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1                   A bill to be entitled  
2           An act relating to the Asbestos and Silica Compensation  
3           Fairness Act; amending s. 774.202, F.S.; revising purpose  
4           of the act; amending s. 774.203, F.S.; revising  
5           definitions; amending s. 774.204, F.S.; revising essential  
6           elements of an asbestos or silica claim; revising persons  
7           who may file or maintain certain civil actions alleging a  
8           nonmalignant asbestos claim; revising and providing  
9           evidence requirements; deleting a provision prohibiting  
10          smokers from filing or maintaining certain asbestos  
11          claims; deleting a provision prohibiting certain persons  
12          from filing or maintaining a civil action alleging an  
13          asbestos claim based on cancer of the colon, rectum, or  
14          stomach; amending s. 774.205, F.S.; deleting a provision  
15          requiring claimants to be domiciled in this state or claim  
16          to have been exposed to asbestos or silica in this state;  
17          revising information to be included in claims; amending s.  
18          774.206, F.S.; deleting a provision prohibiting damages  
19          from being awarded for fear or risk of cancer in certain  
20          civil actions; amending s. 774.207, F.S.; revising  
21          prohibition on punitive damages; amending s. 774.208,  
22          F.S.; deleting criteria a plaintiff must establish in  
23          order to establish a product seller's liability; providing  
24          an effective date.

25  
26           WHEREAS, the crush of asbestos litigation has been costly  
27           to employers, employees, litigants, and the court system, and

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28 WHEREAS, in 1982, the Johns-Manville Corporation, the  
29 nation's largest single supplier of insulation products  
30 containing asbestos, declared bankruptcy due to the burden of  
31 the asbestos litigation, and

32 WHEREAS, since 1982, more than 70 other companies have  
33 reorganized due to the burden of asbestos litigation, and

34 WHEREAS, silica is a naturally occurring mineral, and

35 WHEREAS, the Earth's crust is over 90 percent silica, and  
36 crystalline silica dust is the primary component of sand,  
37 quartz, and granite, and

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

40 WHEREAS, silicosis was recognized as an occupational  
41 disease many years ago, and

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

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

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

53 WHEREAS, the Legislature finds that an overpowering public  
54 necessity requires it to act to prevent a silica-based  
55 litigation crisis, and

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

61 WHEREAS, consolidations, joinders, and similar procedures  
 62 to which some courts have resorted in order to deal with the  
 63 mass of asbestos and silica cases can undermine the appropriate  
 64 functioning of the judicial process and further encourage the  
 65 filing of thousands of cases by exposed individuals who are not  
 66 sick and who may never become sick, and

67 WHEREAS, the Legislature finds that there is an  
 68 overpowering public necessity to defer the claims of exposed  
 69 individuals who are not sick in order to preserve, now and for  
 70 the future, defendants' ability to compensate people who develop  
 71 cancer and other serious asbestos-related and silica-related  
 72 injuries and to safeguard the jobs, benefits, and savings of  
 73 workers in this state and the well-being of the economy of this  
 74 state, NOW THEREFORE,

75  
 76 Be It Enacted by the Legislature of the State of Florida:

77  
 78 Section 1. Section 774.202, Florida Statutes, is amended  
 79 to read:

80 774.202 Purpose.--It is the purpose of this act to:

- 81 (1) Ensure that persons who have demonstrable injuries as  
 82 a result of exposure to asbestos and silica are given their  
 83 constitutional right to access the court system ~~Give priority to~~

84 ~~true victims of asbestos and silica, claimants who can~~  
 85 ~~demonstrate actual physical impairment caused by exposure to~~  
 86 ~~asbestos or silica; and~~

87 (2) Ensure that the burden of medical monitoring and  
 88 health care are not shifted from the asbestos and silica  
 89 companies to Florida patients, health insurance companies,  
 90 employers, and the State Treasury. Fully preserve the rights of  
 91 ~~claimants who were exposed to asbestos or silica to pursue~~  
 92 ~~compensation if they become impaired in the future as a result~~  
 93 ~~of the exposure;~~

94 ~~(3) Enhance the ability of the judicial system to~~  
 95 ~~supervise and control asbestos and silica litigation; and~~

