

By the Committee on Judiciary; and Senators Webster and Clary

590-2204-05

1	A bill to be entitled
2	An act relating to asbestos and silica claims;
3	providing a short title; providing purposes;
4	providing definitions; requiring physical
5	impairment as an essential element of a claim;
6	providing criteria for prima facie evidence of
7	physical impairment for claims and certain
8	actions; providing exceptions; providing
9	additional requirements for evidence relating
10	to physical impairment; specifying absence of
11	certain presumptions at trial; providing
12	procedures for claims and certain actions;
13	providing for consolidation; providing for
14	venue; providing for preliminary proceedings;
15	requiring asbestos and silica claims to include
16	certain information; specifying certain
17	limitation periods for certain claims;
18	specifying distinct causes of action for
19	certain conditions; limiting damages under
20	certain circumstances; prohibiting a general
21	release from liability; prohibiting award of
22	punitive damages; providing for collateral
23	source payments; specifying liability rules
24	applicable to certain persons; providing for
25	construction; providing severability; providing
26	application to certain civil actions; providing
27	an effective date.
28	
29	WHEREAS, asbestos is a mineral that was widely used
30	before the mid 1970's for insulation, fireproofing, and other
31	purposes, and

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

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

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

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

12 WHEREAS, although the use of asbestos has dramatically
13 declined since the 1970's and workplace exposures have been
14 regulated since 1971 by the Occupational Safety and Health
15 Administration, past exposures will continue to result in
16 significant claims of death and disability as a result of such
17 exposure, and

18 WHEREAS, exposure to asbestos has created a flood of
19 litigation in state and federal courts that the United States
20 Supreme Court in Ortiz v. Fibreboard Corporation, 119 S. Ct.
21 2295, 2302 (1999), has characterized as "an elephantine mass"
22 of cases that "defies customary judicial administration," and

23 WHEREAS, asbestos personal injury litigation can be
24 unfair and inefficient, imposing a severe burden on litigants
25 and taxpayers alike, and

26 WHEREAS, the inefficiencies and societal costs of
27 asbestos litigation have been well documented in reports such
28 as the RAND Institutes study on Asbestos Litigation Costs and
29 Compensation, the study of Joseph E. Stiglitz on The Impact of
30 Asbestos Liabilities on Workers in Bankrupt Firms, Dr. Joseph
31 Gitlin's report from Johns Hopkins Medical School on

1 Comparison of B Readers' Interpretations of Chest Radiographs
2 for Asbestos Related Changes, and the Report to the House of
3 Delegates from the American Bar Association Commission on
4 Asbestos Litigation, and

5 WHEREAS, the extraordinary volume of nonmalignant
6 asbestos cases continues to strain state courts, and

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

11 WHEREAS, the cost of compensating exposed individuals
12 who are not sick jeopardizes the ability of defendants to
13 compensate people with cancer and other serious
14 asbestos-related diseases, now and in the future, and

15 WHEREAS, the cost of compensating exposed individuals
16 who are not sick threatens the savings, retirement benefits,
17 and jobs of defendants' current and retired employees and
18 adversely affects the communities in which these defendants
19 operate, and

20 WHEREAS, the crush of asbestos litigation has been
21 costly to employers, employees, litigants, and the court
22 system, and

23 WHEREAS, in 1982, the Johns-Manville Corporation, the
24 nation's largest single supplier of insulation products
25 containing asbestos, declared bankruptcy due to the burden of
26 the asbestos litigation, and

27 WHEREAS, since 1982, more than 70 other companies have
28 declared bankruptcy due to the burden of asbestos litigation,
29 and

30 WHEREAS, estimates show that between 60,000 and 128,000
31 American workers already have lost their jobs as a result of

1 asbestos-related bankruptcies and that the total number of
2 jobs that will be lost due to asbestos-related bankruptcies
3 will eventually reach 432,000, and

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

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

11 WHEREAS, the seriously ill too often find that the
12 value of their recovery is substantially reduced due to
13 defendant bankruptcies and the inefficiency of the litigation
14 process, and

