

ASBESTOS LITIGATION TRANSPARENCY ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts transparency requirements with respect to asbestos bankruptcy trust claims in civil asbestos actions and establishes medical criteria and procedures for asbestos- and silica-related claims.

Highlighted Provisions:

This bill:

- ▶ requires asbestos plaintiffs to investigate and file all asbestos bankruptcy trust claims and provide parties with all trust claims materials after commencement of an asbestos-related lawsuit;
- ▶ gives priority to asbestos and silica claimants who can demonstrate physical impairment caused by exposure to asbestos or silica; and
- ▶ tolls the running of statutes of limitations for persons who have been exposed to asbestos or silica, but have no present physical impairment caused by the exposure.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-6-2001, Utah Code Annotated 1953



- 28 [78B-6-2002](#), Utah Code Annotated 1953
- 29 [78B-6-2003](#), Utah Code Annotated 1953
- 30 [78B-6-2004](#), Utah Code Annotated 1953
- 31 [78B-6-2005](#), Utah Code Annotated 1953
- 32 [78B-6-2006](#), Utah Code Annotated 1953
- 33 [78B-6-2007](#), Utah Code Annotated 1953
- 34 [78B-6-2008](#), Utah Code Annotated 1953
- 35 [78B-6-2101](#), Utah Code Annotated 1953
- 36 [78B-6-2102](#), Utah Code Annotated 1953
- 37 [78B-6-2103](#), Utah Code Annotated 1953
- 38 [78B-6-2104](#), Utah Code Annotated 1953
- 39 [78B-6-2105](#), Utah Code Annotated 1953
- 40 [78B-6-2106](#), Utah Code Annotated 1953
- 41 [78B-6-2107](#), Utah Code Annotated 1953
- 42 [78B-6-2108](#), Utah Code Annotated 1953
- 43 [78B-6-2109](#), Utah Code Annotated 1953
- 44 [78B-6-2110](#), Utah Code Annotated 1953
- 45 [78B-6-2111](#), Utah Code Annotated 1953
- 46 [78B-6-2112](#), Utah Code Annotated 1953
- 47 [78B-6-2113](#), Utah Code Annotated 1953
- 48 [78B-6-2114](#), Utah Code Annotated 1953



50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **78B-6-2001** is enacted to read:

52 **Part 20. Asbestos Bankruptcy Trust Claims Transparency Act**

53 **78B-6-2001. Title.**

54 This part is referred to as the "Asbestos Bankruptcy Trust Claims Transparency Act."

55 Section 2. Section **78B-6-2002** is enacted to read:

56 **78B-6-2002. Legislative findings -- Purpose.**

57 (1) The Legislature finds that:

58 (a) approximately 100 employers have declared bankruptcy at least partially due to

59 asbestos-related liability;

60 (b) these bankruptcies have resulted in a search for more solvent companies by
61 claimants, resulting in over 10,000 companies being named as asbestos defendants, including
62 many small- and medium-sized companies, in industries that cover 85% of the United States
63 economy;

64 (c) scores of trusts have been established in asbestos-related bankruptcy proceedings to
65 form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort
66 system, and new asbestos trusts continue to be formed;

67 (d) asbestos claimants often seek compensation from solvent defendants in civil
68 actions and trusts or claims facilities formed in asbestos-related bankruptcy proceedings;

69 (e) there is limited coordination and transparency between these two paths to recovery,
70 which has resulted in the suppression of evidence in asbestos actions and potential fraud; and

71 (f) justice is promoted by transparency with respect to asbestos bankruptcy trust claims
72 in civil asbestos actions.

73 (2) This part is enacted to:

74 (a) provide transparency with respect to asbestos bankruptcy trust claims in civil
75 asbestos actions; and

76 (b) reduce the opportunity for fraud or suppression of evidence in asbestos actions.

77 Section 3. Section **78B-6-2003** is enacted to read:

78 **78B-6-2003. Definitions.**

79 As used in this part:

80 (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
81 asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform
82 amphibole minerals, and any of these minerals that have been chemically treated or altered,
83 including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action
84 is filed.

85 (2) (a) "Asbestos action" means a claim for damages or other civil or equitable relief
86 presented in a civil action resulting from, based on, or related to:

87 (i) the health effects of exposure to asbestos, including:

88 (A) loss of consortium;

89 (B) wrongful death;

- 90 (C) mental or emotional injury;
91 (D) risk or fear of disease or other injury; and
92 (E) costs of medical monitoring or surveillance; and
93 (ii) any other derivative claim made by or on behalf of a person exposed to asbestos or
94 a representative, spouse, parent, child, or other relative of that person.
95 (b) "Asbestos action" does not include a claim for workers' compensation or veterans'
96 benefits.
97 (3) "Asbestos trust" means a:
98 (a) government-approved or court-approved trust that is intended to provide
99 compensation to claimants arising out of, based on, or related to the health effects of exposure
100 to asbestos or asbestos-containing products;
101 (b) qualified settlement fund that is intended to provide compensation to claimants
102 arising out of, based on, or related to the health effects of exposure to asbestos or
103 asbestos-containing products;
104 (c) compensation fund or claims facility created as a result of an administrative or legal
105 action that is intended to provide compensation to claimants arising out of, based on, or related
106 to the health effects of exposure to asbestos or asbestos-containing products;
107 (d) court-approved bankruptcy that is intended to provide compensation to claimants
108 arising out of, based on, or related to the health effects of exposure to asbestos or
109 asbestos-containing products; or
110 (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec.
111 1121(a) or other applicable provision of law that is intended to provide compensation to
112 claimants arising out of, based on, or related to the health effects of exposure to asbestos or
113 asbestos-containing products.
114 (4) "Plaintiff" means:
115 (a) the person bringing the asbestos action, including a personal representative if the
116 asbestos action is brought by an estate; or
117 (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or
118 legally incapacitated individual.
119 (5) "Trust claims materials" means a final executed proof of claim and all other
120 documents and information related to a claim against an asbestos trust, including:

