

By Senator Villalobos

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1 A bill to be entitled
2 An act relating to asbestos and silica claims;
3 amending s. 774.202, F.S.; revising the purpose of the
4 Asbestos and Silica Compensation Fairness Act;
5 amending s. 774.203, F.S.; revising definitions;
6 amending s. 774.204, F.S.; providing that physical
7 impairment or death is an essential element of an
8 asbestos or silica claim; revising the requirements of
9 a prima facie showing of physical impairment or death
10 as a result of a medical condition to which exposure
11 to asbestos was a contributing factor; deleting the
12 requirements for a prima facie showing of physical
13 impairment or death as a result of certain cancers by
14 a smoker; providing that a prima facie showing is not
15 required in a civil action alleging an asbestos claim
16 based on certain cancers, including cancer of the
17 colon, rectum, and stomach; deleting a provision that
18 prohibits a person from filing a civil action alleging
19 an asbestos claim that is based on cancer of the
20 colon, rectum, or stomach in the absence of a prima
21 facie showing; revising requirements for certain
22 evidence relating to physical impairment; amending s.
23 774.205, F.S.; revising requirements for bringing a
24 civil action alleging an asbestos or silica claim in
25 the courts of this state; amending s. 774.206, F.S.;
26 deleting the provision that prohibits damages from
27 being awarded for fear or risk of cancer in a civil
28 action asserting an asbestos or silica claim; amending
29 s. 774.207, F.S.; authorizing punitive damages to be

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30 awarded only in accordance with state law; amending s.
31 774.208, F.S.; deleting liability rules with regard to
32 product sellers; providing for applicability;
33 providing an effective date.
34

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

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

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

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

48 WHEREAS, although the use of asbestos has dramatically
49 declined since the 1970's and workplace exposures have been
50 regulated since 1971 by the Occupational Safety and Health
51 Administration, past exposures will continue to result in
52 significant claims of death and disability as a result of such
53 exposure, and

54 WHEREAS, exposure to asbestos has created a flood of
55 litigation in state and federal courts that the United States
56 Supreme Court in *Ortiz v. Fibreboard Corporation*, 119 S.Ct.
57 2295, 2302 (1999), has characterized as an "elephantine mass" of
58 cases that "defies customary judicial administration," and

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59 WHEREAS, asbestos personal injury litigation can be unfair
60 and inefficient, imposing a severe burden on litigants and
61 taxpayers alike, and

62 WHEREAS, the inefficiencies and societal costs of asbestos
63 litigation have been well documented in reports such as the RAND
64 Institutes study on Asbestos Litigation Costs and Compensation,
65 the study of Joseph E. Stiglitz on The Impact of Asbestos
66 Liabilities on Workers in Bankrupt Firms, Dr. Joseph Gitlin's
67 report from Johns Hopkins Medical School on Comparison of B
68 Readers' Interpretations of Chest Radiographs for Asbestos
69 Related Changes, and the Report to the House of Delegates from
70 the American Bar Association Commission on Asbestos Litigation,
71 and

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

76 WHEREAS, the cost of compensating exposed individuals who
77 are not sick jeopardizes the ability of defendants to compensate
78 people who develop cancer and other serious asbestos-related
79 diseases, now and in the future, and

80 WHEREAS, the cost of compensating exposed individuals who
81 are not sick threatens the savings, retirement benefits, and
82 jobs of defendants' current and retired employees and adversely
83 affects the communities in which these defendants operate, and

84 WHEREAS, the crush of asbestos litigation has been costly
85 to employers, employees, litigants, and the court system, and

86 WHEREAS, in 1982, the Johns-Manville Corporation, the
87 nation's largest single supplier of insulation products

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88 containing asbestos, declared bankruptcy due to the burden of
89 the asbestos litigation, and

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

92 WHEREAS, silica is a naturally occurring mineral, and

93 WHEREAS, the Earth's crust is more than 90 percent silica,
94 and crystalline silica dust is the primary component of sand,
95 quartz, and granite, and

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

98 WHEREAS, silicosis was recognized as an occupational
99 disease many years ago, and

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

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

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

111 WHEREAS, the Legislature finds that an overpowering public
112 necessity requires it to act to prevent a silica-based
113 litigation crisis, and

