

HOUSE BILL NO. 1197

Introduced by

Representatives K. Koppelman, Jones, Kasper, Keiser, D. Ruby

Senators Campbell, Klein, Krebsbach

1 A BILL for an Act to create and enact two new chapters to title 32 of the North Dakota Century
2 Code, relating to asbestos bankruptcy trust transparency and the prioritization of asbestos and
3 silica claims; to provide an effective date; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 32 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 For purposes of this chapter, unless the context otherwise requires:

- 9 1. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
10 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform
11 amphibole minerals, and any of these minerals that have been chemically treated or
12 altered, including all minerals defined as asbestos in title 29, Code of Federal
13 Regulations, part 1910.
- 14 2. "Asbestos action" means a claim for damages or other civil or equitable relief
15 presented in a civil action arising out of, based on, or related to the health effects of
16 exposure to asbestos, including loss of consortium, wrongful death, mental or
17 emotional injury, risk or fear of disease or other injury, costs of medical monitoring or
18 surveillance, and any other derivative claim made by or on behalf of an individual
19 exposed to asbestos or a representative, spouse, parent, child, or other relative of the
20 exposed individual. This term does not include a claim for compensatory benefits
21 pursuant to workers' compensation or veterans' benefits.
- 22 3. "Asbestos trust" means a government-approved or court-approved trust, qualified
23 settlement fund, compensation fund, or claims facility created as a result of an
24 administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C.

- 1 524(g), 11 U.S.C. 1121(a), or other applicable provision of law intended to provide
2 compensation to claimants arising out of, based on, or related to the health effects of
3 exposure to asbestos.
- 4 4. "Plaintiff" means an individual asserting an asbestos action, a decedent if the action is
5 brought on behalf of an estate, and a parent or guardian if the action is brought on
6 behalf of a minor or legally incapacitated individual.
- 7 5. "Trust claims materials" means a final executed proof of claim and all other documents
8 and information related to a claim against an asbestos trust, including claims forms
9 and supplementary materials, affidavits, depositions, trial testimony, work history,
10 medical and health records, documents reflecting the status of a claim against an
11 asbestos trust, and if the trust claim has settled, all documents relating to the
12 settlement of the trust claim.
- 13 6. "Trust governance documents" means all documents that relate to eligibility and
14 payment levels, including claims payment matrices, trust distribution procedures, or
15 plans for reorganization for an asbestos trust.
- 16 7. "Veterans' benefits" means a program administered by the veterans' administration
17 under 38 U.S.C.
- 18 8. "Workers' compensation" means a program administered by the United States or a
19 state to provide benefits, funded by a responsible employer or its insurance carrier, for
20 occupational diseases, injuries, disability, or death caused by an individual's
21 occupation. The term does not include 45 U.S.C. 51.

22 **Required disclosures by plaintiff.**

- 23 1. Within thirty days after an asbestos action is filed, the plaintiff shall:
- 24 a. Provide the court and parties with a sworn statement signed by the plaintiff and
25 plaintiff's counsel indicating an investigation of all asbestos trust claims has been
26 conducted and all asbestos trust claims that could be made by the plaintiff have
27 been filed. The sworn statement must indicate whether a request has been made
28 to defer, delay, suspend, or toll any asbestos trust claim and provide the
29 disposition of each asbestos trust claim.
- 30 b. Provide parties with all trust claims materials, including materials related to the
31 conditions other than those that are the basis for the asbestos action and any

1 materials from all law firms connected to the plaintiff in relation to the plaintiff's
2 exposure to asbestos.

3 c. Produce all available trust claims materials submitted to any asbestos trusts by
4 other individuals if the plaintiff's asbestos trust claim is based on exposure to
5 asbestos through those individuals.

6 2. The plaintiff shall supplement the information and materials required under this section
7 within thirty days after supplementing an existing asbestos trust claim, receiving
8 additional information or materials related to an asbestos trust claim, or filing an
9 additional asbestos trust claim.

10 3. The court may dismiss an asbestos action if the plaintiff fails to comply with this
11 section.

12 4. An asbestos action may not proceed to trial until at least one hundred eighty days after
13 the requirements of this section have been met.