- 121 (a) claims forms and supplementary materials;
122 (b) affidavits;
123 (c) depositions and trial testimony;
124 (d) work history;
125 (e) medical and health records;
126 (f) documents reflecting the status of a claim against an asbestos trust; and
127 (g) all documents relating to the settlement of the trust claim if the trust claim has
128 settled.
- 129 (6) "Trust governance documents" means all documents that relate to eligibility and
130 payment levels, including:
- 131 (a) claims payment matrices; and
132 (b) trust distribution procedures or plans for reorganization for an asbestos trust.
- 133 (7) "Veterans' benefits" means a program for benefits in connection with military
134 service administered by the Veterans' Administration under United States Code, Title 38,
135 Veterans' Benefits.
- 136 (8) (a) "Workers' compensation" means a program administered by the United States or
137 a state to provide benefits, funded by a responsible employer or the employer's insurance
138 carrier, for occupational diseases or injuries or for disability or death caused by occupational
139 diseases or injuries.
- 140 (b) "Workers' compensation" includes the Longshore and Harbor Workers'
141 Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5
142 U.S.C. Sec. 8101 et seq.
- 143 (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45
144 U.S.C. Sec. 51 et seq.
- 145 Section 4. Section **78B-6-2004** is enacted to read:
- 146 **78B-6-2004. Required disclosures by plaintiff.**
- 147 (1) Within 30 days after an asbestos action is filed, or within 30 days after May 10,
148 2016, whichever is later, and before any evidence is preserved by deposition in the asbestos
149 action, the plaintiff shall do all of the following:
- 150 (a) provide the court and parties with a sworn statement signed by the plaintiff and the
151 plaintiff's counsel, under penalties of perjury, indicating:

152 (i) that an investigation of all asbestos trust claims has been conducted, and that all
153 asbestos trust claims that can be made by the plaintiff or any person on the plaintiff's behalf
154 have been filed;

155 (ii) whether there has been a request to defer, delay, suspend, or toll any asbestos trust
156 claim; and

157 (iii) the disposition of each asbestos trust claim;

158 (b) provide all parties with all trust claims materials, including:

159 (i) trust claims materials that relate to conditions other than those that are the basis for
160 the asbestos action; and

161 (ii) all trust claims materials from all law firms connected to the plaintiff in relation to
162 exposure to asbestos, including anyone at a law firm involved in the asbestos action, any
163 referring law firm, and any other firm that has filed an asbestos trust claim for the plaintiff or
164 on the plaintiff's behalf; and

165 (c) produce all trust claims materials submitted by another individual to any asbestos
166 trusts if:

167 (i) the plaintiff's asbestos trust claim is based on exposure to asbestos through the other
168 individual; and

169 (ii) the materials are available to the plaintiff or the plaintiff's counsel.

170 (2) The plaintiff shall supplement the information and materials required under
171 Subsection (1) within 30 days after the plaintiff or a person on the plaintiff's behalf:

172 (a) supplements an existing asbestos trust claim;

173 (b) receives additional information or materials related to an asbestos trust claim; or

174 (c) files an additional asbestos trust claim.

175 (3) The court may dismiss the asbestos action if the plaintiff fails to comply with this
176 section.

177 (4) An asbestos action may not proceed to trial until at least 180 days after the
178 requirements of Subsection (1) are met.

179 Section 5. Section **78B-6-2005** is enacted to read:

180 **78B-6-2005. Identification of additional asbestos trust claims by defendant.**

181 (1) (a) A defendant may file a motion requesting a stay of the proceedings on or before
182 the later of 60 days before the date that the trial in the action is set to commence or 15 days

183 after the defendant first obtains information that could support additional trust claims by the
184 plaintiff.

185 (b) The motion described in Subsection (1)(a) shall identify the additional asbestos
186 trust claims the defendant believes the plaintiff can file and include information supporting the
187 additional asbestos trust claims.

188 (2) Within 10 days of receiving the defendant's motion described in Subsection (1)(a),
189 the plaintiff shall:

190 (a) file the asbestos trust claims;

191 (b) file a written response with the court stating why there is insufficient evidence for
192 the plaintiff to file the asbestos trust claims; or

193 (c) file a written response with the court requesting a determination that the cost to file
194 the asbestos trust claims exceeds the plaintiff's reasonably anticipated recovery.

195 (3) (a) If the court determines that there is a sufficient basis for the plaintiff to file an
196 asbestos trust claim identified in the motion to stay, the court shall stay the asbestos action until
197 the plaintiff files the asbestos trust claim and produces all related trust claims materials.

198 (b) If the court determines that the cost of submitting an asbestos trust claim exceeds
199 the plaintiff's reasonable anticipated recovery, the court shall stay the asbestos action until the
200 plaintiff files with the court and provides all parties with a verified statement of the plaintiff's
201 history of exposure, usage, or other connection to asbestos covered by that asbestos trust.