15 WHEREAS, silica is a naturally occurring mineral, and

16 WHEREAS, the Earth's crust is over 90 percent silica,
17 and crystalline silica dust is the primary component of sand,
18 quartz, and granite, and

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

21 WHEREAS, silicosis was recognized as an occupational
22 disease many years ago, and

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

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

29 WHEREAS, silica claims, like asbestos claims, often
30 arise when an individual is identified as having markings on
31 his or her lungs that are possibly consistent with silica

1 exposure but the individual has no functional or physical
2 impairment from any silica-related disease, and

3 WHEREAS, the Legislature finds that an overpowering
4 public necessity requires it to act to prevent a silica-based
5 litigation crisis, and

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

11 WHEREAS, consolidations, joinders, and similar
12 procedures to which some courts have resorted in order to deal
13 with the mass of asbestos and silica cases can undermine the
14 appropriate functioning of the judicial process and further
15 encourage the filing of thousands of cases by exposed
16 individuals who are not sick and who may never become sick,
17 and

18 WHEREAS, punitive damage awards unfairly divert the
19 resources of defendants from compensating genuinely impaired
20 claimants and, given the lengthy history of asbestos and
21 silica litigation and the regulatory and other restrictions on
22 the use of asbestos and silica-containing products in the
23 workplace, the legal justification for such awards,
24 punishment, and deterrence is either inapplicable or
25 inappropriate, and

26 WHEREAS, the Legislature finds that there is an
27 overpowering public necessity to defer the claims of exposed
28 individuals who are not sick in order to preserve, now and for
29 the future, defendants' ability to compensate people who
30 develop cancer and other serious asbestos-related and
31 silica-related injuries and to safeguard the jobs, benefits,

1 and savings of workers in this state and the well-being of the
2 economy of this state, NOW, THEREFORE,

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Short title.--This act may be cited as the
7 "Asbestos and Silica Compensation Fairness Act".

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

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

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

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

17 (4) Conserve the scarce resources of the defendants to
18 allow compensation to cancer victims and others who are
19 physically impaired by exposure to asbestos or silica while
20 securing the right to similar compensation for those who may
21 suffer physical impairment in the future.

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

24 (1) "AMA Guides to the Evaluation of Permanent
25 Impairment" means the American Medical Association's Guides to
26 the Evaluation of Permanent Impairment.

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

29 (3) "Asbestos claim" means a claim for damages or
30 other civil or equitable relief presented in a civil action,
31 arising out of, based on, or related to the health effects of

1 exposure to asbestos, including loss of consortium, wrongful
2 death, and any other derivative claim made by or on behalf of
3 an exposed person or a representative, spouse, parent, child,
4 or other relative of an exposed person. The term does not
5 include claims for benefits under a workers' compensation law
6 or veterans' benefits program, or claims brought by a person
7 as a subrogee by virtue of the payment of benefits under a
8 workers' compensation law.

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

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

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

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

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

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

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

31

1 (9) "Board-certified in pulmonary medicine" means a
2 physician who is certified in the subspecialty of pulmonary
3 medicine by the American Board of Internal Medicine or the
4 American Osteopathic Board of Internal Medicine.

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

8 (11) "Certified B-reader" means an individual
9 qualified as a "final" or "B-reader" under 42 C.F.R. section
10 37.51(b), as amended.

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

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

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

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

25 (16) "ILO Scale" means the system for the
26 classification of chest x-rays set forth in the International
27 Labour Office's Guidelines for the Use of ILO International
28 Classification of Radiographs of Pneumoconioses.

29 (17) "Lung cancer" means a malignant tumor in which
30 the primary site of origin of the cancer is inside of the
31

1 lungs, but the term does not include an asbestos claim based
2 upon mesothelioma.

3 (18) "Mesothelioma" means a malignant tumor with a
4 primary site in the pleura or the peritoneum, which has been
5 diagnosed by a board-certified pathologist, using standardized
6 and accepted criteria of microscopic morphology or appropriate
7 staining techniques.

8 (19) "Nonmalignant condition" means any condition that
9 can be caused by asbestos other than a diagnosed cancer.