14 **Identification of additional or alternative asbestos trust by defendant.**

15 1. A defendant may file a motion requesting a stay of the proceedings by the later of the
16 sixtieth day before the trial is set to commence or the fifteenth day after the defendant
17 first obtains information supporting additional trust claims by the plaintiff.

18 2. Within ten days of receiving the defendant's motion, the plaintiff shall:

19 a. File the asbestos trust claims;

20 b. File a written response with the court stating why insufficient evidence exists for
21 the plaintiff to file the asbestos trust claims; or

22 c. File a written response with the court requesting a determination that the cost to
23 file the asbestos trust claims exceed the plaintiff's reasonably anticipated
24 recovery.

25 3. If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust
26 claim, the court shall stay the asbestos action until the plaintiff files the asbestos trust
27 claim and produces all related trust claims materials.

28 4. If the court determines the cost of submitting an asbestos trust claim exceeds the
29 plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until
30 the plaintiff files with the court and provides all parties with a verified statement of the

1 plaintiff's history of exposure, usage, or other connection to asbestos covered by the
2 identified asbestos trust.

3 5. The court may not schedule the asbestos action for trial until at least sixty days after
4 the plaintiff files the documentation required under this section.

5 **Discovery - Use of materials.**

6 1. Trust claims materials and trust governance documents are presumed to be relevant
7 and authentic and are admissible in evidence. A claim of privilege does not apply to
8 any trust claims materials or trust governance documents.

9 2. A defendant in an asbestos action may seek discovery from an asbestos trust. The
10 plaintiff may not claim privilege to bar discovery and shall provide consent or other
11 expression of permission as required by the asbestos trust to release information and
12 materials sought by the defendant.

13 3. Trust claims materials sufficient to entitle a claim to consideration for payment under
14 the applicable trust governance documents may be sufficient to support a jury finding
15 that the plaintiff may have been exposed to products for which the trust was
16 established to provide compensation and that such exposure may be a substantial
17 contributing factor in causing the plaintiff's injury.

18 **Trust record - Valuation of asbestos trust claims - Judicial notice.**

19 1. The court shall identify every asbestos trust claim made by the plaintiff at least thirty
20 days before trial.

21 2. If a plaintiff proceeds to trial before an asbestos trust claim is resolved, there is a
22 rebuttable presumption that the plaintiff is entitled to and will receive the compensation
23 specified in the trust governance document applicable to the claim at the time of the
24 trial.

25 3. The court shall take judicial notice that the trust governance document specifies
26 compensation amounts and payment percentages and establish an attributed value to
27 the plaintiff's asbestos trust claims.

28 **Failure to provide information - Sanctions.**

29 1. The court may impose any sanction provided by court rule or law upon the motion of a
30 defendant or judgment debtor seeking sanctions or other relief for failure to comply
31 with the requirements of this chapter.

- 1 2. If the plaintiff files an asbestos trust claim after the plaintiff obtains a judgment and the
2 asbestos trust was in existence at the time of the judgment, the trial court upon motion
3 by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to
4 adjust the judgment by the amount of any subsequent asbestos trust payments
5 obtained by the plaintiff and to order additional relief to the parties.
- 6 3. A defendant or judgment debtor may file a motion under this section within one year
7 after the court enters a final judgment.

8 **SECTION 2.** A new chapter to title 32 of the North Dakota Century Code is created and
9 enacted as follows:

10 **Definitions.**

11 For purposes of this chapter, unless the context otherwise requires:

- 12 1. "AMA Guides to the Evaluation of Permanent Impairment" means the sixth edition of
13 the American medical association's "Guides to the Evaluation of Permanent
14 Impairment".
- 15 2. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
16 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform
17 amphibole minerals, and any of these minerals that have been chemically treated or
18 altered, including all minerals defined as asbestos under title 29, Code of Federal
19 Regulations, part 1910.
- 20 3. "Asbestos action" means a claim for damages or other civil or equitable relief
21 presented in a civil action arising out of, based on, or related to the health effects of
22 exposure to asbestos, including loss of consortium, wrongful death, mental or
23 emotional injury, risk or fear of disease or other injury, costs of medical monitoring or
24 surveillance, and any other derivative claim made by or on behalf of an individual
25 exposed to asbestos or a representative, spouse, parent, child, or other relative of
26 such individual. The term does not include a claim for workers' compensation or
27 veterans' benefits.
- 28 4. "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by
29 inhalation of asbestos fibers.
- 30 5. "Board-certified in internal medicine" means a physician who is certified by the
31 American board of internal medicine or the American osteopathic board of internal

1 medicine, and whose certification was current at the time of the performance of an
2 examination and rendition of a report required by this chapter.