114 WHEREAS, concerns about statutes of limitations may prompt
115 claimants who have been exposed to asbestos or silica but who do
116 not have any current injury to bring premature lawsuits in order

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117 to protect against losing their rights to future compensation
 118 should they become impaired, and

119 WHEREAS, consolidations, joinders, and similar procedures
 120 to which some courts have resorted in order to deal with the
 121 mass of asbestos and silica cases can undermine the appropriate
 122 functioning of the judicial process and further encourage the
 123 filing of thousands of cases by exposed individuals who are not
 124 sick and who may never become sick, and

125 WHEREAS, the Legislature finds that there is an
 126 overpowering public necessity to defer the claims of exposed
 127 individuals who are not sick in order to preserve, now and for
 128 the future, defendants' ability to compensate people who develop
 129 cancer and other serious asbestos-related and silica-related
 130 injuries and to safeguard the jobs, benefits, and savings of
 131 workers in this state and the well-being of the economy of this
 132 state, NOW, THEREFORE,

133

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

135

136 Section 1. Section 774.202, Florida Statutes, is amended to
 137 read:

138 774.202 Purpose.—It is the purpose of this act to:

139 (1) Ensure that persons who have demonstrable injuries as a
 140 result of exposure to asbestos and silica are given their
 141 constitutional right to access the court system; and Give
 142 ~~priority to true victims of asbestos and silica, claimants who~~
 143 ~~can demonstrate actual physical impairment caused by exposure to~~
 144 ~~asbestos or silica;~~

145 (2) Ensure that the burdens of medical monitoring and

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146 health care are not shifted from the asbestos and silica
147 companies to patients in this state, health insurance companies,
148 employers, and the Department of Financial Services. Fully
149 ~~preserve the rights of claimants who were exposed to asbestos or~~
150 ~~silica to pursue compensation if they become impaired in the~~
151 ~~future as a result of the exposure;~~

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

154 ~~(4) Conserve the scarce resources of the defendants to~~
155 ~~allow compensation to cancer victims and others who are~~
156 ~~physically impaired by exposure to asbestos or silica while~~
157 ~~securing the right to similar compensation for those who may~~
158 ~~suffer physical impairment in the future.~~

159 Section 2. Subsections (4), (18), (22), (23), (24), (25),
160 and (29) of section 774.203, Florida Statutes, are amended to
161 read:

162 774.203 Definitions.—As used in this act, the term:

163 (4) "Asbestosis" means interstitial pneumonitis and
164 fibrosis caused by inhalation of asbestos fibers as defined in
165 an article entitled Diagnosis and Initial Management of Non-
166 Malignant Diseases Related to Asbestos, December 12th, 2003-
167 Official Statement of the American Thoracic Society, 170
168 American Journal of Respiratory and Critical Care Medicine 697
169 (2004) bilateral diffuse interstitial fibrosis of the lungs
170 caused by inhalation of asbestos fibers.

171 (18) "Mesothelioma" means a malignant tumor with a primary
172 site in the pleura, ~~or~~ the peritoneum, the pericardium, or the
173 tunica vaginalis testis which has been diagnosed by a board-
174 certified pathologist, using standardized and accepted criteria

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175 of microscopic morphology or appropriate staining techniques.

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

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

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

185 1. Has conducted an evaluation of pathology materials
186 obtained from surgical or postmortem specimens ~~a physical~~
187 ~~examination~~ of the exposed person or, if the person is deceased,
188 has reviewed all available records relating to the exposed
189 person's medical condition; and

190 ~~2. Is actually treating or has treated the exposed person,~~
191 ~~and has or had a doctor-patient relationship with the person;~~
192 ~~and~~

193 ~~2.3.~~ Is licensed to practice and actively practices in this
194 country; or

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

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

200 ~~2. Is actually treating or has treated the exposed person,~~
201 ~~and has or had a doctor-patient relationship with the person;~~
202 ~~and~~

203 ~~2.3.~~ Is licensed to practice and actively practices in this

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204 country.

