

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1260

INTRODUCER: Senator Trumbull

SUBJECT: Asbestos and Silica Claims

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 1260 changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to allow up to 30 days after filing the complaint to file a report supporting the claim together with certain information supporting the claim. Currently, the report and information must be filed with the complaint. The bill also increases the required information to be furnished to the defendant, primarily by requiring more specificity.

The bill also codifies the “bare metal” defense, by which a manufacturer of goods that did not use asbestos or silica in manufacturing a product is not liable for asbestos or silica exposure resulting from another manufacturer adding asbestos or silica to the product.

The bill is effective July 1, 2023.

II. Present Situation:

In 2005, the state enacted the “Asbestos and Silica Compensation Fairness Act.”¹ The purposes of the act are to:

- Give priority to true victims of asbestos and silica, claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;
- Fully preserve the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;
- Enhance the ability of the judicial system to supervise and control asbestos and silica litigation; and

¹ Section 774.201, F.S.

- Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.²

The act accomplishes its purposes by prohibiting speculative claims and focusing on persons who can demonstrate an actual physical impairment caused by asbestos.³ One means of doing so is through requirements to provide detailed information at the outset of the litigation.

In order to file a case governed by the act, the plaintiff must supply a number of facts regarding the exposure to the asbestos and the resultant injuries. The complaint must include a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related physical impairment.⁴ In addition to the written report, the plaintiff must include with the complaint a sworn information form containing:

- The claimant's name, address, date of birth, and marital status;
- If the claimant alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the claimant alleges exposure, hereinafter the "index person," and the claimant's relationship to each such person;
- The specific location of each alleged exposure;
- The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the plaintiff and each index person;
- The occupation and name of the employer of the exposed person at the time of each alleged exposure;
- The specific condition related to asbestos or silica claimed to exist; and
- Any supporting documentation of the condition claimed to exist.

III. Effect of Proposed Changes:

SB 1260 changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to allow up to 30 days after filing the complaint to file the written report and provide certain information supporting the claim, rather than filing the report and information with the complaint. The bill also adds to the list of required information, requiring the following additional information:

- Occupation of the exposed person.
- Smoking history of the exposed person.
- All current and past worksites of the exposed person.
- All current and past employers of the exposed person.
- The name of any person who may have exposed the exposed person to the asbestos or silica.
- The name, address, and relationship to the exposed person for each person who is knowledgeable regarding the exposed person's exposures to asbestos or silica.

² Section 774.202, F.S.

³ Section 774.204(1), F.S.

⁴ Section 774.205(2), F.S. The proof must meet the requirements of s. 774.204(2), (3), (5), or (6), F.S. The details of such proof are not relevant to this analysis.

- The identity of the manufacturer or seller and specific name of each asbestos-containing product or silica-related product, including, but not limited to, all brand and trade names of the asbestos-containing or silica-related product, to which the exposed person was exposed or the other person was exposed if exposure was through another person.
- For each product identified, each site and the specific location at each site, including the address of each site, at which the exposed person was exposed to asbestos or silica or the other person was exposed if exposure was through another person.
- The beginning and ending dates of each exposure, the specific manner of each exposure, the frequency and length of time of each exposure, and the proximity of the product or its use to the exposed person and each person through whom the exposed person alleges exposure to asbestos or silica.

A court must dismiss a defendant from the case, without prejudice, if that defendant's product or premises is not specifically identified in the sworn information form. A court must dismiss the case in its entirety if the report or form is not filed.

The bill also provides that a product liability defendant in a civil action alleging an asbestos or a silica claim is not liable for an exposure from a later-added product manufactured, distributed, or sold by a third party.⁵ This provision is a codification of an existing defense in asbestos and silica cases sometimes referred to as the "bare metal defense."⁶

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁵ An example may be helpful: Company A builds electric motors for various uses. No asbestos or silica is used to make the motors. Company B buys motors from Company A and attaches them to a pump mechanism that uses asbestos or silica. In a later asbestos or silica claim, Company A is not liable, but Company B may be.

⁶ "A manufacturer's duty to warn, whether premised in negligence or strict liability theory, generally does not extend to hazards arising exclusively from other manufacturer's products, regardless of the foreseeability of the combined use and attendant risk." *Faddish v. Buffalo Pumps*, 881 F.Supp.2d 1361, 1371 (S.D. Fla. 2012); *Waite v. All Acquisition Corp.*, 194 F. Supp. 3d 1298, 1317 (S.D. Fla. 2016).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 774.205 and 774.209.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.