3 6. "Board-certified in occupational medicine" means a physician who is certified in the
4 specialty of occupational medicine by the American board of preventive medicine or
5 the specialty of occupational and environmental medicine by the American osteopathic
6 board of preventive medicine, and whose certification was current at the time of the
7 performance of an examination and rendition of a report required by this chapter.

8 7. "Board-certified in pathology" means a physician who holds primary certification in
9 anatomic pathology or clinical pathology from the American board of pathology or the
10 American osteopathic board of pathology, whose certification was current at the time
11 of the performance of an examination and rendition of a report required by this
12 chapter, and whose professional practice is principally in the field of pathology and
13 involves regular evaluation of pathology materials obtained from surgical or
14 postmortem specimens.

15 8. "Board-certified in pulmonary medicine" means a physician who is certified in the
16 specialty of pulmonary medicine by the American board of internal medicine or the
17 American osteopathic board of internal medicine, and whose certification was current
18 at the time of the performance of an examination and rendition of a report required by
19 this chapter.

20 9. "Certified B-reader" means an individual who is qualified as a national institute for
21 occupational safety and health final or B-reader of x-rays under title 42, Code of
22 Federal Regulations, part 37.51(b), whose certification was current at the time of any
23 readings required under this chapter, and whose B-reads comply with the national
24 institute for occupational safety and health's B-reader's "Code of Ethics", "Issues in
25 Classification of Chest Radiographs", and "Classification of Chest Radiographs in
26 Contested Proceedings" (2011).

27 10. "Chest x-ray" means chest films taken in accordance with all applicable state and
28 federal regulatory standards and taken in the posterior-anterior view.

29 11. "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the
30 measurement of carbon monoxide transfer from inspired gas to pulmonary capillary
31 blood.

- 1 12. "Exposed individual" means an individual whose exposure to asbestos, silica,
2 asbestos-containing products, or silica-containing products is the basis for an
3 asbestos or silica action.
- 4 13. "FEV1" means forced expiratory volume in the first second, which is the maximal
5 volume of air expelled in one second during performance of simple spirometric tests.
- 6 14. "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC.
- 7 15. "FVC" means forced vital capacity, which is the maximal volume of air expelled with
8 maximum effort from a position of full inspiration.
- 9 16. "ILO system and ILO scale" means the radiological ratings and system for the
10 classification of chest x-rays of the international labour office provided in "Guidelines
11 for the Use of the ILO International Classification of Radiographs of Pneumoconioses"
12 (2011).
- 13 17. "Nonmalignant condition" means any condition that may be caused by asbestos or
14 silica other than a diagnosed cancer.
- 15 18. "Official statements of the American thoracic society" means the 2005 lung function
16 testing standards set forth in the technical standards of the American thoracic society,
17 including standardizations of spirometry, standardizations of lung volume testing,
18 standardizations of diffusion capacity testing or single-breath determination of carbon
19 monoxide uptake in the lung, and interpretive strategies for lung function tests.
- 20 19. "Pathological evidence of asbestosis" means a statement by a board-certified
21 pathologist that more than one representative section of lung tissue uninvolved with
22 any other disease process demonstrates a pattern of peribronchiolar or parenchymal
23 scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under
24 the criteria published in "Asbestos-Associated Diseases", 106 Archive of Pathology
25 and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in
26 pathology of asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80
27 (March 2010) (tables 2 and 3).
- 28 20. "Pathological evidence of silicosis" means a statement by a board-certified pathologist
29 that more than one representative section of lung tissue uninvolved with any other
30 disease process demonstrates complicated silicosis with characteristic confluent
31 silicotic nodules or lesions equal to or greater than one centimeter and birefringent

1 crystals or other demonstration of crystal structures consistent with silica, which are
2 well-organized concentric whorls of collagen surrounded by inflammatory cells, in the
3 lung parenchyma and there is not another likely explanation for the presence of the
4 fibrosis, or acute silicosis with characteristic pulmonary edema, interstitial
5 inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in
6 surfactant.