205 (24) "Radiological evidence of asbestosis" means a finding
206 on a ~~quality 1~~ chest X ray under the ILO System of
207 classification (~~in a death case where no pathology is available,~~
208 ~~the necessary radiologic findings may be made with a quality 2~~
209 ~~film if a quality 1 film is not available)~~ showing small,
210 irregular opacities (s, t, u) graded by a certified B-reader of
211 1/0 or higher as at least 1/1 on the ILO scale, or such other
212 competent evidence of asbestosis on computed tomography by a
213 licensed physician.

214 (25) "Radiological evidence of ~~diffuse pleural~~ disease
215 thickening" means a finding on a ~~quality 1~~ chest X ray and
216 computer tomography showing pleural plaques or pleural
217 thickening, which is made by a licensed physician under the ILO
218 System of classification (~~in a death case where no pathology is~~
219 ~~available, the necessary radiologic findings may be made with a~~
220 ~~quality 2 film if a quality 1 film is not available)~~ showing
221 bilateral pleural thickening of at least B2 on the ILO scale and
222 blunting of at least one costophrenic angle.

223 (29) "Smoker" means a person who has smoked cigarettes or
224 used other tobacco products on a consistent and frequent basis
225 within the last 5 ~~15~~ years.

226 Section 3. Section 774.204, Florida Statutes, is amended to
227 read:

228 774.204 Physical impairment.—

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

232 (2) A person may not file or maintain a civil action

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233 alleging a nonmalignant asbestos claim in the absence of a prima
234 facie showing of physical impairment or death as a result of a
235 medical condition to which exposure to asbestos was a
236 substantial contributing factor. The prima facie showing must
237 include all of the following requirements:

238 (a) Evidence verifying that a qualified physician, or
239 someone working under the direct supervision and control of a
240 qualified physician, has taken a detailed occupational and
241 exposure history of the exposed person or, if the person is
242 deceased, from a person who is knowledgeable about the exposures
243 that form the basis of the nonmalignant asbestos claim,
244 including:

245 1. Identification of all of the exposed person's pertinent
246 principal places of employment and exposures to airborne
247 contaminants; and

248 2. Whether each place of employment involved exposures to
249 airborne contaminants, including but not limited to asbestos
250 fibers or other disease-causing dusts, that can cause pulmonary
251 impairment and the nature, duration, and level of any such
252 exposure, if known.

253 (b) Evidence verifying that a qualified physician, or
254 someone working under the direct supervision and control of a
255 qualified physician, has taken a detailed medical and smoking
256 history, including a thorough review of the exposed person's
257 past and present medical problems and their most probable cause.

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

261 (d) In the case of a living person, a determination by a

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262 qualified physician that the exposed person is impaired as
263 defined by official statements of the American Thoracic Society,
264 ~~on the basis of a medical examination and pulmonary function~~
265 ~~testing, that the exposed person has a permanent respiratory~~
266 ~~impairment rating of at least Class 2 as defined by and~~
267 ~~evaluated pursuant to the AMA Guides to the Evaluation of~~
268 ~~Permanent Impairment.~~

269 (e) A diagnosis by a qualified physician of asbestosis or
270 asbestos-related pleural disease ~~diffuse pleural thickening,~~
271 based at a minimum on radiological or pathological evidence of
272 asbestosis or radiological evidence of asbestos-related pleural
273 disease ~~of diffuse pleural thickening.~~

274 (f) In the case of a living person, a determination by a
275 qualified physician that asbestosis or asbestos-related pleural
276 disease ~~diffuse pleural thickening,~~ rather than chronic
277 ~~obstructive pulmonary disease,~~ is a substantial contributing
278 factor to the exposed person's physical impairment as defined by
279 the official statements of the American Thoracic Society. ~~based~~
280 ~~at a minimum on a determination that the exposed person has:~~

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

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

286 3. ~~A chest X ray showing small, irregular opacities (s, t,~~
287 ~~u) graded by a certified B-reader as at least 2/1 on the ILO~~
288 ~~scale.~~

289 (g) ~~If the exposed person meets the requirements of~~
290 ~~paragraphs (a), (b), and (c), and if a qualified physician~~

