

## HOUSE BILL No. 2868

By Committee on Judiciary

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9 AN ACT enacting the asbestos and silica compensation fairness act; con-  
10 cerning asbestos and silica claims.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the asbestos  
14 and silica compensation fairness act.

15 Sec. 2. As used in this act:

16 (a) "AMA guides to the evaluation of permanent impairment" means  
17 the American Medical Association's Guides to the Evaluation of Perma-  
18 nent Impairment (fifth edition 2000) as modified by the American med-  
19 ical association.

20 (b) "Asbestos" means all minerals defined as asbestos in 29 C.F.R. s.  
21 1910, as amended.

22 (c) "Asbestos claim" means any claim for damages or other civil or  
23 equitable relief presented in a civil action arising out of, based on or  
24 related to the health effects of exposure to asbestos, including loss of  
25 consortium, wrongful death and any other derivative claim made by or  
26 on behalf of any exposed person or any representative, spouse, parent,  
27 child or other relative of any exposed person. The term does not include  
28 claims for benefits under a workers' compensation law or veterans' ben-  
29 efits program or claims brought by any person as a subrogee by virtue of  
30 the payment of benefits under a workers' compensation law.

31 (d) "Asbestosis" means bilateral diffuse interstitial fibrosis of the  
32 lungs caused by inhalation of asbestos fibers.

33 (e) "Bankruptcy proceeding" means a case brought under Title 11,  
34 U.S.C., or any related proceeding as provided in section 157 of Title 28,  
35 U.S.C.

36 (f) "Board-certified in internal medicine" means certified by the  
37 American board of internal medicine or the American osteopathic board  
38 of internal medicine.

39 (g) "Board-certified in occupational medicine" means certified in the  
40 subspecialty of occupational medicine by the American board of preven-  
41 tive medicine or the American osteopathic board of preventive medicine.

42 (h) "Board-certified in oncology" means certified in the subspecialty  
43 of medical oncology by the American board of internal medicine or the

- 1 American osteopathic board of internal medicine.
- 2 (i) “Board-certified in pathology” means holding primary certification  
3 in anatomic pathology or clinical pathology from the American board of  
4 pathology or the American osteopathic board of internal medicine and  
5 with professional practice:
- 6 (1) Principally in the field of pathology.
- 7 (2) Involving regular evaluation of pathology materials obtained from  
8 surgical or postmortem specimens.
- 9 (j) “Board-certified in pulmonary medicine” means certified in the  
10 subspecialty of pulmonary medicine by the American board of internal  
11 medicine or the American osteopathic board of internal medicine.
- 12 (k) “Certified B-reader” means an individual qualified as a final or B-  
13 reader under 42 C.F.R. s. 37.51(b), as amended.
- 14 (l) “Civil action” means all suits or claims of a civil nature in court,  
15 whether cognizable as cases at law or in equity or in admiralty. The term  
16 does not include an action relating to any workers’ compensation law or  
17 a proceeding for benefits under any veterans’ benefits program.
- 18 (m) “Exposed person” means any person whose exposure to asbestos,  
19 silica, asbestos-containing products or silica-containing products is the  
20 basis for an asbestos or silica claim.
- 21 (n) “Exposure years” means:
- 22 (1) Each single year of exposure prior to 1972 to be counted as one  
23 year.
- 24 (2) Each single year of exposure from 1972 through 1979 to be  
25 counted as one-half year.
- 26 (3) Exposure after 1979 not to be counted, except that each year from  
27 1972 forward for which the plaintiff can establish exposure exceeding the  
28 occupational safety and health administration limit for 8-hour, time-  
29 weighted average airborne concentration for a substantial portion of the  
30 year to be counted as one year.
- 31 (o) “FEV1” means forced expiratory volume in the first second,  
32 which is the maximal volume of air expelled in one second during per-  
33 formance of simple spirometric tests.
- 34 (p) “FVC” means forced vital capacity which is the maximal volume  
35 of air expired with maximum effort from a position of full inspiration.
- 36 (q) “ILO scale” means the system for the classification of chest x-rays  
37 set forth in the international labor office’s guidelines for the use of ILO  
38 international classification of radiographs of pneumoconioses (1980) as  
39 amended by the international labor office.
- 40 (r) “Lung cancer” means a malignant tumor in which the primary site  
41 of origin of the cancer is located inside of the lungs, but such term does  
42 not include an asbestos claim based upon mesothelioma.
- 43 (s) “Mesothelioma” means a malignant tumor with a primary site in

