

By Senator Webster

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A bill to be entitled
An act relating to asbestos and silica claims;
providing a short title; providing purposes;
providing definitions; requiring physical
impairment as an essential element of a claim;
providing criteria for prima facie evidence of
physical impairment for claims and certain
actions; providing an exception; providing
additional requirements for evidence relating
to physical impairment; specifying absence of
certain presumptions at trial; providing
procedures for claims and certain actions;
providing for consolidation; providing for
venue; providing for preliminary proceedings;
requiring asbestos and silica claims to include
certain information; specifying certain
limitation periods for certain claims;
specifying distinct causes of action for
certain conditions; limiting damages under
certain circumstances; prohibiting a general
release from liability; prohibiting award of
punitive damages; providing for collateral
source payments; specifying liability rules
applicable to certain persons; providing for
construction; providing severability; providing
application to certain civil actions; providing
an effective date.

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

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

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

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

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

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

12 (4) Conserve the scarce resources of the defendants to
13 allow compensation to cancer victims and others who are
14 physically impaired by exposure to asbestos or silica while
15 securing the right to similar compensation for those who may
16 suffer physical impairment in the future.

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

19 (1) "AMA Guides to the Evaluation of Permanent
20 Impairment" means the American Medical Association's Guides to
21 the Evaluation of Permanent Impairment (Fifth Edition 2000),
22 as modified from time to time by the American Medical
23 Association.

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

26 (3) "Asbestos claim" means a claim for damages or
27 other civil or equitable relief presented in a civil action,
28 arising out of, based on, or related to the health effects of
29 exposure to asbestos, including loss of consortium, wrongful
30 death, and any other derivative claim made by or on behalf of
31 an exposed person or a representative, spouse, parent, child,

1 or other relative of an exposed person. The term does not
2 include claims for benefits under a workers' compensation law
3 or veterans' benefits program, or claims brought by a person
4 as a subrogee by virtue of the payment of benefits under a
5 workers' compensation law.

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

8 (5) "Board-certified in internal medicine" means a
9 physician who is certified by the American Board of Internal
10 Medicine or the American Osteopathic Board of Internal
11 Medicine.

12 (6) "Board-certified in occupational medicine" means a
13 physician who is certified in the subspecialty of occupational
14 medicine by the American Board of Preventive Medicine or the
15 American Osteopathic Board of Preventive Medicine.

16 (7) "Board-certified in oncology" means a physician
17 who is certified in the subspecialty of medical oncology by
18 the American Board of Internal Medicine or the American
19 Osteopathic Board of Internal Medicine.

20 (8) "Board-certified in pathology" means a physician
21 who holds primary certification in anatomic pathology or
22 clinical pathology from the American Board of Pathology or the
23 American Osteopathic Board of Internal Medicine and whose
24 professional practice:

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

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

28 (9) "Board-certified in pulmonary medicine" means a
29 physician who is certified in the subspecialty of pulmonary
30 medicine by the American Board of Internal Medicine or the
31 American Osteopathic Board of Internal Medicine.

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

4 (11) "Certified B-reader" means an individual
5 qualified as a "final" or "B-reader" under 42 C.F.R. section
6 37.51(b), as amended.

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

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

15 (14) "Exposure-years" means:

16 (a) Each single year of exposure before 1972 will be
17 counted as one year;

18 (b) Each single year of exposure from 1972 through
19 1979 will be counted as one-half year;

20 (c) Exposure after 1979 will not be counted, except
21 that each year from 1972 forward for which the plaintiff can
22 establish exposure exceeding the OSHA limit for 8-hour
23 time-weighted average airborne concentration for a substantial
24 portion of the year will count as one year.

25 (15) "FEV1" means forced expiratory volume in the
26 first second, which is the maximal volume of air expelled in
27 one second during performance of simple spirometric tests.

28 (16) "FVC" means forced vital capacity, which is the
29 maximal volume of air expired with maximum effort from a
30 position of full inspiration.

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1 (17) "ILO Scale" means the system for the
2 classification of chest x-rays set forth in the International
3 Labour Office's Guidelines for the Use of ILO International
4 Classification of Radiographs of Pneumoconioses (1980), as
5 amended from time to time by the International Labour Office.

6 (18) "Lung cancer" means a malignant tumor in which
7 the primary site of origin of the cancer is inside of the
8 lungs, but the term does not include an asbestos claim based
9 upon mesothelioma.

