

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 venue; providing for preliminary  
14          proceedings; requiring asbestos and silica  
15          claims to include certain information;  
16          specifying certain limitation periods for  
17          certain claims; specifying distinct causes of  
18          action for certain conditions; limiting damages  
19          under certain circumstances; prohibiting a  
20          general release from liability; prohibiting  
21          award of punitive damages; providing for  
22          collateral source payments; specifying  
23          liability rules applicable to certain persons;  
24          providing for construction; providing  
25          severability; providing application to certain  
26          civil actions; providing an effective date.

27  
28           WHEREAS, asbestos is a mineral that was widely used  
29   before the mid 1970's for insulation, fireproofing, and other  
30   purposes, and  
31

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 or silica other than a diagnosed  
10 cancer.

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

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

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

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

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

30 (b) Has conducted a physical examination of the  
31 exposed person, or if the person is deceased, has reviewed all

1 available records relating to the exposed person's medical  
2 condition;

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

6 (d) Is currently licensed to practice and actively  
7 practices in this country.

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

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

22 (26) "Silica" means a respirable crystalline form of  
23 silicon dioxide, including, but not limited to, alpha, quartz,  
24 crystalite, and trydmite.

25 (27) "Silica claim" means a claim for damages or other  
26 civil or equitable relief presented in a civil action, arising  
27 out of, based on, or related to the health effects of exposure  
28 to silica, including loss of consortium, wrongful death, and  
29 any other derivative claim made by or on behalf of an exposed  
30 person or a representative, spouse, parent, child, or other  
31 relative of an exposed person. The term does not include

1 claims for benefits under a workers' compensation law or  
2 veterans' benefits program, or claims brought by a person as a  
3 subrogee by virtue of the payment of benefits under a workers'  
4 compensation law.

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

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

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

15 (a) Handled raw asbestos fibers;

16 (b) Fabricated asbestos-containing products so that  
17 the person was exposed to raw asbestos fibers in the  
18 fabrication process;

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

22 (d) Worked in close proximity to other persons engaged  
23 in any of the activities described in paragraphs (a)-(c) in a  
24 manner that exposed the person on a regular basis to asbestos  
25 fibers.

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

30 (32) "Workers' compensation law" means a law  
31 respecting a program administered by this state or the United

1 States to provide benefits, funded by a responsible employer  
2 or its insurance carrier, for occupational diseases or  
3 injuries or for disability or death caused by occupational  
4 diseases or injuries. The term includes the Longshore and  
5 Harbor Workers' Compensation Act, 33 U.S.C. sections 901-944,  
6 948-950, and the Federal Employees Compensation Act, chapter  
7 81 of Title 5, United States Code, but does not include the  
8 Act of April 22, 1908, the Federal Employers Liability Act, 45  
9 U.S.C. 51 et seq.

10 Section 4. Physical impairment.--

11 (1) Physical impairment of the exposed person, to  
12 which asbestos or silica exposure was a substantial  
13 contributing factor, is an essential element of an asbestos or  
14 silica claim.

15 (2) A person may not file or maintain a civil action  
16 alleging a nonmalignant asbestos claim in the absence of a  
17 prima facie showing of physical impairment as a result of a  
18 medical condition to which exposure to asbestos was a  
19 substantial contributing factor. The prima facie showing must  
20 include all of the following requirements:

21 (a) Evidence verifying that a qualified physician, or  
22 someone working under the direct supervision and control of a  
23 qualified physician, has taken a detailed occupational and  
24 exposure history of the exposed person or, if the person is  
25 deceased, from a person who is knowledgeable about the  
26 exposures that form the basis of the nonmalignant asbestos  
27 claim, including:

28 1. Identification of all of the exposed person's  
29 principal places of employment and exposures to airborne  
30 contaminants; and

31

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

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 detailed medical and smoking  
9 history, including a thorough review of the exposed person's  
10 past and present medical problems and their most probable  
11 cause.

12           (c) Evidence sufficient to demonstrate that at least  
13 10 years have elapsed between the date of first exposure to  
14 asbestos and the date the diagnosis is made.

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

21           (e) A diagnosis by a qualified physician of asbestosis  
22 or diffuse pleural thickening, based at a minimum on  
23 radiological or pathological evidence of asbestosis or  
24 radiological evidence of diffuse pleural thickening.