- 1 the pleura or the peritoneum which has been diagnosed by a board-certified pathologist using standardized and accepted criteria of microscopic morphology or appropriate staining techniques.
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4 (t) “Nonmalignant condition” means any condition that is caused or  
5 may be caused by asbestos other than a diagnosed cancer.
- 6 (u) “Nonsmoker” means an exposed person who has not smoked cigarettes or used any other tobacco products within the last 15 years.
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8 (v) “Pathological evidence of asbestosis” means a statement by a  
9 board-certified pathologist that more than one representative section of  
10 lung tissue uninvolved with any other disease process demonstrates a  
11 pattern of peribronchiolar or parenchymal scarring in the presence of  
12 characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.
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14 (w) “Predicted lower limit of normal” for any test means the fifth  
15 percentile of healthy populations based on age, height, and gender, as  
16 referenced in the AMA guides to the evaluation of permanent  
17 impairment.
- 18 (x) “Qualified physician” means a medical doctor who:
- 19 (1) Is currently a board-certified internist, oncologist, pathologist,  
20 pulmonary specialist or radiologist or specialist in occupational and environmental medicine.
- 21  
22 (2) Has conducted a physical examination of the exposed person.
- 23 (3) Is actually treating or treated the exposed person and has or had  
24 a doctor-patient relationship with such person.
- 25 (4) Spends no more than 10% of professional practice time in providing consulting or expert services in connection with actual or potential civil actions and whose medical group, professional corporation, clinic or other affiliated group earns not more than 20% of its revenues from providing such services.
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30 (5) Is currently licensed to practice and actively practices in the state in which the plaintiff resides or in which the plaintiff’s civil action was filed.
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33 (6) Receives or received payment for the treatment of the exposed person from that person’s health maintenance organization or other medical provider or from the exposed person or a member of the exposed person’s family.
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37 (y) “Radiological evidence of asbestosis” means a quality one chest x-ray under the ILO system of classification showing small, irregular opacities of s, t or u, graded by a certified B-reader as at least  $\frac{1}{4}$  on the ILO scale. In a death case for which no pathology is available, the necessary radiologic findings may be made with a quality two film if a quality one film is not available.
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43 (z) “Radiological evidence of diffuse pleural thickening” means a

- 1 quality one chest x-ray under the ILO system of classification showing  
2 bilateral pleural thickening of at least B2 on the ILO scale and blunting  
3 of at least one costophrenic angle. In a death case for which no pathology  
4 is available, the necessary radiologic findings may be made with a quality  
5 two film if a quality one film is not available.
- 6 (aa) "Silica" means a respirable crystalline form of silicon dioxide,  
7 including, but not limited to, alpha, quartz, cristobalite and trydmitite.
- 8 (bb) "Silica claim" means any claim for damages or other civil or  
9 equitable relief presented in a civil action arising out of, based on or  
10 related to the health effects of exposure to silica, including loss of con-  
11 sortium, wrongful death and any other derivative claim made by or on  
12 behalf of any exposed person or any representative, spouse, parent, child  
13 or other relative of any exposed person. The term does not include claims  
14 for benefits under a workers' compensation law or veterans' benefits pro-  
15 gram or claims brought by any person as a subrogee by virtue of the  
16 payment of benefits under a workers' compensation law.
- 17 (cc) "Silicosis" means nodular interstitial fibrosis of the lungs caused  
18 by inhalation of silica.
- 19 (dd) "Smoker" means a person who has smoked cigarettes or used  
20 other tobacco products within the last 15 years.
- 21 (ee) "State" means any state of the United States, the District of  
22 Columbia, the Commonwealth of Puerto Rico, the Northern Mariana  
23 Islands, the Virgin Islands, Guam, American Samoa and any other terri-  
24 tory or possession of the United States or any political subdivision of any  
25 of such governments.
- 26 (ff) "Substantial contributing factor" means:
- 27 (1) Exposure to asbestos or silica is the predominate cause of the  
28 physical impairment alleged in the claim.
- 29 (2) The exposure to asbestos or silica took place on a regular basis  
30 over an extended period of time and in close proximity to the exposed  
31 person.
- 32 (3) A qualified physician has determined with a reasonable degree of  
33 medical certainty that the physical impairment of the exposed person  
34 would not have occurred but for the asbestos or silica exposure.
- 35 (gg) "Veterans' benefits program" means any program for benefits in  
36 connection with military service administered by the Veterans' Adminis-  
37 tration under Title 38, U.S.C.
- 38 (hh) "Workers' compensation law" means a law respecting a program  
39 administered by a state or the United States to provide benefits, funded  
40 by a responsible employer or its insurance carrier, for occupational dis-  
41 eases or injuries or for disability or death caused by occupational diseases  
42 or injuries. The term includes the longshore and harbor workers' com-  
43 pensation act, 33 U.S.C. 901-944, 948-950, and chapter 81 of Title 5,

