
546 stage of silicosis.

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

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

552 (d) A determination by a qualified physician that the
553 exposed person has:

554 1. A quality 1 chest x-ray under the ILO System of
555 classification and that the x-ray has been read by a certified
556 B-reader as showing, according to the ILO System of
557 classification, bilateral nodular opacities (p, q, or r)
558 occurring primarily in the upper lung fields, graded 1/1 or
559 higher; or

560 2. Pathological demonstration of classic silicotic nodules
561 exceeding one centimeter in diameter as published in 112 Archive
562 of Pathology and Laboratory Medicine 7 (July 1988).

563
564 In a death case where no pathology is available, the necessary
565 radiologic findings may be made with a quality 2 film if a
566 quality 1 film is not available.

567 (e) A conclusion by a qualified physician that the exposed
568 person's medical findings and impairment were not more probably
569 the result of causes other than silica exposure revealed by the
570 exposed person's employment and medical history. A conclusion
571 that the medical findings and impairment are "consistent with"
572 or "compatible with" exposure to silica does not meet the
573 requirements of this subsection.

574 (8) A person may not file or maintain a civil action
575 alleging a silica claim other than as provided in subsection

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576 (7), in the absence of a prima facie showing that includes all
 577 of the following requirements:

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

579 1. Board-certified in pulmonary medicine, internal
 580 medicine, oncology, or pathology stating a diagnosis of the
 581 exposed person of silica-related lung cancer and stating that,
 582 to a reasonable degree of medical probability, exposure to
 583 silica was a substantial contributing factor to the diagnosed
 584 lung cancer; or

585 2. Board-certified in pulmonary medicine, internal
 586 medicine, or pathology stating a diagnosis of the exposed person
 587 of silica-related progressive massive fibrosis or acute
 588 silicoproteinosis, or silicosis complicated by documented
 589 tuberculosis.

590 (b) Evidence verifying that a qualified physician, or
 591 someone working under the direct supervision and control of a
 592 qualified physician, has taken a detailed occupational and
 593 exposure history of the exposed person or, if the person is
 594 deceased, from a person who is knowledgeable about the exposures
 595 that form the basis of the nonmalignant silica claim, including:

596 1. All of the exposed person's principal places of
 597 employment and exposures to airborne contaminants; and

598 2. Whether each place of employment involved exposures to
 599 airborne contaminants, including but not limited to, silica
 600 particles or other disease causing dusts, that can cause
 601 pulmonary impairment and the nature, duration and level of any
 602 such exposure.

603 (c) Evidence verifying that a qualified physician, or
 604 someone working under the direct supervision and control of a
 605 qualified physician, has taken detailed medical and smoking
 606 history, including a thorough review of the exposed person's
 607 past and present medical problems and their most probable cause;

608 (d) A determination by a qualified physician that the
 609 exposed person has:

610 1. A quality 1 chest x-ray under the ILO System of
 611 classification and that the x-ray has been read by a certified
 612 B-reader as showing, according to the ILO System of
 613 classification, bilateral nodular opacities (p, q, or r)
 614 occurring primarily in the upper lung fields, graded 1/1 or
 615 higher; or

616 2. Pathological demonstration of classic silicotic nodules
 617 exceeding one centimeter in diameter as published in 112 Archive
 618 of Pathology and Laboratory Medicine 7 (July 1988).

619
 620 In a death case where no pathology is available, the necessary
 621 radiologic findings may be made with a quality 2 film if a
 622 quality 1 film is not available.

623 (e) A conclusion by a qualified physician that the exposed
 624 person's medical findings and impairment were not more probably
 625 the result of causes other than silica exposure revealed by the
 626 exposed person's employment and medical history. A conclusion
 627 that the medical findings and impairment are "consistent with"
 628 or "compatible with" exposure to silica does not meet the
 629 requirements of this subsection.