10 (19) "Mesothelioma" means a malignant tumor with a
11 primary site in the pleura or the peritoneum, which has been
12 diagnosed by a board-certified pathologist, using standardized
13 and accepted criteria of microscopic morphology or appropriate
14 staining techniques.

15 (20) "Nonmalignant condition" means any condition that
16 can be caused by asbestos other than a diagnosed cancer.

17 (21) "Nonsmoker" means the exposed person has not
18 smoked cigarettes or used any other tobacco products within
19 the last 15 years.

20 (22) "Pathological evidence of asbestosis" means a
21 statement by a board-certified pathologist that more than one
22 representative section of lung tissue uninvolved with any
23 other disease process demonstrates a pattern of
24 peribronchiolar or parenchymal scarring in the presence of
25 characteristic asbestos bodies and that there is no other more
26 likely explanation for the presence of the fibrosis.

27 (23) "Predicted lower limit of normal" for any test
28 means the fifth percentile of healthy populations based on
29 age, height, and gender, as referenced in the AMA Guides to
30 the Evaluation of Permanent Impairment.

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1 (24) "Qualified physician" means a medical doctor,
2 who:
3 (a) Is currently a board-certified internist,
4 oncologist, pathologist, pulmonary specialist, radiologist, or
5 specialist in occupational and environmental medicine;
6 (b) Has conducted a physical examination of the
7 exposed person;
8 (c) Is actually treating or treated the exposed
9 person, and has or had a doctor-patient relationship with the
10 person;
11 (d) Spends not more than 10 percent of his or her
12 professional practice time in providing consulting or expert
13 services in connection with actual or potential civil actions,
14 and whose medical group, professional corporation, clinic, or
15 other affiliated group earns not more than 20 percent of their
16 revenues from providing these services;
17 (e) Is currently licensed to practice and actively
18 practices in the state where the plaintiff resides or where
19 the plaintiff's civil action was filed; and
20 (f) Receives or received payment for the treatment of
21 the exposed person from that person's health maintenance
22 organization, other medical provider, from the exposed person,
23 or from a member of the family of the exposed person.
24 (25) "Radiological evidence of asbestosis" means a
25 quality 1 chest x-ray under the ILO System of classification
26 (in a death case where no pathology is available, the
27 necessary radiologic findings may be made with a quality 2
28 film if a quality 1 film is not available) showing small,
29 irregular opacities (s, t, u) graded by a certified B-reader
30 as at least 1/1 on the ILO scale.
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1 (26) "Radiological evidence of diffuse pleural
2 thickening" means a quality 1 chest x-ray under the ILO System
3 of classification (in a death case where no pathology is
4 available, the necessary radiologic findings may be made with
5 a quality 2 film if a quality 1 film is not available) showing
6 bilateral pleural thickening of at least B2 on the ILO scale
7 and blunting of at least one costophrenic angle.

8 (27) "Silica" means a respirable crystalline form of
9 silicon dioxide, including, but not limited to, alpha, quartz,
10 cristobalite, and trydmite.

11 (28) "Silica claim" means a claim for damages or other
12 civil or equitable relief presented in a civil action, arising
13 out of, based on, or related to the health effects of exposure
14 to silica, including loss of consortium, wrongful death, and
15 any other derivative claim made by or on behalf of an exposed
16 person or a representative, spouse, parent, child, or other
17 relative of an exposed person. The term does not include
18 claims for benefits under a workers' compensation law or
19 veterans' benefits program, or claims brought by a person as a
20 subrogee by virtue of the payment of benefits under a workers'
21 compensation law.

22 (29) "Silicosis" means nodular interstitial fibrosis
23 of the lungs caused by inhalation of silica.

24 (30) "Smoker" means a person who has smoked cigarettes
25 or used other tobacco products within the last 15 years.

26 (31) "Substantial contributing factor" means:

27 (a) Exposure to asbestos or silica is the predominate
28 cause of the physical impairment alleged in the claim;

29 (b) The exposure to asbestos or silica took place on a
30 regular basis over an extended period of time and in close
31 proximity to the exposed person; and

1 (c) A qualified physician has determined with a
2 reasonable degree of medical certainty that the physical
3 impairment of the exposed person would not have occurred but
4 for the asbestos or silica exposures.

5 (32) "Veterans benefits program" means a program for
6 benefits in connection with military service administered by
7 the Veterans' Administration under Title 38, United States
8 Code.