202 (4) Not less than 60 days after the plaintiff provides the documentation required under
203 this section, the court may schedule the asbestos action for trial.

204 Section 6. Section **78B-6-2006** is enacted to read:

205 **78B-6-2006. Discovery -- Use of materials -- Trust record.**

206 (1) (a) Trust claims materials and trust governance documents are presumed to be
207 relevant and authentic and are admissible in evidence in an asbestos action.

208 (b) A claim of privilege does not apply to any trust claims materials or trust governance
209 documents.

210 (2) (a) A defendant in an asbestos action may seek discovery from an asbestos trust.

211 (b) The plaintiff may not claim privilege or confidentiality to bar discovery and shall
212 provide consent or other expression of permission that may be required by the asbestos trust to
213 release information and materials sought by a defendant.

214 (3) Trust claim materials that are sufficient to entitle a claim to consideration for
215 payment under the applicable trust governance documents may be sufficient to support a jury
216 finding that the plaintiff was exposed to products for which the trust was established to provide
217 compensation and that the exposure may be a substantial factor in causing the plaintiff's injury
218 that is at issue in the asbestos action.

219 (4) Not less than 30 days before trial in an asbestos action, the court shall enter into the
220 record a document that identifies every asbestos trust claim made by the plaintiff or on the
221 plaintiff's behalf.

222 Section 7. Section **78B-6-2007** is enacted to read:

223 **78B-6-2007. Failure to provide information -- Sanctions.**

224 (1) On the motion of a defendant or judgment debtor seeking sanctions or other relief
225 in an asbestos action, the court may impose any sanction provided by court rule or a law of this
226 state, including vacating a judgment rendered in the action, for a plaintiff's failure to comply
227 with the disclosure requirements of this part.

228 (2) The trial court, on motion by a defendant or judgment debtor seeking sanctions or
229 other relief, has jurisdiction to reopen the judgment in an asbestos action, adjust the judgment
230 by the amount of any subsequent asbestos trust payments obtained by the plaintiff, and order
231 any other relief to the parties that the court considers just and proper if:

232 (a) the plaintiff or a person on the plaintiff's behalf files an asbestos trust claim after
233 the plaintiff obtains a judgment in an asbestos action; and

234 (b) the asbestos trust was in existence at the time the plaintiff obtained the judgment.

235 (3) A defendant or judgment debtor shall file any motion under this section within a
236 reasonable time, not to exceed 3 years after the judgment was entered.

237 Section 8. Section **78B-6-2008** is enacted to read:

238 **78B-6-2008. Application.**

239 (1) This part applies to asbestos actions filed on or after May 10, 2016, as well as any
240 pending asbestos actions in which trial has not commenced as of May 10, 2016.

241 (2) This part may only be applied prospectively if the application of a provision in this
242 part would unconstitutionally affect a vested right.

243 Section 9. Section **78B-6-2101** is enacted to read:

244 **Part 21. Asbestos and Silica Claims Priorities Act**

245 78B-6-2101. Title.

246 This part is known as the "Asbestos and Silica Claims Priorities Act."

247 Section 10. Section **78B-6-2102** is enacted to read:

248 78B-6-2102. Findings and purpose.

249 (1) The Legislature finds that:

250 (a) asbestos is a mineral that was widely used before the 1980s for insulation,
251 fireproofing, and other purposes;

252 (b) millions of American workers and others were exposed to asbestos, especially
253 during and after World War II, and before the issuance of regulations by the Occupational
254 Safety and Health Administration in the early 1970s;

255 (c) long-term exposure to asbestos has been associated with various types of cancer,
256 including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis
257 and diffuse pleural thickening;

258 (d) diseases caused by asbestos often have long latency periods;

259 (e) although the use of asbestos has dramatically declined since the 1970s and
260 workplace exposures have been regulated since 1971 by the Occupational Safety and Health
261 Administration, past exposures will continue to result in significant claims of death and
262 disability as a result of the exposure;

263 (f) the United States Supreme Court in Amchem Products, Inc. v. Windsor, 521 U.S.
264 591, 598 (1997), described the asbestos litigation as a "crisis";

265 (g) attorney-sponsored x-ray screenings have been used to amass large numbers of
266 claims by unimpaired plaintiffs;

267 (h) approximately 100 employers have declared bankruptcy at least partially because of
268 asbestos-related liability;

269 (i) these bankruptcies have resulted in a search for more solvent companies by
270 claimants, resulting in over 10,000 companies being named as asbestos defendants, including
271 many small- and medium-sized companies, in industries that cover 85% of the United States
272 economy;

273 (j) silica is a naturally occurring mineral and is the basic component of sand, quartz,
274 and granite;

275 (k) silica-related illness, including silicosis, can develop from the prolonged inhalation

276 of respirable silica particles;

277 (l) silica claims, like asbestos claims, have involved individuals with no demonstrable
278 physical impairment, and plaintiffs have been identified through for-profit screening
279 companies;

280 (m) silica screening processes have been found subject to substantial abuse and
281 potential fraud;

282 (n) the cost of compensating plaintiffs who have no present asbestos-related or
283 silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability
284 of defendants to compensate plaintiffs with cancer and adversely affects defendant companies;

285 (o) concerns about statutes of limitations and available funds can prompt unimpaired
286 plaintiffs to bring asbestos and silica actions to protect their rights to future compensation
287 should they become impaired; and

288 (p) the public interest requires giving priority to the claims of exposed individuals who
289 are sick in order to help preserve, now and for the future, defendants' ability to compensate
290 people who develop cancer and other serious asbestos-related diseases, as well as silica-related
291 injuries, and to safeguard the jobs, benefits, and savings of workers in this state and the
292 well-being of this state's economy.