96 ~~(4) Conserve the scarce resources of the defendants to~~  
 97 ~~allow compensation to cancer victims and others who are~~  
 98 ~~physically impaired by exposure to asbestos or silica while~~  
 99 ~~securing the right to similar compensation for those who may~~  
 100 ~~suffer physical impairment in the future.~~

101 Section 2. Subsections (4), (18), (22), (23), (24), and  
 102 (25) of section 774.203, Florida Statutes, are amended to read:

103 774.203 Definitions.--As used in this act, the term:

104 (4) "Asbestosis" means ~~bilateral diffuse~~ pneumonitis and fibrosis caused by inhalation of the lungs  
 105 ~~caused by inhalation of asbestos fibers.~~

107 (18) "Mesothelioma" means a malignant tumor with a primary  
 108 site in the pleura, ~~or~~ the peritoneum, or the pericardium or  
 109 tunica vaginalis testis, which has been diagnosed by a board-  
 110 certified pathologist, using standardized and accepted criteria  
 111 of microscopic morphology or appropriate staining techniques.

112 (22) "Predicted lower limit of normal" for any test means  
 113 below the reference values set by the American Thoracic Society  
 114 ~~the fifth percentile of healthy populations based on age,~~  
 115 ~~height, and gender, as referenced in the AMA Guides to the~~  
 116 ~~Evaluation of Permanent Impairment.~~

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

118 (a) Is a board-certified pathologist licensed to practice  
 119 and actively practices in this country who ~~performed services~~  
 120 ~~requested or authorized by a physician who:~~

121 1. Has conducted an evaluation of pathology materials  
 122 obtained from surgical or postmortem specimens ~~a physical~~  
 123 ~~examination~~ of the exposed person or, if the person is deceased,  
 124 has reviewed all available records relating to the exposed  
 125 person's medical condition;

126 ~~2. Is actually treating or has treated the exposed person,~~  
 127 ~~and has or had a doctor-patient relationship with the person;~~  
 128 ~~and~~

129 ~~2.3.~~ Is licensed to practice and actively practices in  
 130 this country; or

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

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

136 ~~2. Is actually treating or has treated the exposed person,~~  
 137 ~~and has or had a doctor-patient relationship with the person;~~  
 138 ~~and~~

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139        ~~2.3.~~ Is licensed to practice and actively practices in  
140 this country.

141        (24) "Radiological evidence of asbestosis" means a finding  
142 on a ~~quality 1~~ chest X ray under the ILO System of  
143 classification ~~(in a death case where no pathology is available,~~  
144 ~~the necessary radiologic findings may be made with a quality 2~~  
145 ~~film if a quality 1 film is not available)~~ showing small,  
146 irregular opacities (s, t, u) graded by a certified B-reader of  
147 1/0 or higher ~~as at least 1/1~~ on the ILO scale or such other  
148 competent evidence of asbestosis on computed tomography by a  
149 licensed physician.

150        (25) "Radiological evidence of ~~diffuse pleural~~ disease  
151 thickening" means a finding on a ~~quality 1~~ chest X ray or  
152 computer tomography showing pleural plaques or pleural  
153 thickening by a licensed physician ~~under the ILO System of~~  
154 ~~classification (in a death case where no pathology is available,~~  
155 ~~the necessary radiologic findings may be made with a quality 2~~  
156 ~~film if a quality 1 film is not available)~~ showing bilateral  
157 pleural thickening ~~of at least B2 on the ILO scale and blunting~~  
158 ~~of at least one costophrenic angle.~~

159        Section 3. Section 774.204, Florida Statutes, is amended  
160 to read:

161        774.204 Physical impairment.--

162        (1) Physical impairment or death of the exposed person, to  
163 which asbestos or silica exposure was a substantial contributing  
164 factor, is an essential element of an asbestos or silica claim.

165        (2) A person may not file or maintain a civil action  
166 alleging a nonmalignant asbestos claim in the absence of a prima

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167 | facie showing of physical impairment or death as a result of a  
168 | medical condition to which exposure to asbestos was a  
169 | substantial contributing factor. The prima facie showing must  
170 | include all of the following requirements:

171 |       (a) Evidence verifying that a qualified physician, or  
172 | someone working under the direct supervision and control of a  
173 | qualified physician, has taken a detailed occupational and  
174 | exposure history of the exposed person or, if the person is  
175 | deceased, from a person who is knowledgeable about the exposures  
176 | that form the basis of the nonmalignant asbestos claim,  
177 | including:

178 |           1. Identification of all of the exposed person's pertinent  
179 | principal places of employment and exposures to airborne  
180 | contaminants; and

181 |           2. Whether each place of employment involved exposures to  
182 | airborne contaminants, including but not limited to asbestos  
183 | fibers or other disease-causing dusts, that can cause pulmonary  
184 | impairment and the nature, duration, and level of any such  
185 | exposure, if known.