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

13 (21) "Pathological evidence of asbestosis" means a
14 statement by a board-certified pathologist that more than one
15 representative section of lung tissue uninvolved with any
16 other disease process demonstrates a pattern of
17 peribronchiolar or parenchymal scarring in the presence of
18 characteristic asbestos bodies and that there is no other more
19 likely explanation for the presence of the fibrosis.

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

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

26 (a) Is currently a board-certified internist,
27 oncologist, pathologist, pulmonary specialist, radiologist, or
28 specialist in occupational and environmental medicine;

29 (b) Has conducted a physical examination of the
30 exposed person;

31

1 (c) Is actually treating or treated the exposed
2 person, and has or had a doctor-patient relationship with the
3 person;

4 (d) Spends not more than 10 percent of his or her
5 professional practice time in providing consulting or expert
6 services in connection with actual or potential civil actions,
7 and whose medical group, professional corporation, clinic, or
8 other affiliated group earns not more than 20 percent of their
9 revenues from providing these services;

10 (e) Is currently licensed to practice and actively
11 practices in the state where the plaintiff resides or where
12 the plaintiff's civil action was filed; and

13 (f) Receives or received payment for the treatment of
14 the exposed person from that person's health maintenance
15 organization, other medical provider, from the exposed person,
16 or from a member of the family of the exposed person.

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

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

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1 (26) "Silica" means a respirable crystalline form of
2 silicon dioxide, including, but not limited to, alpha, quartz,
3 crystalobalite, and trydmite.

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

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

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

20 (30) "Substantial contributing factor" means:

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

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

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

30 (31) "Substantial occupational exposure" means
31 employment for an extended period of time in industries and

1 occupations in which, for a substantial portion of a normal
2 work year for that occupation, the exposed person did any of
3 the following:

4 (a) Handled raw asbestos fibers;

5 (b) Fabricated asbestos-containing products so that
6 the person was exposed to raw asbestos fibers in the
7 fabrication process;

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

11 (d) Worked in close proximity to other persons engaged
12 in any of the activities described in paragraphs (a)-(c) in a
13 manner that exposed the person on a regular basis to asbestos
14 fibers.

15 (32) "Veterans benefits program" means a program for
16 benefits in connection with military service administered by
17 the Veterans' Administration under Title 38, United States
18 Code.

19 (33) "Workers' compensation law" means a law
20 respecting a program administered by this state or the United
21 States to provide benefits, funded by a responsible employer
22 or its insurance carrier, for occupational diseases or
23 injuries or for disability or death caused by occupational
24 diseases or injuries. The term includes the Longshore and
25 Harbor Workers' Compensation Act, 33 U.S.C. sections 901-944,
26 948-950, and the Federal Employees Compensation Act, chapter
27 81 of Title 5, United States Code, but does not include the
28 Act of April 22, 1908, the Federal Employers Liability Act, 45
29 U.S.C. 51 et seq.

30 Section 4. Physical impairment.--
31

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

5 (2) A person may not file or maintain a civil action
6 alleging a nonmalignant asbestos claim in the absence of a
7 prima facie showing of physical impairment as a result of a
8 medical condition to which exposure to asbestos was a
9 substantial contributing factor. The prima facie showing must
10 include all of the following requirements:

11 (a) Evidence verifying that a qualified physician, or
12 someone working under the direct supervision and control of a
13 qualified physician, has taken a detailed occupational and
14 exposure history of the exposed person or, if the person is
15 deceased, from a person who is knowledgeable about the
16 exposures that form the basis of the nonmalignant asbestos
17 claim, including:

18 1. Identification of all of the exposed person's
19 principal places of employment and exposures to airborne
20 contaminants; and

21 2. Whether each place of employment involved exposures
22 to airborne contaminants, including but not limited to
23 asbestos fibers or other disease causing dusts, that can cause
24 pulmonary impairment and the nature, duration and level of any
25 such exposure.

26 (b) Evidence verifying that a qualified physician, or
27 someone working under the direct supervision and control of a
28 qualified physician, has taken detailed medical and smoking
29 history, including a thorough review of the exposed person's
30 past and present medical problems and their most probable
31 cause.