1 U.S.C., the federal employees compensation act, but does not include the  
2 act of April 22, 1908, 45 U.S.C. 51 et seq., popularly referred to as the  
3 “Federal Employers’ Liability Act.”

4 Sec. 3. (a) Physical impairment of the exposed person, to which as-  
5 bestos or silica exposure was a substantial contributing factor, shall be an  
6 essential element of an asbestos or silica claim.

7 (b) No person shall bring or maintain a civil action alleging a non-  
8 malignant asbestos claim in the absence of a prima facie showing of phys-  
9 ical impairment as a result of a medical condition to which exposure to  
10 asbestos was a substantial contributing factor. Such a prima facie showing  
11 shall include:

12 (1) Evidence verifying that a qualified physician has taken a detailed  
13 occupational and exposure history of the exposed person or, if such person  
14 is deceased, from a person who is knowledgeable about the exposures  
15 that form the basis of the nonmalignant asbestos claim, including:

16 (A) Identification of all of the exposed person’s principal places of  
17 employment and exposures to airborne contaminants.

18 (B) Whether each place of employment involved exposures to air-  
19 borne contaminants, including, but not limited to, asbestos fibers or other  
20 disease-causing dusts, that can cause pulmonary impairment and the na-  
21 ture, duration and level of any such exposure.

22 (2) Evidence sufficient to demonstrate that at least 10 years have  
23 elapsed between the date of first exposure to asbestos and the date of  
24 diagnosis.

25 (3) Evidence verifying that a qualified physician has taken detailed  
26 medical and smoking history, including a thorough review of the exposed  
27 person’s past and present medical problems and their most probable  
28 cause.

29 (4) A determination by a qualified physician, on the basis of a medical  
30 examination and pulmonary function testing, that the exposed person has  
31 a permanent respiratory impairment rating of at least class 2 as defined  
32 by and evaluated pursuant to the AMA guides to the evaluation of per-  
33 manent impairment.

34 (5) A diagnosis by a qualified physician of asbestosis or diffuse pleural  
35 thickening, based at a minimum on radiological or pathological evidence  
36 of asbestosis or radiological evidence of diffuse pleural thickening.

37 (6) A determination by a qualified physician that asbestosis or diffuse  
38 pleural thickening, rather than chronic obstructive pulmonary disease, is  
39 a substantial contributing factor to the exposed person’s physical impair-  
40 ment, based at a minimum on a determination that the exposed person  
41 has:

42 (A) Total lung capacity, by plethysmography or timed gas dilution,  
43 below the predicted lower limit of normal;