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

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

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

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

7           (g) If the exposed person meets the requirements of  
8 paragraphs (a), (b), and (c), and if a qualified physician  
9 determines that the exposed person has a physical impairment,  
10 as demonstrated by meeting the criteria set forth in  
11 paragraphs (d) and (f)1. or 2., but the exposed person's chest  
12 x-ray does not demonstrate radiological evidence of  
13 asbestosis, the exposed person may meet the criteria of  
14 paragraph (e) if his or her chest x-ray is graded by a  
15 certified B-reader as at least 1/0 and a qualified physician,  
16 relying on high-resolution computed tomography, determines to  
17 a reasonable degree of medical certainty that the exposed  
18 person has asbestosis and forms the conclusion set forth in  
19 paragraph (h).

20           (h) A conclusion by a qualified physician that the  
21 exposed person's medical findings and impairment were not more  
22 probably the result of causes other than the asbestos exposure  
23 revealed by the exposed person's employment and medical  
24 history. A diagnosis that states that the medical findings and  
25 impairment are "consistent with" or "compatible with" exposure  
26 to asbestos does not meet the requirements of this subsection.

27           (i) If a plaintiff files a civil action alleging a  
28 nonmalignant asbestos claim, and that plaintiff alleges that  
29 his or her exposure to asbestos was the result of extended  
30 contact with another exposed person who, if the civil action  
31 had been filed by the other exposed person, would have met the

1 requirements of paragraph (a) and the plaintiff alleges that  
2 he or she had extended contact with the exposed person during  
3 the time period in which that exposed person met the  
4 requirements of paragraph (a), the plaintiff has satisfied the  
5 requirements of paragraph (a). The plaintiff in such a civil  
6 action must individually satisfy the requirements of  
7 paragraphs (b), (c), (d), (e), (f), (g), and (h).

8 (3) A person who is a smoker may not file or maintain  
9 a civil action alleging an asbestos claim which is based upon  
10 cancer of the lung, larynx, pharynx, or esophagus in the  
11 absence of a prima facie showing that includes all of the  
12 following 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 a primary  
16 cancer of the lung, larynx, pharynx, or esophagus, and that  
17 exposure to asbestos was a substantial contributing factor to  
18 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) Radiological or pathological evidence of  
23 asbestosis or diffuse pleural thickening or a qualified  
24 physician's diagnosis of asbestosis based on a chest x-ray  
25 graded by a certified B-reader as at least 1/0 on the ILO  
26 scale and high-resolution computed tomography supporting the  
27 diagnosis of asbestosis to a reasonable degree of medical  
28 certainty.

29 (d) Evidence of the exposed person's substantial  
30 occupational exposure to asbestos. If a plaintiff files a  
31 civil action alleging an asbestos-related claim based on

1 cancer of the lung, larynx, pharynx, or esophagus, and that  
2 plaintiff alleges that his or her exposure to asbestos was the  
3 result of extended contact with another exposed person who, if  
4 the civil action had been filed by the other exposed person,  
5 would have met the substantial occupational exposure  
6 requirement of this subsection, and the plaintiff alleges that  
7 he or she had extended contact with the exposed person during  
8 the time period in which that exposed person met the  
9 substantial occupational exposure requirement of this  
10 subsection, the plaintiff has satisfied the requirements of  
11 this paragraph. The plaintiff in such a civil action must  
12 individually satisfy the requirements of this subsection.

13 (e) If the exposed person is deceased, the qualified  
14 physician, or someone working under the direct supervision and  
15 control of a qualified physician, may obtain the evidence  
16 required in paragraph (b) and paragraph (d) from the person  
17 most knowledgeable about the alleged exposures that form the  
18 basis of the asbestos claim.

19 (f) A conclusion by a qualified physician that the  
20 exposed person's medical findings and impairment were not more  
21 probably the result of causes other than the asbestos exposure  
22 revealed by the exposed person's employment and medical  
23 history. A conclusion that the medical findings and impairment  
24 are "consistent with" or "compatible with" exposure to  
25 asbestos does not meet the requirements of this subsection.

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

30 (5) A person may not file or maintain a civil action  
31 alleging an asbestos claim which is based on cancer of the



1 colon, rectum, or stomach in the absence of a prima facie  
2 showing that includes all of the following requirements:

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

8 (b) Evidence sufficient to demonstrate that at least  
9 10 years have elapsed between the date of first exposure to  
10 asbestos and the date of diagnosis of the cancer.

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

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

1 sub-subparagraph. The plaintiff in such a civil action must  
2 individually satisfy the requirements of this subsection.

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

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

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

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

27 (a) Evidence verifying that a qualified physician, or  
28 someone working under the direct supervision and control of a  
29 qualified physician, has taken a detailed occupational and  
30 exposure history of the exposed person or, if the person is  
31 deceased, from a person who is knowledgeable about the

1 exposures that form the basis of the nonmalignant silica  
2 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  
9 any such exposure.