293 (2) This part is enacted to:

294 (a) give priority to asbestos and silica claimants who can demonstrate physical
295 impairment caused by exposure to asbestos or silica;

296 (b) toll the running of statutes of limitations for persons who have been exposed to
297 asbestos or to silica, but who have no present physical impairment caused by the exposure;

298 (c) enhance the ability of the courts to supervise and manage asbestos and silica cases;

299 (d) reduce the opportunity for fraud in asbestos and silica litigation; and

300 (e) conserve defendants' resources to allow compensation to present and future
301 claimants with physical impairment caused by exposure to asbestos or silica.

302 Section 11. Section **78B-6-2103** is enacted to read:

303 **78B-6-2103. Definitions.**

304 As used in this part:

305 (1) "AMA Guides to the Evaluation of Permanent Impairment" means the American
306 Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time

307 of the performance of any examination or test on the exposed person required under this part.

308 (2) "Asbestos" means the same as that term is defined in Section [78B-6-2003](#).

309 (3) "Asbestos action" means the same as that term is defined in Section [78B-6-2003](#).

310 (4) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by
311 inhalation of asbestos fibers.

312 (5) "Board-certified in occupational medicine" means a physician who is certified in
313 the specialty of occupational medicine by the American Board of Preventive Medicine or the
314 specialty of occupational/environmental medicine by the American Osteopathic Board of
315 Preventive Medicine and whose certification was current at the time of the performance of an
316 examination and rendition of a report required by this part.

317 (6) "Board-certified in oncology" means a physician who is certified in the specialty of
318 medical oncology by the American Board of Internal Medicine or specialty of oncology by the
319 American Osteopathic Board of Internal Medicine and whose certification was current at the
320 time of the performance of an examination and rendition of a report required by this part.

321 (7) "Board-certified in pathology" means a physician who holds primary certification in
322 anatomic pathology or clinical pathology from the American Board of Pathology or the
323 American Osteopathic Board of Pathology, whose certification was current at the time of the
324 performance of an examination and rendition of a report required by this part, and whose
325 professional practice is principally in the field of pathology involving regular evaluation of
326 pathology materials obtained from surgical or postmortem specimens.

327 (8) "Board-certified in pulmonary medicine" means a physician who is certified in the
328 specialty of pulmonary medicine by the American Board of Internal Medicine or the American
329 Osteopathic Board of Internal Medicine and whose certification was current at the time of the
330 performance of an examination and rendition of a report required by this part.

331 (9) "Certified B-reader" means an individual who has qualified as a National Institute
332 for Occupational Safety and Health (NIOSH) final or B-reader of x-rays under 42 C.F.R. Sec.
333 37.51(b), whose certification was current at the time of any readings required under this part,
334 and whose B-reads comply with the NIOSH B-reader's Code of Ethics, Issues in Classification
335 of Chest Radiographs, and Classification of Chest Radiographs in Contested Proceedings.

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

338 (11) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the
339 measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

340 (12) "Exposed person" means a person whose exposure to asbestos or silica or to
341 asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

342 (13) "FEV1" means forced expiratory volume in the first second, which is the maximal
343 volume of air expelled in one second during performance of simple spirometric tests.

344 (14) "FEV1/FVC" means the ratio of the actual values of FEV1 over FVC.

345 (15) "FVC" means forced vital capacity, which is the maximal volume of air expired
346 with maximum effort from a position of full inspiration.

347 (16) "ILO system" and "ILO scale" mean the radiological ratings and system for the
348 classification of chest x-rays of the International Labor Office provided in "Guidelines for the
349 Use of ILO International Classification of Radiographs of Pneumoconioses" in effect on the
350 day any x-rays of the exposed person were reviewed by a certified B-reader.

351 (17) "Mesothelioma" means a malignant tumor with a primary site of origin in the
352 pleura, peritoneum, or pericardium that has been diagnosed by a board-certified pathologist or
353 oncologist using standardized and accepted criteria of microscopic morphology or appropriate
354 immunohistochemical staining techniques.

355 (18) "Nonmalignant condition" means any condition that can be caused by asbestos or
356 silica other than a diagnosed cancer.

357 (19) "Official statements of the American Thoracic Society" means lung function
358 testing standards set forth in statements from the American Thoracic Society including
359 standardizations of spirometry, standardizations of lung volume testing, standardizations of
360 diffusion capacity testing or single-breath determination of carbon monoxide uptake in the
361 lung, and interpretive strategies for lung function tests, which are in effect on the day of the
362 pulmonary function testing of the exposed person.

363 (20) "Pathological evidence of asbestosis" means a statement by a board-certified
364 pathologist that more than one representative section of lung tissue uninvolved with any other
365 disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the
366 presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in
367 Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11,
368 Appendix 3 (October 8, 1982), or grade one or higher in pathology of asbestosis, 134 Archive

369 of Pathology and Laboratory Medicine 462-80 (March 2010) (tables 2 and 3), or as amended at
370 the time of the exam, and there is no other more likely explanation for the presence of the
371 fibrosis.