186 |       (b) Evidence verifying that a qualified physician, or  
187 | someone working under the direct supervision and control of a  
188 | qualified physician, has taken a detailed medical and smoking  
189 | history, including a thorough review of the exposed person's  
190 | past and present medical problems and their most probable cause.

191 |       (c) Evidence sufficient to demonstrate that at least 10  
192 | years have elapsed between the date of first exposure to  
193 | asbestos and the date the diagnosis is made.

194           (d) In the case of a living person, a determination by a  
 195 qualified physician that the exposed person is impaired as  
 196 defined by Official Statements of the American Thoracic Society,  
 197 ~~on the basis of a medical examination and pulmonary function~~  
 198 ~~testing, that the exposed person has a permanent respiratory~~  
 199 ~~impairment rating of at least Class 2 as defined by and~~  
 200 ~~evaluated pursuant to the AMA Guides to the Evaluation of~~  
 201 ~~Permanent Impairment.~~

202           (e) A diagnosis by a qualified physician of asbestosis or  
 203 asbestos-related diffuse pleural disease thickening, based at a  
 204 minimum on radiological or pathological evidence of asbestosis  
 205 or radiological evidence of asbestos-related diffuse pleural  
 206 disease thickening.

207           (f) In the case of a living person, a determination by a  
 208 qualified physician that asbestosis or asbestos-related diffuse  
 209 pleural disease thickening, rather than chronic obstructive  
 210 ~~pulmonary disease,~~ is a substantial contributing factor to the  
 211 exposed person's physical impairment, as defined by Official  
 212 Statements of the American Thoracic Society. ~~based at a minimum~~  
 213 ~~on a determination that the exposed person has:~~

- 214           1. ~~Total lung capacity, by plethysmography or timed gas~~  
 215 ~~dilution, below the predicted lower limit of normal;~~
- 216           2. ~~Forced vital capacity below the lower limit of normal~~  
 217 ~~and a ratio of FEV1 to FVC that is equal to or greater than the~~  
 218 ~~predicted lower limit of normal; or~~
- 219           3. ~~A chest X ray showing small, irregular opacities (s, t,~~  
 220 ~~u) graded by a certified B-reader as at least 2/1 on the ILO~~  
 221 ~~scale.~~

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222 ~~(g) If the exposed person meets the requirements of~~  
223 ~~paragraphs (a), (b), and (c), and if a qualified physician~~  
224 ~~determines that the exposed person has a physical impairment, as~~  
225 ~~demonstrated by meeting the criteria set forth in paragraph (d)~~  
226 ~~and subparagraph (f)1. or subparagraph (f)2., but the exposed~~  
227 ~~person's chest X ray does not demonstrate radiological evidence~~  
228 ~~of asbestosis, the exposed person may meet the criteria of~~  
229 ~~paragraph (c) if his or her chest X ray is graded by a certified~~  
230 ~~B-reader as at least 1/0 and a qualified physician, relying on~~  
231 ~~high-resolution computed tomography, determines to a reasonable~~  
232 ~~degree of medical certainty that the exposed person has~~  
233 ~~asbestosis and forms the conclusion set forth in paragraph (h).~~

234 ~~(g)-(h)~~ A conclusion by a qualified physician that the  
235 exposed person's exposure to asbestos was a substantial  
236 contributing cause of the exposed person's medical findings, and  
237 impairment, or death were not more probably the result of causes  
238 other than the asbestos exposure revealed by the exposed  
239 person's employment and medical history. A diagnosis that states  
240 that the medical findings and impairment are "consistent with"  
241 or "compatible with" exposure to asbestos does not meet the  
242 requirements of this subsection.