9 (33) "Workers' compensation law" means a law
10 respecting a program administered by this state or the United
11 States to provide benefits, funded by a responsible employer
12 or its insurance carrier, for occupational diseases or
13 injuries or for disability or death caused by occupational
14 diseases or injuries. The term includes the Longshore and
15 Harbor Workers' Compensation Act, 33 U.S.C. sections 901-944,
16 948-950, and the Federal Employees Compensation Act, chapter
17 81 of Title 5, United States Code, but does not include the
18 Act of April 22, 1908, the Federal Employers Liability Act, 45
19 U.S.C. 51 et seq.

20 Section 4. Physical impairment.--

21 (1) Physical impairment of the exposed person, to
22 which asbestos or silica exposure was a substantial
23 contributing factor, is an essential element of an asbestos or
24 silica claim.

25 (2) A person may not file or maintain a civil action
26 alleging a nonmalignant asbestos claim in the absence of a
27 prima facie showing of physical impairment as a result of a
28 medical condition to which exposure to asbestos was a
29 substantial contributing factor. The prima facie showing must
30 include all of the following requirements:

1 (a) Evidence verifying that a qualified physician has
2 taken a detailed occupational and exposure history of the
3 exposed person or, if the person is deceased, from a person
4 who is knowledgeable about the exposures that form the basis
5 of the nonmalignant asbestos claim, including:

6 1. Identification of all of the exposed person's
7 principal places of employment and exposures to airborne
8 contaminants; and

9 2. Whether each place of employment involved exposures
10 to airborne contaminants, including but not limited to
11 asbestos fibers or other disease causing dusts, that can cause
12 pulmonary impairment and the nature, duration and level of any
13 such exposure.

14 (b) Evidence verifying that a qualified physician has
15 taken detailed medical and smoking history, including a
16 thorough review of the exposed person's past and present
17 medical problems and their most probable cause.

18 (c) Evidence sufficient to demonstrate that at least
19 10 years have elapsed between the date of first exposure to
20 asbestos and the date the diagnosis is made.

21 (d) A determination by a qualified physician, on the
22 basis of a medical examination and pulmonary function testing,
23 that the exposed person has a permanent respiratory impairment
24 rating of at least Class 2 as defined by and evaluated
25 pursuant to the AMA Guides to the Evaluation of Permanent
26 Impairment.

27 (e) A diagnosis by a qualified physician of asbestosis
28 or diffuse pleural thickening, based at a minimum on
29 radiological or pathological evidence of asbestosis or
30 radiological evidence of diffuse pleural thickening.

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

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

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

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

14 (g) A conclusion by a qualified physician that the
15 exposed person's medical findings and impairment were not more
16 probably the result of causes other than the asbestos exposure
17 revealed by the exposed person's employment and medical
18 history. A diagnosis that states that the medical findings and
19 impairment are "consistent with" or "compatible with" exposure
20 to asbestos does not meet the requirements of this subsection.

21 (3) A person may not file or maintain a civil action
22 alleging an asbestos claim which is based upon lung cancer, in
23 the absence of a prima facie showing that includes all of the
24 following requirements:

25 (a) A diagnosis by a qualified physician who is
26 board-certified in pathology, pulmonary medicine, or oncology
27 of a primary lung cancer and that exposure to asbestos was a
28 substantial contributing factor to the condition.

29 (b) Evidence sufficient to demonstrate that at least
30 10 years have elapsed between the date of first exposure to
31 asbestos and the date of diagnosis of the lung cancer.

1 (c) The requirements of subparagraph 1. or
2 subparagraph 2., depending on whether the exposed person has a
3 history of smoking:

4 1. In the case of an exposed person who is a
5 nonsmoker, either:

6 a. Radiological or pathological evidence of
7 asbestosis; or

8 b. Evidence of occupational exposure to asbestos for
9 the following minimum exposure periods in the specified
10 occupations:

11 (I) Five exposure-years for insulators, shipyard
12 workers, workers in manufacturing plants handling raw
13 asbestos, boilermakers, shipfitters, steamfitters, or other
14 trades performing similar functions;

15 (II) Ten exposure-years for utility and power house
16 workers, secondary manufacturing workers, or other trades
17 performing similar functions; or

18 (III) Fifteen exposure-years for general construction,
19 maintenance workers, chemical and refinery workers, marine
20 engine room personnel and other personnel on vessels,
21 stationary engineers and firemen, railroad engine repair
22 workers, or other trades performing similar functions.