- 1 (B) forced vital capacity below the lower limit of normal and a ratio  
2 of FEV1 to FVC that is equal to or greater than the predicted lower limit  
3 of normal; or
- 4 (C) a chest x-ray showing small, irregular opacities of s, t or u, graded  
5 by a certified B-reader at least  $\frac{2}{1}$  on the ILO scale.
- 6 (7) A conclusion by a qualified physician that the exposed person's  
7 medical findings and impairment were not more probably the result of  
8 causes other than the asbestos exposure revealed by the exposed person's  
9 employment and medical history. A conclusion which states that the med-  
10 ical findings and impairment are consistent with or compatible with ex-  
11 posure to asbestos does not meet the requirements of this paragraph.
- 12 (c) No person shall bring or maintain a civil action alleging an asbestos  
13 claim which is based upon lung cancer in the absence of a prima facie  
14 showing which shall include all of the following minimum requirements:
- 15 (1) A diagnosis by a qualified physician, who is board certified in  
16 pathology, pulmonary medicine or oncology, of a primary lung cancer and  
17 that exposure to asbestos was a substantial contributing factor to the  
18 condition.
- 19 (2) Evidence sufficient to demonstrate that at least 10 years have  
20 elapsed between the date of first exposure to asbestos and the date of  
21 diagnosis of the lung cancer.
- 22 (3) Depending on whether the exposed person has a history of smok-  
23 ing, the requirements of subparagraph (A) or (B):
- 24 (A) In the case of an exposed person who is a nonsmoker:
- 25 (i) Radiological or pathological evidence of asbestosis; or
- 26 (ii) evidence of occupational exposure to asbestos for the following  
27 minimum exposure periods in the specified occupations:
- 28 (I) Five exposure years for insulators, shipyard workers, workers in  
29 manufacturing plants handling raw asbestos, boilermakers, shipfitters,  
30 steamfitters or other trades performing similar functions;
- 31 (II) ten exposure years for utility and powerhouse workers, secondary  
32 manufacturing workers or other trades performing similar functions; or
- 33 (III) fifteen exposure years for general construction, maintenance  
34 workers, chemical and refinery workers, marine engine room personnel  
35 and other personnel on vessels, stationary engineers and firemen, railroad  
36 engine repair workers or other trades performing similar functions.
- 37 (B) In the case of an exposed person who is a smoker, the criteria  
38 contained in sub-subparagraphs (A)(i) and (A)(ii) must be met.
- 39 (4) A conclusion by a qualified physician that the exposed person's  
40 medical findings and impairment were not more probably the result of  
41 causes other than the asbestos exposure revealed by the exposed person's  
42 employment and medical history. A conclusion that the medical findings  
43 and impairment are consistent with or compatible with exposure to as-

1 bestos does not meet the requirements of this subsection.

2 If the exposed person is deceased, the qualified physician may obtain  
3 the evidence required in paragraph (b) and subparagraph (3)(A)(ii) from  
4 the person most knowledgeable about the alleged exposures that form  
5 the basis of the asbestos claim.

6 (d) No person shall bring or maintain a civil action alleging an asbes-  
7 tos claim which is based upon cancer of the colon, rectum, larynx, phar-  
8 ynx, esophagus or stomach in the absence of a prima facie showing which  
9 shall include all of the following minimum requirements:

10 (1) A diagnosis by a qualified physician who is board certified in pa-  
11 thology, pulmonary medicine or oncology, as appropriate for the type of  
12 cancer claimed, of primary cancer of the colon, rectum, larynx, pharynx,  
13 esophagus or stomach and that exposure to asbestos was a substantial  
14 contributing factor to the condition.

15 (2) Evidence sufficient to demonstrate that at least 10 years have  
16 elapsed between the date of first exposure to asbestos and the date of  
17 diagnosis of the cancer.

18 (3) The requirement of:

19 (A) Radiological or pathological evidence of asbestosis; or

20 (B) evidence of occupational exposure to asbestos for the following  
21 minimum exposure periods in the specified occupations:

22 (i) Five exposure years for insulators, shipyard workers, workers in  
23 manufacturing plants handling raw asbestos, boilermakers, shipfitters,  
24 steamfitters or other trades performing similar functions;

25 (ii) ten exposure years for utility and powerhouse workers, secondary  
26 manufacturing workers or other trades performing similar functions; or

27 (iii) fifteen exposure years for general construction, maintenance  
28 workers, chemical and refinery workers, marine engine room personnel  
29 and other personnel on vessels, stationary engineers and firemen, railroad  
30 engine repair workers or other trades performing similar functions.

31 (4) A conclusion by a qualified physician that the exposed person's  
32 medical findings and impairment were not more probably the result of  
33 causes other than the asbestos exposure revealed by the exposed person's  
34 employment and medical history. A conclusion that the medical findings  
35 and impairment are consistent with or compatible with exposure to as-  
36 bestos does not meet the requirements of this paragraph.

37 If the exposed person is deceased, the qualified physician may obtain  
38 the evidence required in paragraph (2) and subparagraph (3)(B) from the  
39 person most knowledgeable about the alleged exposures that form the  
40 basis of the asbestos claim.

41 (e) In a civil action alleging an asbestos claim based upon mesothe-  
42 lioma, no prima facie showing is required.