243 ~~(h)-(i)~~ If a plaintiff files a civil action alleging a  
244 nonmalignant asbestos claim, and that plaintiff alleges that his  
245 or her exposure to asbestos was the result of extended contact  
246 with another exposed person who, if the civil action had been  
247 filed by the other exposed person, would have met the  
248 requirements of paragraph (a), and the plaintiff alleges that he  
249 or she had extended contact with the exposed person during the

250 time period in which that exposed person met the requirements of  
 251 paragraph (a), the plaintiff has satisfied the requirements of  
 252 paragraph (a). The plaintiff in such a civil action must  
 253 individually satisfy the requirements of paragraphs (b), (c),  
 254 (d), (e), (f), and (g), ~~and (h)~~.

255 ~~(3) A person who is a smoker may not file or maintain a~~  
 256 ~~civil action alleging an asbestos claim which is based upon~~  
 257 ~~cancer of the lung, larynx, pharynx, or esophagus in the absence~~  
 258 ~~of a prima facie showing that includes all of the following~~  
 259 ~~requirements:~~

260 ~~(a) A diagnosis by a qualified physician who is board~~  
 261 ~~certified in pathology, pulmonary medicine, or oncology, as~~  
 262 ~~appropriate for the type of cancer claimed, of a primary cancer~~  
 263 ~~of the lung, larynx, pharynx, or esophagus, and that exposure to~~  
 264 ~~asbestos was a substantial contributing factor to the condition.~~

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

268 ~~(c) Radiological or pathological evidence of asbestosis or~~  
 269 ~~diffuse pleural thickening or a qualified physician's diagnosis~~  
 270 ~~of asbestosis based on a chest X ray graded by a certified B-~~  
 271 ~~reader as at least 1/0 on the ILO scale and high-resolution~~  
 272 ~~computed tomography supporting the diagnosis of asbestosis to a~~  
 273 ~~reasonable degree of medical certainty.~~

274 ~~(d) Evidence of the exposed person's substantial~~  
 275 ~~occupational exposure to asbestos. If a plaintiff files a civil~~  
 276 ~~action alleging an asbestos-related claim based on cancer of the~~  
 277 ~~lung, larynx, pharynx, or esophagus, and that plaintiff alleges~~

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278 ~~that his or her exposure to asbestos was the result of extended~~  
279 ~~contact with another exposed person who, if the civil action had~~  
280 ~~been filed by the other exposed person, would have met the~~  
281 ~~substantial occupational exposure requirement of this~~  
282 ~~subsection, and the plaintiff alleges that he or she had~~  
283 ~~extended contact with the exposed person during the time period~~  
284 ~~in which that exposed person met the substantial occupational~~  
285 ~~exposure requirement of this subsection, the plaintiff has~~  
286 ~~satisfied the requirements of this paragraph. The plaintiff in~~  
287 ~~such a civil action must individually satisfy the requirements~~  
288 ~~of this subsection.~~

289 ~~(e) If the exposed person is deceased, the qualified~~  
290 ~~physician, or someone working under the direct supervision and~~  
291 ~~control of a qualified physician, may obtain the evidence~~  
292 ~~required in paragraphs (b) and (d) from the person most~~  
293 ~~knowledgeable about the alleged exposures that form the basis of~~  
294 ~~the asbestos claim.~~

295 ~~(f) A conclusion by a qualified physician that the exposed~~  
296 ~~person's medical findings and impairment were not more probably~~  
297 ~~the result of causes other than the asbestos exposure revealed~~  
298 ~~by the exposed person's employment and medical history. A~~  
299 ~~conclusion that the medical findings and impairment are~~  
300 ~~"consistent with" or "compatible with" exposure to asbestos does~~  
301 ~~not meet the requirements of this subsection.~~

302 ~~(3)(4)~~ In a civil action alleging an asbestos claim by a  
303 nonsmoker based on cancer of the lung, larynx, colon, rectum,  
304 stomach, pharynx, or esophagus, a prima facie showing of an  
305 impairment due to asbestos exposure is not required.