7 21. "Plaintiff" means the individual bringing the asbestos or silica action, including a
8 personal representative if the asbestos or silica action is brought by an estate,
9 conservator, or guardian if the asbestos or silica action is brought on behalf of a minor
10 or legally incapacitated individual.

11 22. "Plethysmography or body plethysmography" means the test for determining lung
12 volume in which the exposed individual is enclosed in a chamber equipped to measure
13 pressure, flow, or volume change.

14 23. "Predicted lower limit of normal" means the test value that is the calculated standard
15 convention lying at the fifth percentile, below the upper ninety-five percent of the
16 reference population, based on age, height, and gender, as referenced in the "AMA's
17 Guides to the Evaluation of Permanent Impairment," the recommendations of "The
18 American Thoracic Society for Lung Function Testing" (1991), and the reference
19 values from the "Third National Health and Nutrition Examination Survey" (1993).

20 24. "Pulmonary function test" means spirometry, lung volume testing, and diffusion
21 capacity testing, including appropriate measurements, quality control data, and
22 graphs, performed in accordance with the methods of calibration and techniques
23 provided in the "AMA's Guides to the Evaluation of Permanent Impairment" and the
24 standards provided in the official statements on pulmonary function testing of the
25 American thoracic society (2005).

26 25. "Qualified physician" means a physician who is board-certified in internal medicine,
27 pathology, pulmonary medicine, or occupational medicine, as may be appropriate to
28 the actual diagnostic specialty in question, and who:

- 29 a. Conducted a physical examination of the exposed individual and has taken or
30 has directed to be taken under the physician's supervision, direction, and control,
31 a detailed occupational, exposure, medical, smoking, and social history from the

1 exposed individual, or if the exposed individual is deceased, has reviewed the
2 pathology material and has taken or has directed to be taken under the
3 physician's supervision, direction, and control, a detailed history from the
4 individual most knowledgeable about the information forming the basis of the
5 asbestos or silica action;

6 b. Treated or is treating the exposed individual, and has a doctor-patient
7 relationship with the exposed individual at the time of the physical examination,
8 or in the case of a board-certified pathologist, examined tissue samples or
9 pathological slides of the exposed individual at the request of the treating
10 physician;

11 c. Spends no more than twenty-five percent of the physician's professional practice
12 time providing consulting or expert services in actual or potential civil actions, and
13 whose medical group, professional corporation, clinic, or other affiliated group
14 earns no more than twenty-five percent of its revenue providing such services;

15 d. Was licensed to practice on the date any examination or pulmonary function
16 testing was conducted and actively practiced in the state where the exposed
17 individual resided at the time of the examination or pulmonary function testing or
18 the state in which the asbestos or silica action was filed;

19 e. Received payment for the treatment of the exposed individual from the exposed
20 individual, a member of the exposed individual's family, or the exposed
21 individual's health care plan and not from the exposed individual's lawyer or law
22 firm;

23 f. Prepared or directly supervised the preparation and final review of any medical
24 report under this chapter; and

25 g. Has not relied on any examination, test, radiograph, report, or opinion of any
26 doctor, clinic, laboratory, or testing company that performed an examination, test,
27 radiograph, or screening of the exposed individual in violation of any law,
28 regulation, licensing requirement, or medical code of practice of the state in
29 which the examination, test, or screening was conducted, which was conducted
30 without establishing a doctor-patient relationship with the exposed individual or
31 medical personnel involved in the examination, test, or screening process, or

1 which required the exposed individual to agree to retain the legal service of a law
2 firm.

3 26. "Radiological evidence of asbestosis" means a quality 1 chest x-ray under the ILO
4 system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest
5 x-ray is available showing bilateral small irregular opacities (s, t, or u) occurring
6 primarily in the lower lung zones graded by a certified B-reader as at least 1/1 on the
7 ILO scale.