1 (c) Evidence sufficient to demonstrate that at least
2 10 years have elapsed between the date of first exposure to
3 asbestos and the date the diagnosis is made.

4 (d) A determination by a qualified physician, on the
5 basis of a medical examination and pulmonary function testing,
6 that the exposed person has a permanent respiratory impairment
7 rating of at least Class 2 as defined by and evaluated
8 pursuant to the AMA Guides to the Evaluation of Permanent
9 Impairment.

10 (e) A diagnosis by a qualified physician of asbestosis
11 or diffuse pleural thickening, based at a minimum on
12 radiological or pathological evidence of asbestosis or
13 radiological evidence of diffuse pleural thickening.

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

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

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

24 2. In lieu of the determinations in subparagraph 1., a
25 chest x-ray showing small, irregular opacities (s, t, u)
26 graded by a certified B-reader at least 2/1 on the ILO scale.

27 (g) If the exposed person meets the requirements of
28 paragraphs (a), (b), and (c), and if a qualified physician
29 determines that the exposed person has a physical impairment,
30 as demonstrated by meeting the criteria set forth in
31 paragraphs (d) and (f)1., but the exposed person's chest x-ray

1 does not demonstrate radiological evidence of asbestosis, the
2 exposed person may meet the criteria of paragraph (e) if his
3 or her chest x-ray is graded by a certified B-reader as at
4 least 1/0 and a qualified physician, relying on
5 high-resolution computed tomography, determines to a
6 reasonable degree of medical certainty that the exposed person
7 has asbestosis and forms the conclusion set forth in paragraph
8 (h).

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

16 (i) If a plaintiff files a civil action alleging a
17 nonmalignant asbestos claim, and that plaintiff alleges that
18 his or her exposure to asbestos was the result of extended
19 contact with another exposed person who, if the civil action
20 had been filed by the other exposed person, would have met the
21 requirements of paragraph (a) and the plaintiff alleges that
22 he or she had extended contact with the exposed person during
23 the time period in which that exposed person met the
24 requirements of paragraph (a), the plaintiff has satisfied the
25 requirements of paragraph (a). The plaintiff in such a civil
26 action must individually satisfy the requirements of
27 paragraphs (b), (c), (d), (e), (f), and (g).

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

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

5 (b) Evidence sufficient to demonstrate that at least
6 10 years have elapsed between the date of first exposure to
7 asbestos and the date of diagnosis of the lung cancer.

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

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

13 a. Radiological or pathological evidence of asbestosis
14 or diffuse pleural thickening or a qualified physician's
15 diagnosis of asbestosis based on a chest x-ray graded by a
16 certified B-reader as at least 1/0 on the ILO scale and
17 high-resolution computed tomography supporting the diagnosis
18 of asbestosis to a reasonable degree of medical certainty; or

19 b. Evidence of the exposed person's substantial
20 occupational exposure to asbestos. If a plaintiff files a
21 civil action alleging an asbestos-related lung cancer claim
22 and that plaintiff alleges that his or her exposure to
23 asbestos was the result of extended contact with another
24 exposed person who, if the civil action had been filed by the
25 other exposed person, would have met the substantial
26 occupational exposure requirement of this subsection, and the
27 plaintiff alleges that he or she had extended contact with the
28 exposed person during the time period in which that exposed
29 person met the substantial occupational exposure requirement
30 of this subsection, the plaintiff has satisfied the
31 requirements of this subparagraph. The plaintiff in such a

1 civil action must individually satisfy the requirements of
2 paragraph (a), paragraph (b), sub-subparagraph a. where
3 appropriate, subparagraph 2. where appropriate, and paragraph
4 (d).

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

8 3. If the exposed person is deceased, the qualified
9 physician, or someone working under the direct supervision and
10 control of a qualified physician, may obtain the evidence
11 required in sub-subparagraph 1.b. and paragraph (b) from the
12 person most knowledgeable about the alleged exposures that
13 form the basis of the asbestos claim.

14 (d) 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 conclusion that the medical findings and impairment
19 are "consistent with" or "compatible with" exposure to
20 asbestos does not meet the requirements of this subsection.