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

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

23 (d) A determination by a qualified physician that the  
24 exposed person has:

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

31

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

5  
6 In a death case where no pathology is available, the necessary  
7 radiologic findings may be made with a quality 2 film if a  
8 quality 1 film is not available.

9           (e) 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 silica exposure  
12 revealed by the exposed person's employment and medical  
13 history. A conclusion that the medical findings and impairment  
14 are "consistent with" or "compatible with" exposure to silica  
15 does not meet the requirements of this subsection.

16           (8) A person may not file or maintain a civil action  
17 alleging a silica claim other than as provided in subsection  
18 (5), in the absence of a prima facie showing that includes all  
19 of the following requirements:

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

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

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

1       (b) 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 any  
14 such exposure.

15       (c) 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;

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

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

29           2. Pathological demonstration of classic silicotic  
30 nodules exceeding one centimeter in diameter as published in  
31

1 112 Archive of Pathology and Laboratory Medicine 7 (July  
2 1988).

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

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

14 (9) Evidence relating to physical impairment under  
15 this section, including pulmonary function testing and  
16 diffusing studies, must:

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

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

30  
31

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

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

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

10          (b) Be conclusive as to the liability of any  
11 defendant; and

12          (c) Be admissible at trial.

13        Section 5. Claimant proceedings.--

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

20          (2) A plaintiff in a civil action alleging an asbestos  
21 or silica claim must include with the complaint or other  
22 initial pleading a written report and supporting test results  
23 constituting prima facie evidence of the exposed person's  
24 asbestos-related or silica-related physical impairment meeting  
25 the requirements of subsection (2), subsection (3), subsection  
26 (5), or subsection (6) of section 4. For any asbestos or  
27 silica claim pending on the effective date of this act, the  
28 plaintiff must file the report and supporting test results at  
29 least 30 days before setting a date for trial. The defendant  
30 must be afforded a reasonable opportunity to challenge the  
31 adequacy of the proffered prima facie evidence of

1 asbestos-related impairment. The claim of the plaintiff shall  
2 be dismissed without prejudice upon a finding of failure to  
3 make the required prima facie showing.

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

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

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

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

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

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

26 (f) The specific condition related to asbestos or  
27 silica claimed to exist; and

28 (g) Any supporting documentation of the condition  
29 claimed to exist.

30 Section 6. Statute of limitations; two-disease rule.--  
31



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

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

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

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

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

21       (2) At the time a complaint is filed in a civil action  
22 alleging an asbestos or silica claim, the plaintiff must file  
23 a verified written report with the court which discloses the  
24 total amount of any collateral source payments received,  
25 including payments that the plaintiff will receive in the  
26 future, as a result of settlements or judgments based upon the  
27 same claim. For any asbestos or silica claim pending on the  
28 effective date of this act, the plaintiff shall file a  
29 verified written report within 60 days after the effective  
30 date of this act, or at least 30 days before trial. Further,  
31 the plaintiff must update the reports on a regular basis

1 during the course of the proceeding until a final judgment is  
2 entered in the case. The court shall permit setoff, based on  
3 the collateral source payment information provided, in  
4 accordance with the laws of this state as of the effective  
5 date of this act.

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

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

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

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

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

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

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

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

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

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

29 (b) For the purpose of sub-subparagraph 1.b., a  
30 product seller may not be considered to have failed to  
31

1 exercise reasonable care with respect to a product based upon  
2 an alleged failure to inspect the product, if:

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

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

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

12 Section 9. Miscellaneous provisions.--

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

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

19 (a) Affect the rights of any party in bankruptcy  
20 proceedings; or

21 (b) Affect the ability of any person who is able to  
22 make a showing that the person satisfies the claim criteria  
23 for compensable claims or demands under a trust established  
24 under a plan of reorganization under Chapter 11 of the United  
25 States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim  
26 or demand against that trust.

27 (3) It is the intent of the Legislature that this law  
28 render the utmost comity and respect to the constitutional  
29 prerogatives of the judiciary of this state, and nothing in  
30 this act should be construed as any effort to impinge upon  
31 those prerogatives. To that end, if the Florida Supreme Court

1 enters a final judgment concluding or declaring that any  
2 provision of this act improperly encroaches on the authority  
3 of the court to adopt the rules of practice and procedure in  
4 the courts of this state, the Legislature intends that any  
5 such provision be construed as a request for a rule change  
6 under Section 2, Article V, of the State Constitution and not  
7 as a mandatory legislative directive.

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

12 (5) If any provision of this act or the application  
13 thereof to any person or circumstance is held invalid, the  
14 invalidity does not affect other provisions or application of  
15 the act which can be given effect without the invalid  
16 provision or application, and to this end the provisions of  
17 this act are declared severable.

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