8 27. "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 chest
9 x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no
10 pathology or quality 1 chest x-ray is available, showing diffuse bilateral pleural
11 thickening of at least b2 on the ILO scale and blunting of at least one costophrenic
12 angle as classified by a certified B-reader.

13 28. "Radiological evidence of silicosis" means a quality 1 chest x-ray under the ILO
14 system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest
15 x-ray is available, showing bilateral predominantly nodular or rounded opacities (p, q,
16 or r) occurring primarily in the upper lung fields graded by a certified B-reader as at
17 least 1/1 on the ILO scale or A, B, or C sized opacities representing complicated
18 silicosis or acute silicosis with characteristic pulmonary edema, interstitial
19 inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in
20 surfactant.

21 29. "Silica" means a respirable crystalline form of silicon dioxide, including quartz,
22 crystalite, and tridymite;

23 30. "Silica action" means a claim for damages or other civil or equitable relief presented in
24 a civil action arising out of, based on, or related to the health effects of exposure to
25 silica, including loss of consortium, wrongful death, mental or emotional injury, risk or
26 fear of disease or other injury, costs of medical monitoring or surveillance, and any
27 other derivative claim made by or on behalf of an individual exposed to silica or a
28 representative, spouse, parent, child, or other relative of that individual. The term does
29 not include a claim under workers' compensation law or veterans' benefits.

30 31. "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis, or chronic
31 silicosis caused by the inhalation of respirable silica.

- 1 32. "Spirometry" means a test of air capacity of the lung through a spirometer to measure
2 the volume of air inspired and expired.
- 3 33. "Supporting test results" means copies of the B-reading, pulmonary function tests,
4 including printouts of the flow volume loops, volume time curves, DLCO graphs, lung
5 volume tests and graphs, quality control data and other pertinent data for all trials, and
6 all other elements required to demonstrate compliance with the equipment, quality,
7 interpretation, and reporting standards in this chapter, B-reader reports, reports of
8 x-ray examinations, diagnostic imaging of the chest, pathology reports, and all other
9 tests reviewed by the diagnosing physician or a qualified physician in reaching the
10 physician's conclusions.
- 11 34. "Timed gas dilution" means a method for measuring total lung capacity in which the
12 subject breathes into a spirometer containing a known concentration of an inert and
13 insoluble gas for a specific time and the concentration of that inert and insoluble gas in
14 the lung is compared to the concentration of that type of gas in the spirometer.
- 15 35. "Total lung capacity" means the volume of gas contained in the lungs at the end of a
16 maximal inspiration.
- 17 36. "Veterans' benefits" means a program for benefits in connection with military service
18 administered by the veterans' administration under 38 U.S.C.
- 19 37. "Workers' compensation" means a program administered by the United States or a
20 state to provide benefits, funded by a responsible employer or its insurance carrier, for
21 occupational diseases or injuries or for disability or death caused by occupational
22 diseases or injuries. The term does not include 45 U.S.C. 51.

23 **Elements of proof for asbestos claims or silica claims.**

- 24 1. a. A plaintiff in an asbestos or silica action shall file a detailed narrative with the
25 complaint or other initial pleading, signed under oath by a qualified physician and
26 accompanied by supporting test results, which constitute prima facie evidence
27 the exposed individual meets the requirements of this chapter. The report may
28 not be prepared by a lawyer or other individual working for or on behalf of a
29 lawyer.
- 30 b. A defendant must be afforded a reasonable opportunity to challenge the
31 adequacy of the prima facie evidence before trial.