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

26 3. If the exposed person is deceased, the qualified
27 physician may obtain the evidence required in sub-subparagraph
28 1.b and paragraph (b) from the person most knowledgeable about
29 the alleged exposures that form the basis of the asbestos
30 claim.

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1 (d) A conclusion by a qualified physician that the
2 exposed person's medical findings and impairment were not more
3 probably the result of causes other than the asbestos exposure
4 revealed by the exposed person's employment and medical
5 history. A conclusion that the medical findings and impairment
6 are "consistent with" or "compatible with" exposure to
7 asbestos does not meet the requirements of this subsection.

8 (4) A person may not file or maintain a civil action
9 alleging an asbestos claim which is based upon cancer of the
10 colon, rectum, larynx, pharynx, esophagus, or stomach, in the
11 absence of a prima facie showing that includes all of the
12 following minimum requirements:

13 (a) A diagnosis by a qualified physician who is
14 board-certified in pathology, pulmonary medicine, or oncology,
15 as appropriate for the type of cancer claimed, of primary
16 cancer of the colon, rectum, larynx, pharynx, esophagus, or
17 stomach, and that exposure to asbestos was a substantial
18 contributing factor to the condition.

19 (b) Evidence sufficient to demonstrate that at least
20 10 years have elapsed between the date of first exposure to
21 asbestos and the date of diagnosis of the cancer.

22 (c) The requirements of subparagraph 1. or
23 subparagraph 2.:

24 1. Radiological or pathological evidence of
25 asbestosis; or

26 2. Evidence of occupational exposure to asbestos for
27 the following minimum exposure-periods in the specified
28 occupations:

29 a. Five exposure-years for insulators, shipyard
30 workers, workers in manufacturing plants handling raw
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1 asbestos, boilermakers, shipfitters, steamfitters, or other
2 trades performing similar functions;

3 b. Ten exposure-years for utility and power house
4 workers, secondary manufacturing workers, or other trades
5 performing similar functions; or

6 c. Fifteen exposure-years for general construction,
7 maintenance workers, chemical and refinery workers, marine
8 engine room personnel and other personnel on vessels,
9 stationary engineers and firemen, railroad engine repair
10 workers, or other trades performing similar functions.

11 (d) A conclusion by a qualified physician that the
12 exposed person's medical findings and impairment were not more
13 probably the result of causes other than the asbestos exposure
14 revealed by the exposed person's employment and medical
15 history. A conclusion that the medical findings and impairment
16 are "consistent with" or "compatible with" exposure to
17 asbestos does not meet the requirements of this subsection.

18 (5) In a civil action alleging an asbestos claim based
19 upon mesothelioma, no prima facie showing is required.

20 (6) A person may not file or maintain a civil action
21 alleging a silicosis claim in the absence of a prima facie
22 showing of physical impairment as a result of a medical
23 condition to which exposure to silica was a substantial
24 contributing factor. The prima facie showing must include all
25 of the following requirements:

26 (a) Evidence verifying that a qualified physician has
27 taken a detailed occupational and exposure history of the
28 exposed person or, if the person is deceased, from a person
29 who is knowledgeable about the exposures that form the basis
30 of the nonmalignant silica claim, including:

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

3 2. Whether each place of employment involved exposures
4 to airborne contaminants, including but not limited to silica
5 particles or other disease causing dusts, that can cause
6 pulmonary impairment and the nature, duration, and level of
7 any such exposure.

8 (b) Evidence verifying that a qualified physician has
9 taken detailed medical and smoking history, including a
10 thorough review of the exposed person's past and present
11 medical problems and their most probable cause, and verifying
12 a sufficient latency period for the applicable stage of
13 silicosis.

14 (c) A determination by a qualified physician, on the
15 basis of a medical examination and pulmonary function testing,
16 that the exposed person has a permanent respiratory impairment
17 rating of at least Class 2 as defined by and evaluated
18 pursuant to the AMA Guides to the Evaluation of Permanent
19 Impairment.

20 (d) A determination by a qualified physician that the
21 exposed person has:

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

28 2. Pathological demonstration of classic silicotic
29 nodules exceeding one centimeter in diameter as published in
30 112 Archive of Pathology and Laboratory Medicine 7 (July
31 1988).