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291 ~~determines that the exposed person has a physical impairment, as~~
292 ~~demonstrated by meeting the criteria set forth in paragraph (d)~~
293 ~~and subparagraph (f)1. or subparagraph (f)2., but the exposed~~
294 ~~person's chest X ray does not demonstrate radiological evidence~~
295 ~~of asbestosis, the exposed person may meet the criteria of~~
296 ~~paragraph (e) if his or her chest X ray is graded by a certified~~
297 ~~B-reader as at least 1/0 and a qualified physician, relying on~~
298 ~~high-resolution computed tomography, determines to a reasonable~~
299 ~~degree of medical certainty that the exposed person has~~
300 ~~asbestosis and forms the conclusion set forth in paragraph (h).~~

301 (g) ~~(h)~~ A conclusion by a qualified physician that the
302 exposed person's exposure to asbestos was a substantial
303 contributing cause to the exposed person's medical findings, and
304 impairment, or death were not more probably the result of causes
305 other than the asbestos exposure revealed by the exposed
306 person's employment and medical history. A diagnosis that states
307 that the medical findings and impairment are "consistent with"
308 or "compatible with" exposure to asbestos does not meet the
309 requirements of this subsection.

310 (h) ~~(i)~~ If a plaintiff files a civil action alleging a
311 nonmalignant asbestos claim, and that plaintiff alleges that his
312 or her exposure to asbestos was the result of extended contact
313 with another exposed person who, if the civil action had been
314 filed by the other exposed person, would have met the
315 requirements of paragraph (a), and the plaintiff alleges that he
316 or she had extended contact with the exposed person during the
317 time period in which that exposed person met the requirements of
318 paragraph (a), the plaintiff has satisfied the requirements of
319 paragraph (a). The plaintiff in such a civil action must

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320 individually satisfy the requirements of paragraphs (b), (c),
321 (d), (e), (f), ~~(g)~~, and (h).

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

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

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

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

341 ~~(d) Evidence of the exposed person's substantial~~
342 ~~occupational exposure to asbestos. If a plaintiff files a civil~~
343 ~~action alleging an asbestos-related claim based on cancer of the~~
344 ~~lung, larynx, pharynx, or esophagus, and that plaintiff alleges~~
345 ~~that his or her exposure to asbestos was the result of extended~~
346 ~~contact with another exposed person who, if the civil action had~~
347 ~~been filed by the other exposed person, would have met the~~
348 ~~substantial occupational exposure requirement of this~~

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349 ~~subsection, and the plaintiff alleges that he or she had~~
350 ~~extended contact with the exposed person during the time period~~
351 ~~in which that exposed person met the substantial occupational~~
352 ~~exposure requirement of this subsection, the plaintiff has~~
353 ~~satisfied the requirements of this paragraph. The plaintiff in~~
354 ~~such a civil action must individually satisfy the requirements~~
355 ~~of this subsection.~~

356 ~~(e) If the exposed person is deceased, the qualified~~
357 ~~physician, or someone working under the direct supervision and~~
358 ~~control of a qualified physician, may obtain the evidence~~
359 ~~required in paragraphs (b) and (d) from the person most~~
360 ~~knowledgeable about the alleged exposures that form the basis of~~
361 ~~the asbestos claim.~~

362 ~~(f) A conclusion by a qualified physician that the exposed~~
363 ~~person's medical findings and impairment were not more probably~~
364 ~~the result of causes other than the asbestos exposure revealed~~
365 ~~by the exposed person's employment and medical history. A~~
366 ~~conclusion that the medical findings and impairment are~~
367 ~~"consistent with" or "compatible with" exposure to asbestos does~~
368 ~~not meet the requirements of this subsection.~~

369 ~~(3)-(4) In a civil action alleging an asbestos claim by a~~
370 ~~nonsmoker based on cancer of the lung, larynx, pharynx, colon,~~
371 ~~rectum, stomach, or esophagus, a prima facie showing of an~~
372 ~~impairment due to asbestos exposure is not required.~~

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

377 ~~(a) A diagnosis by a qualified physician who is board~~

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378 ~~certified in pathology, pulmonary medicine, or oncology, as~~
379 ~~appropriate for the type of cancer claimed, of cancer of the~~
380 ~~colon, rectum, or stomach, and that exposure to asbestos was a~~
381 ~~substantial contributing factor to the condition.~~