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630 (9) Evidence relating to physical impairment under this
 631 section, including pulmonary function testing and diffusing
 632 studies, must:

633 (a) Comply with the technical recommendations for
 634 examinations, testing procedures, quality assurance, quality
 635 control, and equipment of the AMA Guides to the Evaluation of
 636 Permanent Impairment, as set forth in 2d C.F.R. Part 404,
 637 subpart. P. Appl., part A, section 3.00 E. and F., and the
 638 interpretive standards, set forth in the official statement of
 639 the American Thoracic Society entitled "lung function testing:
 640 selection of reference values and interpretive strategies" as
 641 published in American Review of Respiratory Disease. 1991:
 642 144:1202-1218;

643 (b) Not be obtained through testing or examinations that
 644 violate any applicable law, regulation, licensing requirement,
 645 or medical code of practice; and

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

649 (10) Presentation of prima facie evidence meeting the
 650 requirements of subsection (2), (3), (5), or (6) of this section
 651 may not:

652 (a) Result in any presumption at trial that the exposed
 653 person is impaired by an asbestos-related or silica-related
 654 condition;

655 (b) Be conclusive as to the liability of any defendant;
 656 and

657 (c) Be admissible at trial.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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658 Section 5. Claimant proceedings.--

659 (1) A civil action alleging an asbestos or silica claim
660 may be brought in the courts of this state if the plaintiff is
661 domiciled in this state or the exposure to asbestos or silica
662 that is a substantial contributing factor to the physical
663 impairment of the plaintiff on which the claim is based occurred
664 in this state.

665 (2) A plaintiff in a civil action alleging an asbestos or
666 silica claim must include with the complaint or other initial
667 pleading a written report and supporting test results
668 constituting prima facie evidence of the exposed person's
669 asbestos-related or silica-related physical impairment meeting
670 the requirements of subsection (2), subsection (3), subsection
671 (5), or subsection (6) of section 4. For any asbestos or silica
672 claim pending on the effective date of this act, the plaintiff
673 must file the report and supporting test results at least 30
674 days before setting a date for trial. The defendant must be
675 afforded a reasonable opportunity to challenge the adequacy of
676 the proffered prima facie evidence of asbestos-related
677 impairment. The claim of the plaintiff shall be dismissed
678 without prejudice upon a finding of failure to make the required
679 prima facie showing.

680 (3) All asbestos claims and silica claims filed in this
681 state on or after the effective date of this act must include,
682 in addition to the written report described in subsection (3) of
683 section 5 and the information required by subsection (2) of
684 section 7, a sworn information form containing the following
685 information:

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- 686 (a) The claimant's name, address, date of birth, and
- 687 marital status;
- 688 (b) If the claimant alleges exposure to asbestos or silica
- 689 through the testimony of another person or alleges other than
- 690 direct or bystander exposure to a product, the name, address,
- 691 date of birth, marital status, for each person by which the
- 692 claimant alleges exposure, hereinafter the "index person," and
- 693 the claimant's relationship to each such person;
- 694 (c) The specific location of each alleged exposure;
- 695 (d) The beginning and ending dates of each alleged
- 696 exposure as to each asbestos product or silica product for each
- 697 location at which exposure allegedly took place for the
- 698 plaintiff and each index person;
- 699 (e) The occupation and name of the employer of the exposed
- 700 person at the time of each alleged exposure;
- 701 (f) The specific condition related to asbestos or silica
- 702 claimed to exist; and
- 703 (g) Any supporting documentation of the condition claimed
- 704 to exist.

705 Section 6. Statute of limitations; two-disease rule.--

706 (1) Notwithstanding any other law, with respect to any

707 asbestos or silica claim not barred as of the effective date of

708 this act, the limitations period does not begin to run until the

709 exposed person discovers, or through the exercise of reasonable

710 diligence should have discovered, that he or she is physically

711 impaired by an asbestos-related or silica-related condition.

712 (2) An asbestos or silica claim arising out of a

713 nonmalignant condition shall be a distinct cause of action from

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714 an asbestos or silica claim relating to the same exposed person
715 arising out of asbestos-related or silica-related cancer.
716 Damages may not be awarded for fear or risk of cancer in a civil
717 action asserting an asbestos or silica claim.

718 (3) A settlement of a nonmalignant asbestos or silica
719 claim concluded after the effective date of this act may not
720 require, as a condition of settlement, the release of any future
721 claim for asbestos-related or silica-related cancer.

722 Section 7. Scope of liability; damages.--

723 (1) Punitive damages may not be awarded in any civil
724 action alleging an asbestos or silica claim.