372 (21) "Pathological evidence of silicosis" means a statement by a board-certified
373 pathologist that more than one representative section of lung tissue uninvolved with any other
374 disease process demonstrates complicated silicosis with characteristic confluent silicotic
375 nodules or lesions equal to or greater than one centimeter and birefringent crystals or other
376 demonstration of crystal structures consistent with silica (well-organized concentric whorls of
377 collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely
378 explanation for the presence of the fibrosis exists, or acute silicosis with characteristic
379 pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of
380 proteinaceous fluid rich in surfactant.

381 (22) "Plaintiff" means the person bringing the asbestos or silica action, including a
382 personal representative if the asbestos or silica action is brought by an estate, or a conservator
383 or next friend if the asbestos or silica action is brought on behalf of a minor or legally
384 incapacitated individual.

385 (23) "Plethysmography or body (box) plethysmography" means the test for determining
386 lung volume in which the exposed person is enclosed in a chamber equipped to measure
387 pressure, flow, or volume change.

388 (24) "Predicted lower limit of normal" means the test value that is the calculated
389 standard convention lying at the fifth percentile, below the upper 95% of the reference
390 population, based on age, height, and gender, according to the recommendations by the
391 American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation
392 of Permanent Impairment, primarily National Health and Nutrition Examination Survey
393 (NHANES) predicted values, or as amended.

394 (25) "Premises owner" means a person, firm, or organization that owns, in whole or in
395 part, leases, rents, maintains, or controls privately owned land or water, or a building and
396 structure on the land or water, or that leases state-owned land or water, including a building or
397 other structure on the land or water.

398 (26) "Pulmonary function test" means spirometry, lung volume testing, and diffusion
399 capacity testing, including appropriate measurements, quality control data, and graphs,

400 performed in accordance with the methods of calibration and techniques provided in the
401 applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided
402 in the official statements of the American Thoracic Society in effect on the day pulmonary
403 function testing of the exposed person was conducted.

404 (27) "Qualified physician" means a physician board-certified in oncology, pathology,
405 pulmonary medicine, or occupational medicine, as may be appropriate to the actual diagnostic
406 specialty in question, that meets all of the following requirements:

407 (a) (i) if the exposed person is alive at the time of examination, the physician
408 conducted a physical examination and has taken, or has directed to be taken under the
409 physician's supervision, direction, and control, a detailed occupational, exposure, medical,
410 smoking, and social history from the exposed person; or

411 (ii) if the exposed person is deceased, the physician has reviewed the pathology
412 material and has taken, or has directed to be taken under the physician's supervision, direction,
413 and control, a detailed history from the person most knowledgeable about the information
414 forming the basis of the asbestos or silica action;

415 (b) the physician treated or is treating the exposed person, and had or has a
416 doctor-patient relationship with the exposed person at the time of the physical examination, or
417 in the case of a board-certified pathologist, examined tissue samples or pathological slides of
418 the exposed person at the request of the treating physician;

419 (c) the physician spends no more than 25% of the physician's professional practice time
420 providing consulting or expert services in actual or potential civil actions, and whose medical
421 group, professional corporation, clinic, or other affiliated group earns not more than 25% of the
422 medical group's revenue providing such services;

423 (d) the physician was licensed to practice on the date any examination or pulmonary
424 function testing was conducted, and the physician actively practices or practiced in the state
425 where the exposed person resides, or resided at the time of the examination or pulmonary
426 function testing, or the state where the asbestos or silica action was filed;

427 (e) the physician received or is receiving payment for the treatment of the exposed
428 person from the exposed person, a member of the exposed person's family, or the exposed
429 person's health care plan and not from the exposed person's lawyer or law firm;

430 (f) the physician prepared or directly supervised the preparation and final review of any

431 medical report under this part; and

432 (g) the physician has not relied on any examination, test, radiograph, report, or opinion
433 of any doctor, clinic, laboratory, or testing company that performed an examination, test,
434 radiograph, or screening of the exposed person in violation of any law, regulation, licensing
435 requirement, or medical code of practice of the state in which the examination, test, or
436 screening was conducted, or that was conducted without establishing a doctor-patient
437 relationship with the exposed person or medical personnel involved in the examination, test, or
438 screening process, or that required the exposed person to agree to retain the legal service of a
439 law firm.

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

444 (29) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1
445 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology
446 or quality 1 chest x-ray is available, showing diffuse bilateral pleural thickening of at least b2
447 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified
448 B-reader.

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

456 (31) "Silica" means a respirable crystalline form of silicon dioxide, including quartz,
457 cristobalite, and tridymite.

458 (32) (a) "Silica action" means a claim for damages or other civil or equitable relief
459 presented in a civil action arising out of, based on, or related to:

460 (i) the health effects of exposure to silica, including:

461 (A) loss of consortium;

462 (B) wrongful death;
463 (C) mental or emotional injury;
464 (D) risk or fear of disease or other injury; and
465 (E) costs of medical monitoring or surveillance; and
466 (ii) any other derivative claim made by or on behalf of a person exposed to silica or a
467 representative, spouse, parent, child, or other relative of that person.

468 (b) "Silica action" does not include a claim under workers' compensation law or
469 veterans' benefits.