- 1 c. The court shall dismiss the action without prejudice upon finding the plaintiff has
2 failed to make the prima facie showing required by this chapter.
- 3 d. Asbestos and silica actions must be individually filed. No asbestos or silica
4 actions may be permitted on behalf of a group or class of plaintiffs.
- 5 2. A plaintiff shall include a sworn information form containing the following:
- 6 a. The name, address, date of birth, social security number, marital status,
7 occupation, and employer of the exposed individual, and any individual through
8 which the exposed individual alleges exposure;
- 9 b. The plaintiff's relationship to the exposed individual or individual through which
10 the exposure is alleged;
- 11 c. The specific location and manner of each alleged exposure, including the specific
12 location and manner of exposure for any individual through which the exposed
13 individual alleges exposure, the beginning and ending date of each alleged
14 exposure, and the identity of the manufacturer of the specific asbestos or silica
15 product for each exposure;
- 16 d. The identity of the defendant or defendants against whom the plaintiff asserts a
17 claim;
- 18 e. The specific asbestos-related or silica-related disease claimed to exist; and
- 19 f. Any supporting documentation relating this subsection.
- 20 3. An asbestos action related to an alleged nonmalignant asbestos-related condition may
21 not be brought or maintained in the absence of prima facie evidence the exposed
22 individual has a physical impairment for which asbestos exposure was a substantial
23 contributing factor. The prima facie showing must be made as to each defendant and
24 include a detailed medical report including:
- 25 a. Radiological or pathological evidence of asbestosis or radiological evidence of
26 diffuse bilateral pleural thickening or a high-resolution computed tomography
27 scan showing evidence of asbestosis or diffuse pleural thickening;
- 28 b. A detailed occupational and exposure history from the exposed individual or, if
29 that individual is deceased, from the individual most knowledgeable about the
30 exposures that form the basis of the action, including identification of all the
31 exposed individual's principal places of employment and exposures to airborne

- 1 contaminants and whether each place of employment involved exposures to
2 airborne contaminants, including asbestos fibers or other disease-causing dusts
3 or fumes, and the nature, duration, and level of any exposure:
- 4 c. A detailed medical, social, and smoking history from the exposed individual or, if
5 that individual is deceased, from the individual most knowledgeable, including a
6 thorough review of the past and present medical problems of the exposed
7 individual:
- 8 d. Evidence verifying that at least fifteen years have elapsed between the exposed
9 individual's date of first exposure to asbestos and the date of diagnosis:
- 10 e. Evidence from an individual medical examination and pulmonary function testing
11 of the exposed individual or, if the exposed individual is deceased, based upon
12 the individual's medical records, that the exposed individual has or the deceased
13 individual had a permanent respiratory impairment rating of at least Class 2 as
14 defined by the "AMA's Guides to the Evaluation of Permanent Impairment" or
15 reported significant changes year to year in lung function for FVC, FEV1, or
16 DLCO as defined by the American thoracic society's interpretative strategies for
17 lung functions tests, 26 European Respiratory Journal 948-68, 961-62, table 12
18 (2005):
- 19 f. Evidence that asbestosis or diffuse bilateral pleural thickening, rather than
20 chronic obstructive pulmonary disease, is a substantial contributing factor to the
21 exposed individual's physical impairment, based on a determination the exposed
22 individual has:
- 23 (1) FVC below the predicted lower limit of normal and FEV1/FVC ratio (using
24 actual values) at or above the predicted lower limit of normal;
- 25 (2) Total lung capacity, by plethysmography or timed gas dilution, below the
26 predicted lower limit of normal; or
- 27 (3) A chest x-ray showing bilateral small, irregular opacities (s, t, or u) graded
28 by a certified B-reader as at least 2/1 on the ILO scale; and
- 29 g. The qualified physician signing the detailed medical report has concluded
30 exposure to asbestos was a substantial contributing factor to the exposed
31 individual's physical impairment and not the result of other causes. An opinion