725 (2) At the time a complaint is filed in a civil action
726 alleging an asbestos or silica claim, the plaintiff must file a
727 verified written report with the court which discloses the total
728 amount of any collateral source payments received, including
729 payments that the plaintiff will receive in the future, as a
730 result of settlements or judgments based upon the same claim.
731 For any asbestos or silica claim pending on the effective date
732 of this act, the plaintiff shall file a verified written report
733 within 60 days after the effective date of this act, or at least
734 30 days before trial. Further, the plaintiff must update the
735 reports on a regular basis during the course of the proceeding
736 until a final judgment is entered in the case. The court shall
737 permit setoff, based on the collateral source payment
738 information provided, in accordance with the laws of this state
739 as of the effective date of this act.

740 Section 8. Liability rules applicable to protect sellers,
741 renters, and lessors.--

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742 (1) (a) In a civil action alleging an asbestos or silica
 743 claim, a product seller other than a manufacturer is liable to a
 744 plaintiff only if the plaintiff establishes that:

745 1.a. The product that allegedly caused the harm that is
 746 the subject of the complaint was sold, rented, or leased by the
 747 product seller;

748 b. The product seller failed to exercise reasonable care
 749 with respect to the product; and

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

752 2.a. The product seller made an express warranty
 753 applicable to the product that allegedly caused the harm that is
 754 the subject of the complaint, independent of any express
 755 warranty made by the manufacturer as to the same product;

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

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

759 3.a. The product seller engaged in intentional wrongdoing,
 760 as determined under the law of this state; and

761 b. The intentional wrongdoing caused the harm that is the
 762 subject of the complaint.

763 (b) For the purpose of sub-subparagraph 1.b., a product
 764 seller may not be considered to have failed to exercise
 765 reasonable care with respect to a product based upon an alleged
 766 failure to inspect the product, if:

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

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769 2. The inspection, in the exercise of reasonable care,
770 would not have revealed the aspect of the product which
771 allegedly caused the exposed person's impairment.

772 (2) In a civil action alleging an asbestos or silica
773 claim, a person engaged in the business of renting or leasing a
774 product is not liable for the tortious act of another solely by
775 reason of ownership of that product.

776 Section 9. Miscellaneous provisions.--

777 (1) This act does not affect the scope or operation of any
778 workers' compensation law or veterans' benefit program, affect
779 the exclusive remedy or subrogation provisions of the law, or
780 authorize any lawsuit which is barred by law.

781 (2) Nothing in this act is intended to, and nothing in
782 this act shall be interpreted to:

783 (a) Affect the rights of any party in bankruptcy
784 proceedings; or

785 (b) Affect the ability of any person who is able to make a
786 showing that the person satisfies the claim criteria for
787 compensable claims or demands under a trust established under a
788 plan of reorganization under Chapter 11 of the United States
789 Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand
790 against that trust.

791 (3) It is the intent of the Legislature that this law
792 render the utmost comity and respect to the constitutional
793 prerogatives of the judiciary of this state, and nothing in this
794 act should be construed as any effort to impinge upon those
795 prerogatives. To that end, if the Florida Supreme Court enters
796 a final judgment concluding or declaring that any provision of

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797 this act improperly encroaches on the authority of the court to
798 adopt the rules of practice and procedure in the courts of this
799 state, the Legislature intends that any such provision be
800 construed as a request for a rule change under Section 2,
801 Article V, of the State Constitution and not as a mandatory
802 legislative directive.

803 (4) This act may not be interpreted to prevent any person
804 from bringing or maintaining an asbestos claim based on
805 nonoccupational exposure where such person would be otherwise
806 able to bring or maintain a claim under this act.

807 (5) If any provision of this act or the application
808 thereof to any person or circumstance is held invalid, the
809 invalidity does not affect other provisions or application of
810 the act which can be given effect without the invalid provision
811 or application, and to this end the provisions of this act are
812 declared severable.

813 Section 10. This act shall take effect July 1, 2005.
814 Because the act expressly preserves the right of all injured
815 persons to recover full compensatory damages for their loss, it
816 does not impair vested rights. In addition, because it enhances
817 the ability of the most seriously ill to receive a prompt
818 recovery, it is remedial in nature. Therefore, the act shall
819 apply to any civil action asserting an asbestos claim in which
820 trial has not commenced as of the effective date of this act.