470 (33) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis, or chronic
471 silicosis caused by the inhalation of respirable silica.

472 (34) "Spirometry" means a test of air capacity of the lung through a spirometer to
473 measure the volume of air inspired and expired.

474 (35) "Supporting test results" means copies of the following documents and images:

475 (a) pulmonary function tests, including printouts of the flow volume loops, volume
476 time curves, DLCO graphs, lung volume tests and graphs, quality control data, and other
477 pertinent data for all trials and all other elements required to demonstrate compliance with the
478 equipment, quality, interpretation, and reporting standards set forth in this part;

479 (b) B-reading and B-reader reports;

480 (c) reports of x-ray examinations;

481 (d) diagnostic imaging of the chest;

482 (e) pathology reports; and

483 (f) all other tests reviewed by the diagnosing physician or a qualified physician in
484 reaching the physician's conclusions.

485 (36) "Timed gas dilution" means a method for measuring total lung capacity in which
486 the subject breathes into a spirometer containing a known concentration of an inert and
487 insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the
488 lung is compared to the concentration of that type of gas in the spirometer.

489 (37) "Total lung capacity" means the volume of gas contained in the lungs at the end of
490 a maximal inspiration.

491 (38) "Veterans' benefits" means the same as that term is defined in Section
492 [78B-6-2003](#).

493 (39) "Workers' compensation law" means the same as that term is defined in Section
494 78B-6-2003.

495 Section 12. Section **78B-6-2104** is enacted to read:

496 **78B-6-2104. Filing claims -- Establishment of prima facie case -- Additional**
497 **required information for new claims -- Individual actions to be filed.**

498 (1) A plaintiff in an asbestos or silica action shall file with the complaint or other initial
499 pleading a detailed narrative medical report and diagnosis, signed under oath by a qualified
500 physician and accompanied by supporting test results, which constitute prima facie evidence
501 that the exposed person meets the requirements of this part.

502 (2) The report described in Subsection (1) may not be prepared by a lawyer or person
503 working for or on behalf of a lawyer or law firm.

504 (3) For an asbestos or silica action pending on May 10, 2016, the detailed narrative
505 medical report, diagnosis, and supporting test results described in Subsection (1) shall be
506 provided to all parties not later than 90 days after May 10, 2016, or not later than 90 days
507 before trial, whichever is earlier.

508 (4) A defendant shall be afforded a reasonable opportunity to challenge the adequacy of
509 the prima facie evidence before trial.

510 (5) The court in an asbestos or silica action shall dismiss the action without prejudice
511 on finding that the plaintiff has failed to make the prima facie showing required by this part.

512 (6) A plaintiff in an asbestos or silica action filed on or after May 10, 2016, shall
513 include a sworn information form containing all of the following:

514 (a) the name, address, date of birth, social security number, marital status, occupation,
515 and employer of the exposed person, and any person through which the exposed person alleges
516 exposure;

517 (b) the plaintiff's relationship to the exposed person or person through which the
518 exposure is alleged;

519 (c) the specific location and manner of each alleged exposure, including the specific
520 location and manner of exposure for any person through which the exposed person alleges
521 exposure;

522 (d) the beginning and ending dates of each alleged exposure;

523 (e) the identity of the manufacturer of the specific asbestos or silica product for each

- 524 exposure;
- 525 (f) the identity of the defendant or defendants against whom the plaintiff asserts a
- 526 claim;
- 527 (g) the specific asbestos-related or silica-related disease claimed to exist; and
- 528 (h) any supporting documentation relating to Subsections (6)(a) through (g).
- 529 (7) Asbestos and silica actions shall be individually filed and may not be filed on
- 530 behalf of a group or class of plaintiffs.

531 Section 13. Section **78B-6-2105** is enacted to read:

532 **78B-6-2105. Elements of proof for asbestos actions alleging a nonmalignant**
533 **asbestos-related condition.**

534 (1) An asbestos action related to an alleged nonmalignant asbestos-related condition
535 may not be brought or maintained in the absence of prima facie evidence that the exposed
536 person has a physical impairment for which asbestos exposure was a substantial contributing
537 factor.

538 (2) The prima facie showing shall be made as to each defendant and include a detailed
539 narrative medical report and diagnosis signed under oath by a qualified physician that includes:

540 (a) radiological or pathological evidence of asbestosis or radiological evidence of
541 diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing
542 evidence of asbestosis or diffuse pleural thickening;

543 (b) a detailed occupational and exposure history from the exposed person or, if that
544 person is deceased, from the person most knowledgeable about the exposures that form the
545 basis of the action, including identification of all of the exposed person's principal places of
546 employment and exposures to airborne contaminants and whether each place of employment
547 involved exposures to airborne contaminants, including asbestos fibers or other disease causing
548 dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of
549 any exposure;

550 (c) a detailed medical, social, and smoking history from the exposed person or, if that
551 person is deceased, from the person most knowledgeable about the exposures that form the
552 basis of the action, including a thorough review of the past and present medical problems of the
553 exposed person and the most probable cause of the medical problems;

554 (d) evidence verifying that at least 15 years have elapsed between the exposed person's

555 date of first exposure to asbestos and the date of diagnosis;