43 (f) No person shall bring or maintain a civil action alleging a silica

- 1 claim in the absence of a prima facie showing of physical impairment as  
2 a result of a medical condition to which exposure to silica was a substantial  
3 contributing factor. Such prima facie showing shall include:
- 4 (1) Evidence verifying that a qualified physician has taken a detailed  
5 occupational and exposure history of the exposed person or, if such person  
6 is deceased, from a person who is knowledgeable about the exposures  
7 that form the basis of the nonmalignant silica claim, including:
- 8 (A) All of the exposed person's principal places of employment and  
9 exposures to airborne contaminants.
- 10 (B) Whether each place of employment involved exposures to air-  
11 borne contaminants, including, but not limited to, silica particles or other  
12 disease-causing dusts, that can cause pulmonary impairment and the na-  
13 ture, duration and level of any such exposure.
- 14 (2) Evidence verifying that a qualified physician has taken detailed  
15 medical and smoking history, including a thorough review of the exposed  
16 person's past and present medical problems and their most probable  
17 cause, and verifying a sufficient latency period for the applicable stage of  
18 silicosis.
- 19 (3) A determination by a qualified physician, on the basis of a medical  
20 examination and pulmonary function testing, that the exposed person has  
21 a permanent respiratory impairment rating of at least class 2 as defined  
22 by and evaluated pursuant to the AMA guides to the evaluation of per-  
23 manent impairment.
- 24 (4) A determination by a qualified physician that the exposed person  
25 has:
- 26 (A) A quality one chest x-ray under the ILO system of classification  
27 and that the x-ray has been read by a certified B-reader as showing, ac-  
28 cording to the ILO system of classification, bilateral nodular opacities of  
29 p, q or r, occurring primarily in the upper lung fields, graded  $\frac{1}{1}$  or higher.  
30 In a death case for which no pathology is available, the necessary radiol-  
31 ogic findings may be made with a quality two film if a quality one film is  
32 not available; or
- 33 (B) pathological demonstration of classic silicotic nodules exceeding  
34 one centimeter in diameter as published in 112 Archive of Pathology and  
35 Laboratory Medicine 7 (July 1988).
- 36 (5) A conclusion by a qualified physician that the exposed person's  
37 medical findings and impairment were not more probably the result of  
38 causes other than silica exposure revealed by the exposed person's em-  
39 ployment and medical history. A conclusion that the medical findings and  
40 impairment are consistent with or compatible with exposure to asbestos  
41 does not meet the requirements of this paragraph.
- 42 (g) No person shall bring or maintain a civil action alleging any silica  
43 claim other than as provided in subsection (6) in the absence of a prima

1 facie showing which shall include the following minimum requirements:

2 (1) A report by a qualified physician who is:

3 (A) Board certified in pulmonary medicine, internal medicine, on-  
4 cology or pathology, stating a diagnosis of the exposed person of silica-  
5 related lung cancer and stating that, to a reasonable degree of medical  
6 probability, exposure to silica was a substantial contributing factor to the  
7 diagnosed lung cancer; or

8 (B) Board certified in pulmonary medicine, internal medicine or pa-  
9 thology, stating a diagnosis of the exposed person of silica-related pro-  
10 gressive massive fibrosis or acute silicoproteinosis, or silicosis complicated  
11 by documented tuberculosis.

12 (2) Evidence verifying that a qualified physician has taken a detailed  
13 occupational and exposure history of the exposed person or, if such person  
14 is deceased, from a person who is knowledgeable about the exposures  
15 that form the basis of the nonmalignant silica claim, including:

16 (A) All of the exposed person's principal places of employment and  
17 exposures to airborne contaminants.

18 (B) Whether each place of employment involved exposures to air-  
19 borne contaminants, including, but not limited to, silica particles or other  
20 disease-causing dusts, that can cause pulmonary impairment and the na-  
21 ture, duration and level of any such exposure.

22 (3) Evidence verifying that a qualified physician has taken detailed  
23 medical and smoking history, including a thorough review of the exposed  
24 person's past and present medical problems and their most probable  
25 cause.

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

28 (A) A quality one chest x-ray under the ILO system of classification  
29 and that the x-ray has been read by a certified B-reader as showing, ac-  
30 cording to the ILO system of classification, bilateral nodular opacities of  
31 p, q or r, occurring primarily in the upper lung fields, graded  $\frac{1}{1}$  or higher.  
32 In a death case for which no pathology is available, the necessary radiol-  
33 ogic findings may be made with a quality two film if a quality one film is  
34 not available; or

35 (B) pathological demonstration of classic silicotic nodules exceeding  
36 one centimeter in diameter as published in 112 Archive of Pathology and  
37 Laboratory Medicine 7 (July 1988).