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

5 (e) A conclusion by a qualified physician that the
6 exposed person's medical findings and impairment were not more
7 probably the result of causes other than silica exposure
8 revealed by the exposed person's employment and medical
9 history. A conclusion that the medical findings and impairment
10 are "consistent with" or "compatible with" exposure to silica
11 does not meet the requirements of this subsection.

12 (7) A person may not file or maintain a civil action
13 alleging a silica claim other than as provided in subsection
14 (6), in the absence of a prima facie showing that includes all
15 of the following requirements:

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

17 1. Board-certified in pulmonary medicine, internal
18 medicine, oncology, or pathology stating a diagnosis of the
19 exposed person of silica-related lung cancer and stating that,
20 to a reasonable degree of medical probability, exposure to
21 silica was a substantial contributing factor to the diagnosed
22 lung cancer; or

23 2. Board-certified in pulmonary medicine, internal
24 medicine, or pathology stating a diagnosis of the exposed
25 person of silica-related progressive massive fibrosis or acute
26 silicoproteinosis, or silicosis complicated by documented
27 tuberculosis.

28 (b) Evidence verifying that a qualified physician has
29 taken a detailed occupational and exposure history of the
30 exposed person or, if the person is deceased, from a person
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1 who is knowledgeable about the exposures that form the basis
2 of the nonmalignant silica claim, including:

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

5 2. Whether each place of employment involved exposures
6 to airborne contaminants, including but not limited to, silica
7 particles or other disease causing dusts, that can cause
8 pulmonary impairment and the nature, duration and level of any
9 such exposure.

10 (c) Evidence verifying that a qualified physician has
11 taken detailed medical and smoking history, including a
12 thorough review of the exposed person's past and present
13 medical problems and their most probable cause;

14 (d) A determination by a qualified physician that the
15 exposed person has:

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

22 2. Pathological demonstration of classic silicotic
23 nodules exceeding one centimeter in diameter as published in
24 112 Archive of Pathology and Laboratory Medicine 7 (July
25 1988).

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27 In a death case where no pathology is available, the necessary
28 radiologic findings may be made with a quality 2 film if a
29 quality 1 film is not available.

30 (e) A conclusion by a qualified physician that the
31 exposed person's medical findings and impairment were not more

1 probably the result of causes other than silica exposure
2 revealed by the exposed person's employment and medical
3 history. A conclusion that the medical findings and impairment
4 are "consistent with" or "compatible with" exposure to silica
5 does not meet the requirements of this subsection.

6 (8) Evidence relating to physical impairment under
7 this section, including pulmonary function testing and
8 diffusing studies, must:

9 (a) Comply with the technical recommendations for
10 examinations, testing procedures, quality assurance, quality
11 control, and equipment of the AMA Guides to the Evaluation of
12 Permanent Impairment, as set forth in 2d C.F.R. Part 404,
13 subpart. P. Appl., part A, section 3.00 E. and F., and the
14 interpretive standards, set forth in the official statement of
15 the American Thoracic Society entitled "lung function testing:
16 selection of reference values and interpretive strategies" as
17 published in American Review of Respiratory Disease. 1991:
18 144:1202-1218;

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

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

25 (9) Presentation of prima facie evidence meeting the
26 requirements of subsection (2), (3), (4), (5) or (6) of this
27 section may not:

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

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1 (b) Be conclusive as to the liability of any
2 defendant; and

3 (c) Be admissible at trial.

4 Section 5. Claimant proceedings.--

5 (1) A court may consolidate for trial any number and
6 type of asbestos or silica claims with consent of all the
7 parties. In the absence of consent, the court may consolidate
8 for trial only asbestos or silica claims relating to the same
9 exposed person and members of his or her household.

10 (2) A civil action alleging an asbestos or silica
11 claim may be brought in the courts of this state if the
12 plaintiff is domiciled in this state or the exposure to
13 asbestos or silica that is a substantial contributing factor
14 to the physical impairment of the plaintiff on which the claim
15 is based occurred in this state.