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

310 ~~(a) A diagnosis by a qualified physician who is board~~  
311 ~~certified in pathology, pulmonary medicine, or oncology, as~~  
312 ~~appropriate for the type of cancer claimed, of cancer of the~~  
313 ~~colon, rectum, or stomach, and that exposure to asbestos was a~~  
314 ~~substantial contributing factor to the condition.~~

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

318 ~~(c)1.a. Radiological or pathological evidence of~~  
319 ~~asbestosis or diffuse pleural thickening or a qualified~~  
320 ~~physician's diagnosis of asbestosis based on a chest X ray~~  
321 ~~graded by a certified B-reader as at least 1/0 on the ILO scale~~  
322 ~~and high-resolution computed tomography supporting the diagnosis~~  
323 ~~of asbestosis to a reasonable degree of medical certainty; or~~

324 ~~b. Evidence of the exposed person's substantial~~  
325 ~~occupational exposure to asbestos. If a plaintiff files a civil~~  
326 ~~action alleging an asbestos-related claim based on cancer of the~~  
327 ~~colon, rectum, or stomach, and that plaintiff alleges that his~~  
328 ~~or her exposure to asbestos was the result of extended contact~~  
329 ~~with another exposed person who, if the civil action had been~~  
330 ~~filed by the other exposed person, would have met the~~  
331 ~~substantial occupational exposure requirement of this~~  
332 ~~subsection, and the plaintiff alleges that he or she had~~  
333 ~~extended contact with the exposed person during the time period~~

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334 ~~in which that exposed person met the substantial occupational~~  
335 ~~exposure requirement of this subsection, the plaintiff has~~  
336 ~~satisfied the requirements of this sub-subparagraph. The~~  
337 ~~plaintiff in such a civil action must individually satisfy the~~  
338 ~~requirements of this subsection.~~

339 ~~2. In the case of an exposed person who is a smoker, the~~  
340 ~~criteria in sub-subparagraph 1.a. and b. must be met.~~

341 ~~3. If the exposed person is deceased, the qualified~~  
342 ~~physician, or someone working under the direct supervision and~~  
343 ~~control of a qualified physician, may obtain the evidence~~  
344 ~~required in sub-subparagraph 1.b. and paragraph (b) from the~~  
345 ~~person most knowledgeable about the alleged exposures that form~~  
346 ~~the basis of the asbestos claim.~~

347 ~~(d) A conclusion by a qualified physician that the exposed~~  
348 ~~person's medical findings and impairment were not more probably~~  
349 ~~the result of causes other than the asbestos exposure revealed~~  
350 ~~by the exposed person's employment and medical history. A~~  
351 ~~conclusion that the medical findings and impairment are~~  
352 ~~"consistent with" or "compatible with" exposure to asbestos does~~  
353 ~~not meet the requirements of this subsection.~~

354 ~~(4)-(6)~~ (4) In a civil action alleging an asbestos claim based  
355 upon mesothelioma a prima facie showing of an impairment due to  
356 asbestos exposure is not required.

357 ~~(5)-(7)~~ (5) A person may not file or maintain a civil action  
358 alleging a silicosis claim in the absence of a prima facie  
359 showing of physical impairment as a result of a medical  
360 condition to which exposure to silica was a substantial

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361 contributing factor. The prima facie showing must include all of  
362 the following requirements:

363 (a) Evidence verifying that a qualified physician, or  
364 someone working under the direct supervision and control of a  
365 qualified physician, has taken a detailed occupational and  
366 exposure history of the exposed person or, if the person is  
367 deceased, from a person who is knowledgeable about the exposures  
368 that form the basis of the nonmalignant silica claim, including:

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

371 2. Whether each place of employment involved exposures to  
372 airborne contaminants, including, but not limited to, silica  
373 particles or other disease-causing dusts, that can cause  
374 pulmonary impairment and the nature, duration, and level of any  
375 such exposure.

376 (b) Evidence verifying that a qualified physician, or  
377 someone working under the direct supervision and control of a  
378 qualified physician, has taken detailed medical and smoking  
379 history, including a thorough review of the exposed person's  
380 past and present medical problems and their most probable cause,  
381 and verifying a sufficient latency period for the applicable  
382 stage of silicosis.

383 (c) A determination by a qualified physician, on the basis  
384 of a medical examination and pulmonary function testing, that  
385 the exposed person has a permanent respiratory impairment rating  
386 of at least Class 2 as defined by and evaluated pursuant to the  
387 AMA Guides to the Evaluation of Permanent Impairment.

388 (d) A determination by a qualified physician that the  
 389 exposed person has:

390 1. A quality 1 chest X ray under the ILO System of  
 391 classification and that the X ray has been read by a certified  
 392 B-reader as showing, according to the ILO System of  
 393 classification, bilateral nodular opacities (p, q, or r)  
 394 occurring primarily in the upper lung fields, graded 1/1 or  
 395 higher; or

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

399  
 400 In a death case where no pathology is available, the necessary  
 401 radiologic findings may be made with a quality 2 film if a  
 402 quality 1 film is not available.

