

Bill No. SB 2562

Barcode 485446

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
. .
. .
. .
. .
. .

The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment

In title, on page 1, line 28,

insert:

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

WHEREAS, millions of American workers and others were exposed to asbestos, especially during and after World War II and before the advent of regulation by the Occupational Safety and Health Administration in the early 1970's, and

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

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

Bill No. SB 2562

Barcode 485446

1 WHEREAS, although the use of asbestos has dramatically
2 declined since the 1970's and workplace exposures have been
3 regulated since 1971 by the Occupational Safety and Health
4 Administration, past exposures will continue to result in
5 significant claims of death and disability as a result of such
6 exposure, and

7 WHEREAS, exposure to asbestos has created a flood of
8 litigation in state and federal courts that the United States
9 Supreme Court in Ortiz v. Fibreboard Corporation, 119 S. Ct.
10 2295, 2302 (1999), has characterized as "an elephantine mass"
11 of cases that "defies customary judicial administration," and

12 WHEREAS, asbestos personal injury litigation can be
13 unfair and inefficient, imposing a severe burden on litigants
14 and taxpayers alike, and

15 WHEREAS, the inefficiencies and societal costs of
16 asbestos litigation have been well documented in reports such
17 as the RAND Institutes study on Asbestos Litigation Costs and
18 Compensation, the study of Joseph E. Stiglitz on The Impact of
19 Asbestos Liabilities on Workers in Bankrupt Firms, Dr. Joseph
20 Gitlin's report from Johns Hopkins Medical School on
21 Comparison of B Readers' Interpretations of Chest Radiographs
22 for Asbestos Related Changes, and the Report to the House of
23 Delegates from the American Bar Association Commission on
24 Asbestos Litigation, and

25 WHEREAS, the extraordinary volume of nonmalignant
26 asbestos cases continues to strain state courts, and

27 WHEREAS, the vast majority of asbestos claims are filed
28 by individuals who allege they have been exposed to asbestos
29 and who may have some physical sign of exposure but who suffer
30 no present asbestos-related impairment, and

31 WHEREAS, the cost of compensating exposed individuals

Bill No. SB 2562

Barcode 485446

1 | who are not sick jeopardizes the ability of defendants to
2 | compensate people with cancer and other serious
3 | asbestos-related diseases, now and in the future, and

4 | WHEREAS, the cost of compensating exposed individuals
5 | who are not sick threatens the savings, retirement benefits,
6 | and jobs of defendants' current and retired employees and
7 | adversely affects the communities in which these defendants
8 | operate, and

9 | WHEREAS, the crush of asbestos litigation has been
10 | costly to employers, employees, litigants, and the court
11 | system, and

12 | WHEREAS, in 1982, the Johns-Manville Corporation, the
13 | nation's largest single supplier of insulation products
14 | containing asbestos, declared bankruptcy due to the burden of
15 | the asbestos litigation, and

16 | WHEREAS, since 1982, more than 70 other companies have
17 | declared bankruptcy due to the burden of asbestos litigation,
18 | and

19 | WHEREAS, estimates show that between 60,000 and 128,000
20 | American workers already have lost their jobs as a result of
21 | asbestos-related bankruptcies and that the total number of
22 | jobs that will be lost due to asbestos-related bankruptcies
23 | will eventually reach 432,000, and

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

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

31 | WHEREAS, the seriously ill too often find that the

Bill No. SB 2562

Barcode 485446

1 value of their recovery is substantially reduced due to
2 defendant bankruptcies and the inefficiency of the litigation
3 process, and

4 WHEREAS, silica is a naturally occurring mineral, and

5 WHEREAS, the Earth's crust is over 90 percent silica,
6 and crystalline silica dust is the primary component of sand,
7 quartz, and granite, and

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

10 WHEREAS, silicosis was recognized as an occupational
11 disease many years ago, and

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

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

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

23 WHEREAS, the Legislature finds that an overpowering
24 public necessity requires it to act to prevent a silica-based
25 litigation crisis, and

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

31 WHEREAS, consolidations, joinders, and similar

Bill No. SB 2562

Barcode 485446

1 | procedures to which some courts have resorted in order to deal
 2 | with the mass of asbestos and silica cases can undermine the
 3 | appropriate functioning of the judicial process and further
 4 | encourage the filing of thousands of cases by exposed
 5 | individuals who are not sick and who may never become sick,
 6 | and

7 | WHEREAS, punitive damage awards unfairly divert the
 8 | resources of defendants from compensating genuinely impaired
 9 | claimants and, given the lengthy history of asbestos and
 10 | silica litigation and the regulatory and other restrictions on
 11 | the use of asbestos and silica-containing products in the
 12 | workplace, the legal justification for such awards,
 13 | punishment, and deterrence is either inapplicable or
 14 | inappropriate, and

15 | WHEREAS, the Legislature finds that there is an
 16 | overpowering public necessity to defer the claims of exposed
 17 | individuals who are not sick in order to preserve, now and for
 18 | the future, defendants' ability to compensate people who
 19 | develop cancer and other serious asbestos-related and
 20 | silica-related injuries and to safeguard the jobs, benefits,
 21 | and savings of workers in this state and the well-being of the
 22 | economy of this state, NOW, THEREFORE,

23 |
 24 |
 25 |
 26 |
 27 |
 28 |
 29 |
 30 |
 31 |