556 (e) evidence from a personal medical examination and pulmonary function testing of
557 the exposed person, or if the exposed person is deceased, based upon the person's medical
558 records, that the exposed person has or the deceased person had a permanent respiratory
559 impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA Guides
560 to the Evaluation of Permanent Impairment or reported significant changes year to year in lung
561 function for FVC, FEV1, or DLCO as defined by the American Thoracic Society's
562 interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68,
563 961-62, table 12 (2005), and as updated;

564 (f) evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic
565 obstructive pulmonary disease, is a substantial factor to the exposed person's physical
566 impairment, based on a determination the exposed person has:

567 (i) FVC below the predicted lower limit of normal and FEV1/FVC ratio (using actual
568 values) at or above the predicted lower limit of normal;

569 (ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted
570 lower limit of normal; or

571 (iii) a chest x-ray showing bilateral small, irregular opacities (s, t, or u) graded by a
572 certified B-reader as at least 2/1 on the ILO scale; and

573 (g) the qualified physician signing the detailed narrative medical report described in
574 this Subsection (2) has concluded that exposure to asbestos was a substantial contributing
575 factor to the exposed person's physical impairment and not more probably the result of other
576 causes.

577 (3) A qualified physician's opinion that the medical findings and impairment are
578 "consistent with" or "compatible with" exposure to asbestos, or words to that effect, does not
579 satisfy the requirements described in Subsection (2)(g).

580 Section 14. Section **78B-6-2106** is enacted to read:

581 **78B-6-2106. Elements of proof for asbestos actions alleging asbestos-related**
582 **cancer other than mesothelioma.**

583 (1) An asbestos action for a malignant condition other than mesothelioma may not be
584 brought or maintained in the absence of prima facie evidence that the exposed person has a
585 primary cancer for which exposure to asbestos was a substantial contributing factor.

586 (2) The prima facie showing shall be made as to each defendant and include a detailed
587 narrative medical report and diagnosis signed under oath by a qualified physician, who is
588 board-certified in pathology, pulmonary medicine or oncology, that includes:

589 (a) radiological or pathological evidence of asbestosis or radiological evidence of
590 diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing
591 evidence of asbestosis or diffuse bilateral pleural thickening;

592 (b) evidence verifying that at least 15 years have elapsed between the exposed person's
593 date of first exposure to asbestos and the date of diagnosis; and

594 (c) the qualified physician signing the detailed narrative medical report described in
595 this Subsection (2) has concluded that exposure to asbestos was a substantial contributing
596 factor to the cancer of the exposed person and not more probably the result of other causes.

597 (3) A qualified physician's opinion stating that the medical findings and cancer are
598 "consistent with" or "compatible with" exposure to asbestos, or words to that effect, does not
599 satisfy the requirement described in Subsection (2)(c).

600 (4) The court shall hold an evidentiary hearing and determine if the exposed person has
601 established a prima facie showing of cancer to which exposure to asbestos was a substantial
602 contributing factor.

603 Section 15. Section **78B-6-2107** is enacted to read:

604 **78B-6-2107. Elements of proof for silica actions alleging silicosis.**

605 (1) A silica action related to alleged silicosis may not be brought or maintained in the
606 absence of prima facie evidence that the exposed person has a physical impairment as a result
607 of silicosis.

608 (2) The prima facie showing shall be made as to each defendant and include a detailed
609 narrative medical report and diagnosis signed under oath by a qualified physician that includes:

610 (a) radiological or pathological evidence of silicosis or a high-resolution computed
611 tomography scan showing evidence of silicosis;

612 (b) a detailed occupational and exposure history from the exposed person or, if the
613 exposed person is deceased, from the person most knowledgeable about the exposures that
614 form the basis of the action, including identification of all principal places of employment and
615 exposures to airborne contaminants and whether each place of employment involved exposures
616 to airborne contaminants, including silica or other disease-causing dusts or fumes, that may

617 cause pulmonary impairment and the nature, duration, and level of any exposure;

618 (c) a detailed medical, social, and smoking history from the exposed person or, if the
619 exposed person is deceased, from the person most knowledgeable about the exposures that
620 form the basis of the action, including a thorough review of the past and present medical
621 problems and the most probable cause of the medical problems;

622 (d) evidence that a sufficient latency period has elapsed between the exposed person's
623 date of first exposure to silica and the day of diagnosis;

624 (e) evidence based upon a personal medical examination and pulmonary function
625 testing of the exposed person, or if the exposed person is deceased, based upon the person's
626 medical records, that the exposed person has or the deceased person had a permanent
627 respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the
628 AMA Guides to the Evaluation of Permanent Impairment or reported significant changes year
629 to year in lung function for FVC, FEV1, or DLCO as defined by the American Thoracic
630 Society's interpretative strategies for lung function tests, 26 European Respiratory Journal
631 948-68, 961-62, table 12 (2005), and as updated; and

632 (f) the qualified physician signing the detailed narrative medical report in this
633 Subsection (2) has concluded that exposure to silica was a substantial contributing factor to the
634 exposed person's physical impairment and not more probably the result of other causes.

635 (3) A qualified physician's opinion stating that the medical findings and impairment are
636 "consistent with" or "compatible with" exposure to silica, or words to that effect, does not
637 satisfy the requirement in Subsection (2)(f).

638 Section 16. Section **78B-6-2108** is enacted to read:

639 **78B-6-2108. Elements of proof for silica actions other than silicosis.**

640 (1) A silica action other than silicosis may not be brought or maintained in the absence
641 of prima facie evidence that the exposed person has a primary cancer or physical impairment
642 for which exposure to silica was a substantial contributing factor.