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

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

391 ~~b. Evidence of the exposed person's substantial~~
392 ~~occupational exposure to asbestos. If a plaintiff files a civil~~
393 ~~action alleging an asbestos-related claim based on cancer of the~~
394 ~~colon, rectum, or stomach, and that plaintiff alleges that his~~
395 ~~or her exposure to asbestos was the result of extended contact~~
396 ~~with another exposed person who, if the civil action had been~~
397 ~~filed by the other exposed person, would have met the~~
398 ~~substantial occupational exposure requirement of this~~
399 ~~subsection, and the plaintiff alleges that he or she had~~
400 ~~extended contact with the exposed person during the time period~~
401 ~~in which that exposed person met the substantial occupational~~
402 ~~exposure requirement of this subsection, the plaintiff has~~
403 ~~satisfied the requirements of this sub-subparagraph. The~~
404 ~~plaintiff in such a civil action must individually satisfy the~~
405 ~~requirements of this subsection.~~

406 ~~2. In the case of an exposed person who is a smoker, the~~

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407 ~~criteria in sub-subparagraph 1.a. and b. must be met.~~

408 ~~3. If the exposed person is deceased, the qualified~~
409 ~~physician, or someone working under the direct supervision and~~
410 ~~control of a qualified physician, may obtain the evidence~~
411 ~~required in sub-subparagraph 1.b. and paragraph (b) from the~~
412 ~~person most knowledgeable about the alleged exposures that form~~
413 ~~the basis of the asbestos claim.~~

414 ~~(d) A conclusion by a qualified physician that the exposed~~
415 ~~person's medical findings and impairment were not more probably~~
416 ~~the result of causes other than the asbestos exposure revealed~~
417 ~~by the exposed person's employment and medical history. A~~
418 ~~conclusion that the medical findings and impairment are~~
419 ~~"consistent with" or "compatible with" exposure to asbestos does~~
420 ~~not meet the requirements of this subsection.~~

421 ~~(4)(6)~~ In a civil action alleging an asbestos claim based
422 upon mesothelioma a prima facie showing of an impairment due to
423 asbestos exposure is not required.

424 ~~(5)(7)~~ A person may not file or maintain a civil action
425 alleging a silicosis claim in the absence of a prima facie
426 showing of physical impairment as a result of a medical
427 condition to which exposure to silica was a substantial
428 contributing factor. The prima facie showing must include all of
429 the following requirements:

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

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

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

443 (b) Evidence verifying that a qualified physician, or
444 someone working under the direct supervision and control of a
445 qualified physician, has taken detailed medical and smoking
446 history, including a thorough review of the exposed person's
447 past and present medical problems and their most probable cause,
448 and verifying a sufficient latency period for the applicable
449 stage of silicosis.

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

455 (d) A determination by a qualified physician that the
456 exposed person has:

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

463 2. Pathological demonstration of classic silicotic nodules
464 exceeding one centimeter in diameter as published in 112 Archive

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465 of Pathology and Laboratory Medicine 7 (July 1988).

466
467 In a death case where no pathology is available, the necessary
468 radiologic findings may be made with a quality 2 film if a
469 quality 1 film is not available.

470 (e) A conclusion by a qualified physician that the exposed
471 person's medical findings and impairment were not more probably
472 the result of causes other than silica exposure revealed by the
473 exposed person's employment and medical history. A conclusion
474 that the medical findings and impairment are "consistent with"
475 or "compatible with" exposure to silica does not meet the
476 requirements of this subsection.

477 (6)~~(8)~~ A person may not file or maintain a civil action
478 alleging a silica claim other than as provided in subsection (5)
479 ~~(7)~~, in the absence of a prima facie showing that includes all
480 of the following requirements:

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

482 1. Board certified in pulmonary medicine, internal
483 medicine, oncology, or pathology stating a diagnosis of the
484 exposed person of silica-related lung cancer and stating that,
485 to a reasonable degree of medical probability, exposure to
486 silica was a substantial contributing factor to the diagnosed
487 lung cancer; or

488 2. Board certified in pulmonary medicine, internal
489 medicine, or pathology stating a diagnosis of the exposed person
490 of silica-related progressive massive fibrosis or acute
491 silicoproteinosis, or silicosis complicated by documented
492 tuberculosis.