38 (5) A conclusion by a qualified physician that the exposed person's  
39 medical findings and impairment were not more probably the result of  
40 causes other than silica exposure revealed by the exposed person's em-  
41 ployment and medical history. A conclusion that the medical findings and  
42 impairment are consistent with or compatible with exposure to asbestos  
43 does not meet the requirements of this paragraph.

1 (h) Evidence relating to physical impairment under this section, in-  
2 cluding pulmonary function testing and diffusing studies, shall:

3 (1) Comply with the technical recommendations for examinations,  
4 testing procedures, quality assurance, quality control and equipment of  
5 the AMA guides to the evaluation of permanent impairment, as set forth  
6 in 2d C.F.R. Pt. 404, Subpt. P. Appl., Part A, Sec. 3.00 E. and F., and  
7 the interpretive standards set forth in the official statement of the Amer-  
8 ican Thoracic Society entitled "Lung function testing: selection of refer-  
9 ence values and interpretive strategies" as published in American Review  
10 of Respiratory Disease, 1991, 144:1202-1218.

11 (2) Not be obtained through testing or examinations that violate any  
12 applicable law, regulation, licensing requirement, or medical code of  
13 practice.

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

16 (i) Presentation of prima facie evidence meeting the requirements of  
17 subsection (2), subsection (3), subsection (4), subsection (6) or subsection  
18 (7) shall not:

19 (A) Result in any presumption at trial that the exposed person is im-  
20 paired by an asbestos-related or silica-related condition.

21 (B) Be conclusive as to the liability of any defendant.

22 (C) Be admissible at trial.

23 Sec. 4. (a) A court may consolidate for trial any number and type of  
24 asbestos or silica claims with consent of all the parties. In the absence of  
25 such consent, the court may consolidate for trial only asbestos or silica  
26 claims relating to the same exposed person and members of such person's  
27 household.

28 (b) A civil action alleging an asbestos or silica claim may only be  
29 brought in the courts of this state if the plaintiff is domiciled in this state  
30 or the exposure to asbestos or silica that is a substantial contributing factor  
31 to the physical impairment on which the claim is based occurred in this  
32 state.

33 (c) The plaintiff in any civil action alleging an asbestos or silica claim  
34 shall file together with the complaint or other initial pleading a written  
35 report and supporting test results constituting prima facie evidence of the  
36 exposed person's asbestos-related or silica-related physical impairment  
37 meeting the requirements of subsections (b) through (g) of section 3, and  
38 amendments thereto. For any asbestos or silica claim pending on the  
39 effective date of this act, the plaintiff shall file such a written report and  
40 supporting test results no later than 60 days after the effective date or no  
41 later than 30 days prior to the commencement of trial. The defendant  
42 shall be afforded a reasonable opportunity to challenge the adequacy of  
43 the proffered prima facie evidence of asbestos-related impairment. The

1 plaintiff's claim shall be dismissed without prejudice upon a finding of  
2 failure to make the required prima facie showing.

3 (d) All asbestos claims and silica claims filed in this state on or after  
4 the effective date of this act shall include, in addition to the report re-  
5 quired in subsection (3) and the information required in subsection (2)  
6 of section 7, a sworn information form containing the following  
7 information:

8 (1) The claimant's name, address, date of birth, social security num-  
9 ber and marital status.

10 (2) If the claimant alleges exposure to asbestos or silica through the  
11 testimony of another person or other than by direct or bystander exposure  
12 to any product, the name, address, date of birth, social security number  
13 and marital status for each person by which such claimant alleges expo-  
14 sure, hereafter the "index person," and the claimant's relationship to each  
15 person.

16 (3) The specific location of each alleged exposure.

17 (4) The beginning and ending dates of each alleged exposure as to  
18 each asbestos product or silica product for each location at which the  
19 exposure allegedly took place for plaintiff and for each index person.

20 (5) The occupation and name of employer of the exposed person at  
21 the time of each alleged exposure.

22 (6) The specific condition related to asbestos or silica claimed to exist.

23 (7) Any supporting documentation of the condition claimed to exist.

24 Sec. 5. (a) Notwithstanding any other provision of law, with respect  
25 to any asbestos or silica claim not barred as of the effective date of this  
26 act, the limitations period shall not begin to run until the exposed person  
27 discovers, or through the exercise of reasonable diligence should have  
28 discovered, that the exposed person is physically impaired by an asbestos-  
29 related or silica-related condition, as defined in section 4, and amend-  
30 ments thereto.