21 (4) In a civil action alleging an asbestos claim based
22 upon mesothelioma, cancer of the colon, rectum, larynx,
23 pharynx, esophagus, or stomach, a prima facie showing is not
24 required.

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

31

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

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

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

15 (b) Evidence verifying that a qualified physician, or
16 someone working under the direct supervision and control of a
17 qualified physician, has taken detailed medical and smoking
18 history, including a thorough review of the exposed person's
19 past and present medical problems and their most probable
20 cause, and verifying a sufficient latency period for the
21 applicable stage of silicosis.

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

28 (d) A determination by a qualified physician that the
29 exposed person has:

30 1. A quality 1 chest x-ray under the ILO System of
31 classification and that the x-ray has been read by a certified

1 B-reader as showing, according to the ILO System of
2 classification, bilateral nodular opacities (p, q, or r)
3 occurring primarily in the upper lung fields, graded 1/1 or
4 higher; or

5 2. Pathological demonstration of classic silicotic
6 nodules exceeding one centimeter in diameter as published in
7 112 Archive of Pathology and Laboratory Medicine 7 (July
8 1988).

9
10 In a death case where no pathology is available, the necessary
11 radiologic findings may be made with a quality 2 film if a
12 quality 1 film is not available.

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

20 (6) A person may not file or maintain a civil action
21 alleging a silica claim other than as provided in subsection
22 (5), in the absence of a prima facie showing that includes all
23 of the following requirements:

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

25 1. Board-certified in pulmonary medicine, internal
26 medicine, oncology, or pathology stating a diagnosis of the
27 exposed person of silica-related lung cancer and stating that,
28 to a reasonable degree of medical probability, exposure to
29 silica was a substantial contributing factor to the diagnosed
30 lung cancer; or

31

1 2. Board-certified in pulmonary medicine, internal
2 medicine, or pathology stating a diagnosis of the exposed
3 person of silica-related progressive massive fibrosis or acute
4 silicoproteinosis, or silicosis complicated by documented
5 tuberculosis.

6 (b) Evidence verifying that a qualified physician, or
7 someone working under the direct supervision and control of a
8 qualified physician, has taken a detailed occupational and
9 exposure history of the exposed person or, if the person is
10 deceased, from a person who is knowledgeable about the
11 exposures that form the basis of the nonmalignant silica
12 claim, including:

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

15 2. Whether each place of employment involved exposures
16 to airborne contaminants, including but not limited to, silica
17 particles or other disease causing dusts, that can cause
18 pulmonary impairment and the nature, duration and level of any
19 such exposure.

20 (c) Evidence verifying that a qualified physician, or
21 someone working under the direct supervision and control of a
22 qualified physician, has taken detailed medical and smoking
23 history, including a thorough review of the exposed person's
24 past and present medical problems and their most probable
25 cause;

26 (d) A determination by a qualified physician that the
27 exposed person has:

28 1. A quality 1 chest x-ray under the ILO System of
29 classification and that the x-ray has been read by a certified
30 B-reader as showing, according to the ILO System of
31 classification, bilateral nodular opacities (p, q, or r)

1 occurring primarily in the upper lung fields, graded 1/1 or
2 higher; or

3 2. Pathological demonstration of classic silicotic
4 nodules exceeding one centimeter in diameter as published in
5 112 Archive of Pathology and Laboratory Medicine 7 (July
6 1988).

7
8 In a death case where no pathology is available, the necessary
9 radiologic findings may be made with a quality 2 film if a
10 quality 1 film is not available.

11 (e) 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 silica 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 silica
17 does not meet the requirements of this subsection.

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

21 (a) Comply with the technical recommendations for
22 examinations, testing procedures, quality assurance, quality
23 control, and equipment of the AMA Guides to the Evaluation of
24 Permanent Impairment, as set forth in 2d C.F.R. Part 404,
25 subpart. P. Appl., part A, section 3.00 E. and F., and the
26 interpretive standards, set forth in the official statement of
27 the American Thoracic Society entitled "lung function testing:
28 selection of reference values and interpretive strategies" as
29 published in American Review of Respiratory Disease. 1991:
30 144:1202-1218;

31

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

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

7 (8) Presentation of prima facie evidence meeting the
8 requirements of subsection (2), (3), (5), or (6) of this
9 section may not:

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

13 (b) Be conclusive as to the liability of any
14 defendant; and

15 (c) Be admissible at trial.