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

410 ~~(6)-(8)~~ A person may not file or maintain a civil action  
 411 alleging a silica claim other than as provided in subsection (5)  
 412 ~~(7)~~, in the absence of a prima facie showing that includes all  
 413 of the following requirements:

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

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415 1. Board certified in pulmonary medicine, internal  
416 medicine, oncology, or pathology stating a diagnosis of the  
417 exposed person of silica-related lung cancer and stating that,  
418 to a reasonable degree of medical probability, exposure to  
419 silica was a substantial contributing factor to the diagnosed  
420 lung cancer; or

421 2. Board certified in pulmonary medicine, internal  
422 medicine, or pathology stating a diagnosis of the exposed person  
423 of silica-related progressive massive fibrosis or acute  
424 silicoproteinosis, or silicosis complicated by documented  
425 tuberculosis.

426 (b) Evidence verifying that a qualified physician, or  
427 someone working under the direct supervision and control of a  
428 qualified physician, has taken a detailed occupational and  
429 exposure history of the exposed person or, if the person is  
430 deceased, from a person who is knowledgeable about the exposures  
431 that form the basis of the nonmalignant silica claim, including:

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

434 2. Whether each place of employment involved exposures to  
435 airborne contaminants, including, but not limited to, silica  
436 particles or other disease-causing dusts, that can cause  
437 pulmonary impairment and the nature, duration, and level of any  
438 such exposure.

439 (c) Evidence verifying that a qualified physician, or  
440 someone working under the direct supervision and control of a  
441 qualified physician, has taken a detailed medical and smoking

442 history, including a thorough review of the exposed person's  
 443 past and present medical problems and their most probable cause;

444 (d) A determination by a qualified physician that the  
 445 exposed person has:

446 1. A quality 1 chest X ray under the ILO System of  
 447 classification and that the X ray has been read by a certified  
 448 B-reader as showing, according to the ILO System of  
 449 classification, bilateral nodular opacities (p, q, or r)  
 450 occurring primarily in the upper lung fields, graded 1/1 or  
 451 higher; or

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

455  
 456 In a death case where no pathology is available, the necessary  
 457 radiologic findings may be made with a quality 2 film if a  
 458 quality 1 film is not available.

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

466 (7)~~(9)~~ Evidence relating to physical impairment under this  
 467 section, including pulmonary function testing and diffusing  
 468 studies, must:

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469           (a) Comply with the Official Statements of the American  
470 Thoracic Society ~~technical recommendations for examinations,~~  
471 ~~testing procedures, quality assurance, quality control, and~~  
472 ~~equipment of the AMA Guides to the Evaluation of Permanent~~  
473 ~~Impairment, as set forth in 20 C.F.R. part 404, Subpart P. App.~~  
474 ~~1. Part A, s. 3.00 E. and F., and the interpretive standards,~~  
475 ~~set forth in the official statement of the American Thoracic~~  
476 ~~Society entitled "lung function testing: selection of reference~~  
477 ~~values and interpretive strategies" as published in American~~  
478 ~~Review of Respiratory Disease. 1991: 144:1202-1218;~~

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

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

485           ~~(8)-(10)~~ (8) Presentation of prima facie evidence meeting the  
486 requirements of subsection (2), ~~subsection (3), subsection (5),~~  
487 or subsection (4) ~~(6)~~ of this section may not:

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

491           (b) Be conclusive as to the liability of any defendant;  
492 and

493           (c) Be admissible at trial.

494           Section 4. Section 774.205, Florida Statutes, is amended  
495 to read:

496           774.205 Claimant proceedings.--

497           ~~(1) A civil action alleging an asbestos or silica claim~~  
 498 ~~may be brought in the courts of this state if the plaintiff is~~  
 499 ~~domiciled in this state or the exposure to asbestos or silica~~  
 500 ~~that is a substantial contributing factor to the physical~~  
 501 ~~impairment of the plaintiff on which the claim is based occurred~~  
 502 ~~in this state.~~