493 (b) Evidence verifying that a qualified physician, or

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494 someone working under the direct supervision and control of a
495 qualified physician, has taken a detailed occupational and
496 exposure history of the exposed person or, if the person is
497 deceased, from a person who is knowledgeable about the exposures
498 that form the basis of the nonmalignant silica claim, including:

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

501 2. Whether each place of employment involved exposures to
502 airborne contaminants, including, but not limited to, silica
503 particles or other disease-causing dusts, that can cause
504 pulmonary impairment and the nature, duration, and level of any
505 such exposure.

506 (c) Evidence verifying that a qualified physician, or
507 someone working under the direct supervision and control of a
508 qualified physician, has taken a detailed medical and smoking
509 history, including a thorough review of the exposed person's
510 past and present medical problems and their most probable cause;

511 (d) A determination by a qualified physician that the
512 exposed person has:

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

519 2. Pathological demonstration of classic silicotic nodules
520 exceeding one centimeter in diameter as published in 112 Archive
521 of Pathology and Laboratory Medicine 7 (July 1988).
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523 In a death case where no pathology is available, the necessary
524 radiologic findings may be made with a quality 2 film if a
525 quality 1 film is not available.

526 (e) A conclusion by a qualified physician that the exposed
527 person's medical findings and impairment were not more probably
528 the result of causes other than silica exposure revealed by the
529 exposed person's employment and medical history. A conclusion
530 that the medical findings and impairment are "consistent with"
531 or "compatible with" exposure to silica does not meet the
532 requirements of this subsection.

533 (7)~~(9)~~ Evidence relating to physical impairment under this
534 section, including pulmonary function testing and diffusing
535 studies, must:

536 (a) Comply with the official statements of the American
537 Thoracic Society ~~technical recommendations for examinations,~~
538 ~~testing procedures, quality assurance, quality control, and~~
539 ~~equipment of the AMA Guides to the Evaluation of Permanent~~
540 ~~Impairment, as set forth in 20 C.F.R. part 404, Subpart P. App.~~
541 ~~1. Part A, s. 3.00 E. and F., and the interpretive standards,~~
542 ~~set forth in the official statement of the American Thoracic~~
543 ~~Society entitled "lung function testing: selection of reference~~
544 ~~values and interpretive strategies" as published in American~~
545 ~~Review of Respiratory Disease. 1991: 144:1202-1218;~~

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

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

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552 (8)~~(10)~~ Presentation of prima facie evidence meeting the
553 requirements of subsection (2)~~, subsection (3), subsection (5),~~
554 or subsection (4) ~~(6)~~ of this section may not:

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

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

559 (c) Be admissible at trial.

560 Section 4. Section 774.205, Florida Statutes, is amended to
561 read:

562 774.205 Claimant proceedings.—

563 ~~(1) A civil action alleging an asbestos or silica claim may~~
564 ~~be brought in the courts of this state if the plaintiff is~~
565 ~~domiciled in this state or the exposure to asbestos or silica~~
566 ~~that is a substantial contributing factor to the physical~~
567 ~~impairment of the plaintiff on which the claim is based occurred~~
568 ~~in this state.~~

569 (1)~~(2)~~ A plaintiff in a civil action alleging an asbestos
570 or silica claim must include with the complaint or other initial
571 pleading a written report and supporting test results
572 constituting prima facie evidence of the exposed person's
573 asbestos-related or silica-related physical impairment meeting
574 the requirements of s. 774.204(2), (3), (5), or (6). For any
575 asbestos or silica claim pending on the effective date of this
576 act, the plaintiff must file the report and supporting test
577 results at least 30 days before setting a date for trial. The
578 defendant must be afforded a reasonable opportunity to challenge
579 the adequacy of the proffered prima facie evidence of asbestos-
580 related impairment. The claim of the plaintiff shall be

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581 dismissed without prejudice upon a finding of failure to make
582 the required prima facie showing.