16 Section 5. Claimant proceedings.--

17 (1) A court may consolidate for trial any number and
18 type of asbestos or silica claims with consent of all the
19 parties. In the absence of consent, the court may consolidate
20 for trial only asbestos or silica claims relating to the same
21 exposed person and members of his or her household.

22 (2) A civil action alleging an asbestos or silica
23 claim may be brought in the courts of this state if the
24 plaintiff is domiciled in this state or the exposure to
25 asbestos or silica that is a substantial contributing factor
26 to the physical impairment of the plaintiff on which the claim
27 is based occurred in this state.

28 (3) A plaintiff in a civil action alleging an asbestos
29 or silica claim must include with the complaint or other
30 initial pleading a written report and supporting test results
31 constituting prima facie evidence of the exposed person's

1 asbestos-related or silica-related physical impairment meeting
2 the requirements of subsection (2), subsection (3), subsection
3 (5), or subsection (6) of section 4. For any asbestos or
4 silica claim pending on the effective date of this act, the
5 plaintiff must file the report and supporting test results at
6 least 30 days before setting a date for trial. The defendant
7 must be afforded a reasonable opportunity to challenge the
8 adequacy of the proffered prima facie evidence of
9 asbestos-related impairment. The claim of the plaintiff shall
10 be dismissed without prejudice upon a finding of failure to
11 make the required prima facie showing.

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

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

20 (b) If the claimant alleges exposure to asbestos or
21 silica through the testimony of another person or alleges
22 other than direct or bystander exposure to a product, the
23 name, address, date of birth, social security number, marital
24 status, for each person by which the claimant alleges
25 exposure, hereinafter the "index person," and the claimant's
26 relationship to each such person;

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

28 (d) The beginning and ending dates of each alleged
29 exposure as to each asbestos product or silica product for
30 each location at which exposure allegedly took place for the
31 plaintiff and each index person;

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

3 (f) The specific condition related to asbestos or
4 silica claimed to exist; and

5 (g) Any supporting documentation of the condition
6 claimed to exist.

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

8 (1) Notwithstanding any other law, with respect to any
9 asbestos or silica claim not barred as of the effective date
10 of this act, the limitations period does not begin to run
11 until the exposed person discovers, or through the exercise of
12 reasonable diligence should have discovered, that he or she is
13 physically impaired by an asbestos-related condition.

14 (2) An asbestos or silica claim arising out of a
15 nonmalignant condition shall be a distinct cause of action
16 from an asbestos or silica claim relating to the same exposed
17 person arising out of asbestos-related or silica-related
18 cancer. Damages may not be awarded for fear or risk of cancer
19 in a civil action asserting an asbestos or silica claim.

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

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

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

27 (2) At the time a complaint is filed in a civil action
28 alleging an asbestos or silica claim, the plaintiff must file
29 a verified written report with the court which discloses the
30 total amount of any collateral source payments received,
31 including payments that the plaintiff will receive in the

1 future, as a result of settlements or judgments based upon the
2 same claim. For any asbestos or silica claim pending on the
3 effective date of this act, the plaintiff shall file a
4 verified written report within 60 days after the effective
5 date of this act, or at least 30 days before trial. Further,
6 the plaintiff must update the reports on a regular basis
7 during the course of the proceeding until a final judgment is
8 entered in the case. The court shall permit setoff, based on
9 the collateral source payment information provided, in
10 accordance with the laws of this state as of the effective
11 date of this act.