- 1 that the medical findings and impairment are consistent with or compatible with
2 exposure to asbestos does not satisfy this subdivision.
- 3 4. A silica action related to alleged silicosis may not be brought or maintained in the
4 absence of prima facie evidence the exposed individual has a physical impairment for
5 which exposure to silica was a substantial contributing factor. The prima facie showing
6 must be made as to each defendant and include a detailed medical report and
7 diagnosis signed under oath by a qualified physician including:
- 8 a. Radiological or pathological evidence of silicosis or a high-resolution computed
9 tomography scan showing evidence of silicosis;
- 10 b. A detailed occupational and exposure history from the exposed individual or, if
11 that individual is deceased, from the individual most knowledgeable about the
12 exposures that form the basis of the action, including identification of all principal
13 places of employment and exposures to airborne contaminants and whether
14 each place of employment involved exposures to airborne contaminants,
15 including silica or other disease-causing dusts or fumes, and the nature, duration,
16 and level of any exposure;
- 17 c. A detailed medical, social, and smoking history from the exposed individual or, if
18 that individual is deceased, from the individual most knowledgeable, including a
19 thorough review of the past and present medical problems;
- 20 d. Evidence a sufficient latency period has elapsed between the exposed
21 individual's date of first exposure to silica and the day of diagnosis;
- 22 e. Evidence based upon an individual medical examination and pulmonary function
23 testing of the exposed individual or, if the exposed individual is deceased, based
24 upon the individual's medical records, the exposed individual has or the
25 deceased individual had a permanent respiratory impairment rating of at least
26 Class 2 as defined by the "AMA's Guides to the Evaluation of Permanent
27 Impairment" or reported significant changes year to year in lung function for FVC,
28 FEV1, or DLCO as defined by the American thoracic society's interpretative
29 strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-
30 62, table 12 (2005); and

- 1 f. The qualified physician signing the detailed medical report has concluded
2 exposure to silica was a substantial contributing factor to the exposed individual's
3 physical impairment and not the result of other causes. An opinion stating the
4 medical findings and impairment are consistent with or compatible with exposure
5 to silica does not satisfy this subdivision.

6 **Procedures - Limitation.**

- 7 1. Evidence relating to the prima facie showings required under this chapter does not
8 create a presumption the exposed individual has an asbestos-related or silica-related
9 injury or impairment, and is not conclusive as to the liability of any defendant.
- 10 2. Evidence may not be offered at trial, and the jury may not be informed of:
- 11 a. The grant or denial of a motion to dismiss an asbestos or silica action under this
12 chapter; or
- 13 b. The provisions of this chapter with respect to what constitutes a prima facie
14 showing of asbestos- or silica-related impairment.
- 15 3. Until a court enters an order determining the exposed individual has established prima
16 facie evidence of impairment, an asbestos or silica action is not subject to discovery.
17 except discovery related to establishing or challenging the prima facie evidence or by
18 order of the trial court upon motion of one of the parties.
- 19 4. a. A court may consolidate any number of asbestos or silica actions with the
20 consent of all parties. In the absence of consent, the court may consolidate
21 asbestos or silica actions relating to the exposed individual and members of that
22 individual's household.
- 23 b. A class action relating to more than one exposed individual and members of that
24 individual's household is not permitted.
- 25 c. This subsection does not preclude consolidation of cases by court order for
26 pretrial or discovery purposes.
- 27 5. A defendant in an asbestos action is not liable for exposures from a product or
28 component part made or sold by a third party, even if the third party is insolvent or
29 otherwise not amenable to suit.

1 **Statue of limitations - Two-disease rule.**

2 1. With respect to an asbestos or silica action not barred by limitations, an exposed
3 individual's cause of action may not accrue, nor may the running of limitations
4 commence, before the earlier of the date:

5 a. The exposed individual received a medical diagnosis of an asbestos-related
6 impairment or a silica-related impairment;

7 b. The exposed individual discovered facts that would have led a reasonable
8 individual to obtain a medical diagnosis with respect to the existence of an
9 asbestos-related impairment or a silica-related impairment; or

10 c. The date of death of the exposed individual having an asbestos-related or a
11 silica-related impairment.

12 2. This section does not revive or extend limitations with respect to any claim for
13 asbestos-related impairment or silica-related impairment which was otherwise
14 time-barred before the effective date of this chapter.

15 3. This section does not adversely affect, impair, limit, modify, or nullify any settlement or
16 other agreement with respect to an asbestos or silica action entered before the
17 effective date of this chapter.

18 4. An asbestos or silica action arising out of a nonmalignant condition is a distinct cause
19 of action from an action for an asbestos-related or a silica-related cancer. Where
20 otherwise permitted under state law, damages may not be awarded for fear or
21 increased risk of future disease in an asbestos or silica action.

22 **SECTION 4. EFFECTIVE DATE.** This Act becomes effective July 1, 2017.

23 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.