16 (3) A plaintiff in a civil action alleging an asbestos
17 or silica claim must include with the complaint or other
18 initial pleading a written report and supporting test results
19 constituting prima facie evidence of the exposed person's
20 asbestos-related or silica-related physical impairment meeting
21 the requirements of subsections (2) - (6) of section 4. For
22 any asbestos or silica claim pending on the effective date of
23 this act, the plaintiff must file the report and supporting
24 test results within 60 days after the effective date of the
25 act, or at least 30 days before commencing trial. The
26 defendant must be afforded a reasonable opportunity to
27 challenge the adequacy of the proffered prima facie evidence
28 of asbestos-related impairment. The claim of the plaintiff
29 shall be dismissed without prejudice upon a finding of failure
30 to make the required prima facie showing.

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

7 (a) The claimant's name, address, date of birth,
8 social security number, and marital status;

9 (b) If the claimant alleges exposure to asbestos or
10 silica through the testimony of another person or alleges
11 other than direct or bystander exposure to a product, the
12 name, address, date of birth, social security number, marital
13 status, for each person by which the claimant alleges
14 exposure, hereinafter the "index person," and the claimant's
15 relationship to each such person;

16 (c) The specific location of each alleged exposure;

17 (d) The beginning and ending dates of each alleged
18 exposure as to each asbestos product or silica product for
19 each location at which exposure allegedly took place for the
20 plaintiff and each index person;

21 (e) The occupation and name of the employer of the
22 exposed person at the time of each alleged exposure;

23 (f) The specific condition related to asbestos or
24 silica claimed to exist; and

25 (g) Any supporting documentation of the condition
26 claimed to exist.

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

28 (1) Notwithstanding any other law, with respect to any
29 asbestos or silica claim not barred as of the effective date
30 of this act, the limitations period does not begin to run
31 until the exposed person discovers, or through the exercise of

1 reasonable diligence should have discovered, that he or she is
2 physically impaired by an asbestos-related condition.

3 (2) An asbestos or silica claim arising out of a
4 nonmalignant condition shall be a distinct cause of action
5 from an asbestos or silica claim relating to the same exposed
6 person arising out of asbestos-related or silica-related
7 cancer. Damages may not be awarded for fear or risk of cancer
8 in a civil action asserting an asbestos or silica claim.

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

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

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

16 (2) At the time a complaint is filed in a civil action
17 alleging an asbestos or silica claim, the plaintiff must file
18 a verified written report with the court which discloses the
19 total amount of any collateral source payments received,
20 including payments that the plaintiff will receive in the
21 future, as a result of settlements or judgments based upon the
22 same claim. For any asbestos or silica claim pending on the
23 effective date of this act, the plaintiff shall file a
24 verified written report within 60 days after the effective
25 date of this act, or at least 30 days before trial. Further,
26 the plaintiff must update the reports on a regular basis
27 during the course of the proceeding until a final judgment is
28 entered in the case. The court shall ensure that the
29 information contained in the initial and updated report is
30 treated as privileged and confidential and that the contents
31 of the verified written reports may not be disclosed to anyone

1 except the other parties to the action. The court shall permit
2 setoff, based on the collateral source payment information
3 provided, in accordance with the law of this state as of the
4 effective date of this act.

5 Section 8. Liability rules applicable to protect
6 sellers, renters, and lessors.--

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

10 1.a. The product that allegedly caused the harm that
11 is the subject of the complaint was sold, rented, or leased by
12 the product seller;

13 b. The product seller failed to exercise reasonable
14 care with respect to the product; and

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

17 2.a. The product seller made an express warranty
18 applicable to the product that allegedly caused the harm that
19 is the subject of the complaint, independent of any express
20 warranty made by the manufacturer as to the same product;

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

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

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

26 b. The intentional wrongdoing caused the harm that is
27 the subject of the complaint.

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

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

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

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

10 Section 9. Miscellaneous provisions.--

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

15 (2) It is the intent of the Legislature that this law
16 render the utmost comity and respect to the constitutional
17 prerogatives of the judiciary of this state, and nothing in
18 this act should be construed as any effort to impinge upon
19 those prerogatives. To that end, if the Florida Supreme Court
20 enters a final judgment concluding or declaring that any
21 provision of this act improperly encroaches on the authority
22 of the court to adopt the rules of practice and procedure in
23 the courts of this state, the Legislature intends that any
24 such provision be construed as a request for a rule change
25 under Section 2, Article V, of the State Constitution and not
26 as a mandatory legislative directive.

27 (3) If any provision of this act or the application
28 thereof to any person or circumstance is held invalid, the
29 invalidity does not affect other provisions or application of
30 the act which can be given effect without the invalid
31