12 Section 8. Liability rules applicable to protect
13 sellers, renters, and lessors.--

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

17 1.a. The product that allegedly caused the harm that
18 is the subject of the complaint was sold, rented, or leased by
19 the product seller;

20 b. The product seller failed to exercise reasonable
21 care with respect to the product; and

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

24 2.a. The product seller made an express warranty
25 applicable to the product that allegedly caused the harm that
26 is the subject of the complaint, independent of any express
27 warranty made by the manufacturer as to the same product;

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

29 c. The failure of the product to conform to the
30 warranty caused the harm to the exposed person; or
31

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

3 b. The intentional wrongdoing caused the harm that is
4 the subject of the complaint.

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

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

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

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

18 Section 9. Miscellaneous provisions.--

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

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

25 (a) Affect the rights of any party in bankruptcy
26 proceedings; or

27 (b) Affect the ability of any person who is able to
28 make a showing that the person satisfies the claim criteria
29 for compensable claims or demands under a trust established
30 under a plan of reorganization under Chapter 11 of the United
31

1 States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim
2 or demand against that trust.

3 (3) It is the intent of the Legislature that this law
4 render the utmost comity and respect to the constitutional
5 prerogatives of the judiciary of this state, and nothing in
6 this act should be construed as any effort to impinge upon
7 those prerogatives. To that end, if the Florida Supreme Court
8 enters a final judgment concluding or declaring that any
9 provision of this act improperly encroaches on the authority
10 of the court to adopt the rules of practice and procedure in
11 the courts of this state, the Legislature intends that any
12 such provision be construed as a request for a rule change
13 under Section 2, Article V, of the State Constitution and not
14 as a mandatory legislative directive.

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

19 (5) If any provision of this act or the application
20 thereof to any person or circumstance is held invalid, the
21 invalidity does not affect other provisions or application of
22 the act which can be given effect without the invalid
23 provision or application, and to this end the provisions of
24 this act are declared severable.

25 Section 10. This act shall take effect July 1, 2005.
26 Because the act expressly preserves the right of all injured
27 persons to recover full compensatory damages for their loss,
28 it does not impair vested rights. In addition, because it
29 enhances the ability of the most seriously ill to receive a
30 prompt recovery, it is remedial in nature. Therefore, the act
31 shall apply to any civil action asserting an asbestos claim in

1 | which trial has not commenced as of the effective date of this
2 | act.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2562

- 4 The committee substitute differs from the underlying bill in
5 that the committee substitute:
- 6 -- Adds whereas clauses which state that the Legislature
7 finds an "overpowering public necessity" for asbestos and
8 silica litigation reform;
 - 9 -- Removes language that would have incorporated into the
10 Florida Statutes future versions of the American Medical
11 Association's Guides to the Evaluation of Permanent
12 Impairment and the International Labor Office's
13 Guidelines for the Use of ILO International
14 Classification of Radiographs of Pneumoconioses;
 - 15 -- Removes the definition for "exposure years" and related
16 provisions which would have required varying time periods
17 of occupational exposure to asbestos to assert an
18 asbestos claim depending upon the industry in which
19 exposure occurred;
 - 20 -- Replaces the concept of exposure years with provisions
21 which require substantial occupational exposure to
22 asbestos or substantial second-hand exposure to a person
23 who had substantial occupational exposure to asbestos;
 - 24 -- Redefines the term "non-smoker" to include persons who
25 may have had infrequent use of tobacco products within
26 the last 15 years;
 - 27 -- Clarifies that work performed by a qualified physician
28 includes work performed under the supervision and control
29 of a qualified physician;
 - 30 -- Clarifies that physical impairment must be determined by
31 both total lung capacity and forced vital capacity or by
x-ray;
 - Allows less conclusive radiological evidence of
impairment or asbestos exposure if that evidence is
supplemented by high-resolution computed tomography for
non-malignant and lung cancer-based asbestos claims;
 - Requires reports making a prima facie showing of
impairment for pending cases to be filed at least 30 days
before setting a trial date, instead of 60 days after the
effective date of the legislation;
 - Deletes a sentence that would have required courts to
treat as privileged and confidential information
contained in a report showing impairment and collateral
source information;
 - Provides that the legislation does not affect a person's
rights in bankruptcy proceedings; and
 - Provides that the legislation does not affect asbestos

1 actions for non-occupational exposure to asbestos.
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