503           (1)~~(2)~~ A plaintiff in a civil action alleging an asbestos  
 504 or silica claim must include with the complaint or other initial  
 505 pleading a written report and supporting test results  
 506 constituting prima facie evidence of the exposed person's  
 507 asbestos-related or silica-related physical impairment meeting  
 508 the requirements of s. 774.204(2), ~~(3), (5),~~ or (4)~~(6)~~. For any  
 509 asbestos or silica claim pending on the effective date of this  
 510 act, the plaintiff must file the report and supporting test  
 511 results at least 30 days before setting a date for trial. The  
 512 defendant must be afforded a reasonable opportunity to challenge  
 513 the adequacy of the proffered prima facie evidence of asbestos-  
 514 related impairment. The claim of the plaintiff shall be  
 515 dismissed without prejudice upon a finding of failure to make  
 516 the required prima facie showing.

517           (2)~~(3)~~ All asbestos claims and silica claims filed in this  
 518 state on or after the effective date of this act must include,  
 519 in addition to the written report described in subsection (1)  
 520 ~~(2)~~ and the information required by s. 774.207(2), a sworn  
 521 information form containing the following information:

522           (a) The claimant's name, address, date of birth, and  
 523 marital status;

524 ~~(b) If the claimant alleges exposure to asbestos or silica~~  
 525 ~~through the testimony of another person or alleges other than~~  
 526 ~~direct or bystander exposure to a product, the name, address,~~  
 527 ~~date of birth, and marital status for each person by which the~~  
 528 ~~claimant alleges exposure, hereinafter the "index person," and~~  
 529 ~~the claimant's relationship to each such person;~~

530 ~~(c) The specific location of each alleged exposure;~~

531 ~~(d) The beginning and ending dates of each alleged~~  
 532 ~~exposure as to each asbestos product or silica product for each~~  
 533 ~~location at which exposure allegedly took place for the~~  
 534 ~~plaintiff and each index person;~~

535 ~~(e) The occupation and name of the employer of the exposed~~  
 536 ~~person at the time of each alleged exposure;~~

537 (b) ~~(f)~~ The specific condition related to asbestos or  
 538 silica claimed to exist; and

539 (c) ~~(g)~~ Any supporting documentation of the condition  
 540 claimed to exist.

541 Section 5. Subsection (2) of section 774.206, Florida  
 542 Statutes, is amended to read:

543 774.206 Statute of limitations; two-disease rule.--

544 (2) An asbestos or silica claim arising out of a  
 545 nonmalignant condition shall be a distinct cause of action from  
 546 an asbestos or silica claim relating to the same exposed person  
 547 arising out of asbestos-related or silica-related cancer.  
 548 ~~Damages may not be awarded for fear or risk of cancer in a civil~~  
 549 ~~action asserting an asbestos or silica claim.~~

550 Section 6. Subsection (1) of section 774.207, Florida  
 551 Statutes, is amended to read:

552 774.207 Scope of liability; damages.--

553 (1) Punitive damages may not be awarded in any civil  
 554 action alleging an asbestos or silica claim in accordance with  
 555 the laws of the state.

556 Section 7. Section 774.208, Florida Statutes, is amended  
 557 to read:

558 774.208 Liability rules applicable to ~~protect sellers,~~  
 559 ~~renters,~~ and lessors.--

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

563 ~~1.a. The product that allegedly caused the harm that is~~  
 564 ~~the subject of the complaint was sold, rented, or leased by the~~  
 565 ~~product seller;~~

566 ~~b. The product seller failed to exercise reasonable care~~  
 567 ~~with respect to the product; and~~

568 ~~e. The failure to exercise reasonable care was a proximate~~  
 569 ~~cause of the harm to the exposed person;~~

570 ~~2.a. The product seller made an express warranty~~  
 571 ~~applicable to the product that allegedly caused the harm that is~~  
 572 ~~the subject of the complaint, independent of any express~~  
 573 ~~warranty made by the manufacturer as to the same product;~~

574 ~~b. The product failed to conform to the warranty; and~~

575 ~~e. The failure of the product to conform to the warranty~~  
 576 ~~caused the harm to the exposed person; or~~

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

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579 ~~b. The intentional wrongdoing caused the harm that is the~~  
580 ~~subject of the complaint.~~

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

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

587 ~~2. The inspection, in the exercise of reasonable care,~~  
588 ~~would not have revealed the aspect of the product which~~  
589 ~~allegedly caused the exposed person's impairment.~~

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

594 Section 8. This act shall take effect July 1, 2009.