583 (2)~~(3)~~ All asbestos claims and silica claims filed in this
584 state on or after the effective date of this act must include,
585 in addition to the written report described in subsection (2)
586 and the information required by s. 774.207(2), a sworn
587 information form containing the following information:

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

590 ~~(b) If the claimant alleges exposure to asbestos or silica~~
591 ~~through the testimony of another person or alleges other than~~
592 ~~direct or bystander exposure to a product, the name, address,~~
593 ~~date of birth, and marital status for each person by which the~~
594 ~~claimant alleges exposure, hereinafter the "index person," and~~
595 ~~the claimant's relationship to each such person;~~

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

597 ~~(d) The beginning and ending dates of each alleged exposure~~
598 ~~as to each asbestos product or silica product for each location~~
599 ~~at which exposure allegedly took place for the plaintiff and~~
600 ~~each index person;~~

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

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

605 (c)~~(g)~~ Any supporting documentation of the condition
606 claimed to exist.

607 Section 5. Subsections (2) and (3) of section 774.206,
608 Florida Statutes, are amended to read:

609 774.206 Statute of limitations; two-disease rule.—

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610 (2) An asbestos or silica claim arising out of a
611 nonmalignant condition shall be a distinct cause of action from
612 an asbestos or silica claim relating to the same exposed person
613 arising out of asbestos-related or silica-related cancer.
614 ~~Damages may not be awarded for fear or risk of cancer in a civil~~
615 ~~action asserting an asbestos or silica claim.~~

616 (3) A settlement of a nonmalignant asbestos or silica claim
617 concluded after the effective date of this act shall ~~may~~ not
618 require, as a condition of settlement, the release of any future
619 claim for asbestos-related or silica-related cancer.

620 Section 6. Section 774.207, Florida Statutes, is amended to
621 read:

622 774.207 Scope of liability; damages.—

623 (1) Punitive damages may ~~not~~ be awarded only in any civil
624 action alleging an asbestos or silica claim in accordance with
625 the laws of this state.

626 (2) At the time a complaint is filed in a civil action
627 alleging an asbestos or silica claim, the plaintiff must file a
628 verified written report with the court which discloses the total
629 amount of any collateral source payments received, including
630 payments that the plaintiff will receive in the future, as a
631 result of settlements or judgments based upon the same claim.
632 For any asbestos or silica claim pending on the effective date
633 of this act, the plaintiff shall file a verified written report
634 within 60 days after the effective date of this act, or at least
635 30 days before trial. Further, the plaintiff must update the
636 reports on a regular basis during the course of the proceeding
637 until a final judgment is entered in the case. The court shall
638 permit setoff, based on the collateral source payment

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639 information provided, in accordance with the laws of this state
640 as of the effective date of this act.

641 Section 7. Section 774.208, Florida Statutes, is amended to
642 read:

643 774.208 Liability rules applicable to protect ~~sellers,~~
644 ~~renters,~~ and lessors.—

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

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

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

653 ~~c. The failure to exercise reasonable care was a proximate~~
654 ~~cause of the harm to the exposed person;~~

655 ~~2.a. The product seller made an express warranty applicable~~
656 ~~to the product that allegedly caused the harm that is the~~
657 ~~subject of the complaint, independent of any express warranty~~
658 ~~made by the manufacturer as to the same product;~~

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

660 ~~c. The failure of the product to conform to the warranty~~
661 ~~caused the harm to the exposed person; or~~

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

664 ~~b. The intentional wrongdoing caused the harm that is the~~
665 ~~subject of the complaint.~~

666 ~~(b) For the purpose of sub-subparagraph (a)1.b., a product~~
667 ~~seller may not be considered to have failed to exercise~~

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668 ~~reasonable care with respect to a product based upon an alleged~~
669 ~~failure to inspect the product, if:~~

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

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

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

679 Section 8. Because this act expressly preserves the right
680 of all injured persons to recover full compensatory damages for
681 their loss, this act does not impair vested rights. In addition,
682 because this act enhances the ability of the most seriously ill
683 to receive a prompt recovery, it is remedial in nature.
684 Therefore, this act applies to any civil action asserting an
685 asbestos claim in which trial has not commenced as of July 1,
686 2009.

687 Section 9. This act shall take effect July 1, 2009.