31 (b) An asbestos or silica claim arising out of a nonmalignant condition  
32 shall be a distinct cause of action from an asbestos or silica claim relating  
33 to the same exposed person arising out of asbestos-related or silica-related  
34 cancer. No damages shall be awarded for fear or risk of cancer in any  
35 civil action asserting an asbestos or silica claim.

36 (c) No settlement of a nonmalignant asbestos or silica claim con-  
37 cluded after the date of enactment shall require, as a condition of settle-  
38 ment, release of any future claim for asbestos-related or silica-related  
39 cancer.

40 Sec. 6. (a) No punitive damages shall be awarded in any civil action  
41 alleging an asbestos or silica claim.

42 (b) At the time a complaint is filed in a civil action alleging an asbestos  
43 or silica claim, the plaintiff must file a verified written report with the

1 court that discloses the total amount of any collateral source payments  
2 received, including payments which the plaintiff will receive in the future,  
3 as a result of settlements or judgments based upon the same claim. For  
4 any asbestos or silica claim pending on the date of enactment of this act,  
5 the plaintiff shall file such verified written report no later than 60 days  
6 after the date of enactment or no later than 30 days prior to trial. Further,  
7 the plaintiff shall be required to update such reports on a regular basis  
8 during the course of the proceeding until a final judgment is entered in  
9 the case. The court shall ensure that the information contained in the  
10 initial and updated reports is treated as privileged and confidential and  
11 that the contents of the verified written reports shall not be disclosed to  
12 anyone except the other parties to the action. The court shall permit  
13 setoff, based on the collateral source payment information provided, in  
14 accordance with the laws of this state as of the effective date of this act.

15 Sec. 7. (a) (1) In any civil action alleging an asbestos or silica claim,  
16 a product seller other than a manufacturer shall be liable to a plaintiff  
17 only if the plaintiff establishes that:

18 (A) (i) The product that allegedly caused the harm that is the subject  
19 of the complaint was sold, rented, or leased by the product seller;

20 (ii) the product seller failed to exercise reasonable care with respect  
21 to the product; and

22 (iii) the failure to exercise reasonable care was a proximate cause of  
23 the harm to the exposed person;

24 (B) (i) the product seller made an express warranty applicable to the  
25 product that allegedly caused the harm that is the subject of the com-  
26 plaint, independent of any express warranty made by the manufacturer  
27 as to the same product;

28 (ii) the product failed to conform to the warranty; and

29 (iii) the failure of the product to conform to the warranty caused the  
30 harm to the exposed person; or

31 (C) (i) the product seller engaged in intentional wrongdoing, as de-  
32 termined under applicable state law; and

33 (ii) the intentional wrongdoing caused the harm that is the subject of  
34 the complaint.

35 (2) For the purposes of subparagraph (a)(1), a product seller shall not  
36 be considered to have failed to exercise reasonable care with respect to  
37 a product based upon an alleged failure to inspect the product, if:

38 (A) The failure occurred because there was no reasonable opportu-  
39 nity to inspect the product; or

40 (B) the inspection, in the exercise of reasonable care, would not have  
41 revealed the aspect of the product that allegedly caused the exposed per-  
42 son's impairment.

43 (b) In any civil action alleging an asbestos or silica claim, a person

1 engaged in the business of renting or leasing a product shall not be liable  
2 for the tortious act of another solely by reason of ownership of that  
3 product.

4 Sec. 8. (a) This act shall not be construed to affect the scope or op-  
5 eration of the workers' compensation law or veterans' benefit program,  
6 to affect the exclusive remedy or subrogation provisions of any such law,  
7 or to authorize any lawsuit which is barred by any such provision of law.

8 (b) This act expressly preserves the right of all injured persons to  
9 recover full compensatory damages for their loss and therefore does not  
10 impair vested rights. In addition, this act enhances the ability of the most  
11 seriously ill to receive a prompt recovery and therefore is remedial in  
12 nature.

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

18 Sec. 9. This act shall apply to any civil action asserting an asbestos or  
19 silica claim in which trial has not commenced as of the effective date of  
20 this act.

21 Sec. 10. This act shall take effect and be in force from and after its  
22 publication in the statute book.