643 (2) The prima facie showing shall be made as to each defendant and include a detailed
644 narrative medical report and diagnosis signed under oath by a qualified physician, who is
645 board-certified in pathology, pulmonary medicine or oncology, that includes:

646 (a) radiological or pathological evidence of silicosis or a high-resolution computed
647 tomography scan showing evidence of silicosis;

648 (b) evidence verifying that at least 15 years have elapsed between the exposed person's
649 date of first exposure to silica and the date of diagnosis; and

650 (c) the qualified physician signing the detailed narrative medical report in this
651 Subsection (2) has concluded that exposure to silica was a substantial contributing factor to the
652 exposed person's primary cancer or physical impairment and not more probably the result of
653 other causes.

654 (3) A qualified physician's opinion stating that the medical findings and primary cancer
655 or physical impairment are "consistent with" or "compatible with" exposure to silica, or words
656 to that effect, does not satisfy the requirement described in Subsection (2)(c).

657 (4) The court shall hold an evidentiary hearing and determine if the exposed person has
658 established a prima facie showing of a primary cancer or physical impairment to which
659 exposure to silica was a substantial contributing factor.

660 Section 17. Section **78B-6-2109** is enacted to read:

661 **78B-6-2109. Elements of physical impairment.**

662 Evidence relating to physical impairment under this part, including pulmonary function
663 testing and diffusing studies, offered in an action governed by this part, shall satisfy the
664 following requirements:

665 (1) the evidence shall comply with the quality controls, equipment requirements,
666 methods of calibration and techniques set forth in the AMA Guides to the Evaluation of
667 Permanent Impairment, and all standards set forth in the official statements of the American
668 Thoracic Society, which are in effect on the date of any examination or pulmonary function
669 testing of the exposed person required by this part;

670 (2) the evidence may not be obtained by, or based on, testing or examinations that
671 violate any law, regulation, licensing requirement, or medical code of practice of the state in
672 which the examination, test, or screening was conducted, or of this state; and

673 (3) the evidence may not be obtained under the condition that the plaintiff or exposed
674 person retains the legal services of the attorney or law firm sponsoring the examination, test, or
675 screening.

676 Section 18. Section **78B-6-2110** is enacted to read:

677 **78B-6-2110. Procedures.**

678 (1) The existence of evidence relating to the prima facie showings required in this part

679 does not create a presumption that the exposed person has an asbestos-related or silica-related
680 injury or impairment and may not be conclusive as to the liability of any defendant.

681 (2) Evidence may not be offered at trial, and the jury may not be informed, of:

682 (a) the grant or denial of a motion to dismiss an asbestos or silica action under the
683 provisions of this part; or

684 (b) the provisions of this part with respect to what constitutes a prima facie showing of
685 asbestos or silica-related impairment.

686 (3) Until a court enters an order determining that the exposed person has established
687 prima facie evidence of impairment, an asbestos or silica action may not be subject to
688 discovery, except:

689 (a) discovery related to establishing or challenging the prima facie evidence; or

690 (b) by order of the trial court upon motion of a party and for good cause shown.

691 (4) (a) A court may consolidate for trial any number and type of asbestos or silica
692 actions with the consent of all the parties.

693 (b) In the absence of consent described in Subsection (4)(a), the court may consolidate
694 for trial only asbestos or silica actions relating to the exposed person and members of that
695 person's household.

696 (c) No class action or any other form of mass aggregation relating to more than one
697 exposed person and members of those persons' households may be permitted.

698 (d) The provisions of this Subsection (4) do not preclude consolidation of cases by
699 court order for pretrial or discovery purposes.

700 Section 19. Section **78B-6-2111** is enacted to read:

701 **78B-6-2111. Limitations on liability in asbestos and silica actions.**

702 (1) A premises owner, or any entity performing operations on a premises, is not liable
703 in an asbestos or silica action for exposures that do not occur on the premises.

704 (2) A defendant in an asbestos or silica action may not be liable for exposures from a
705 product or component part made or sold by a third party, even if the third party is insolvent or
706 otherwise not amenable to suit.

707 (3) Punitive damages may not be awarded in an asbestos or silica action.

708 Section 20. Section **78B-6-2112** is enacted to read:

709 **78B-6-2112. Requirements for proof of causation.**

710 The following standards for proof of causation apply in any asbestos action involving
711 multiple sources of exposures:

712 (1) proof of "any exposure" to a defendant's product may not suffice and instead the
713 plaintiff shall establish the dose of asbestos fibers to which the exposed person was exposed to
714 from each defendant's product;

715 (2) the dose shall be quantified but need not be established with mathematical
716 precision;

717 (3) the plaintiff shall establish that the defendant's product was a substantial factor in
718 causing the plaintiff's disease;

719 (4) the defendant's product is not a substantial factor in causing the plaintiff's disease if,
720 in light of the evidence of the plaintiff's total exposure to asbestos or other toxins, reasonable
721 persons would not regard the defendant's product as a cause of the disease; and

722 (5) the plaintiff, in the absence of direct evidence of causation, shall prove substantial
723 factor causation with scientifically reliable expert testimony that the plaintiff's exposure to the
724 defendant's product more than doubled the plaintiff's risk of contracting the disease.

725 Section 21. Section **78B-6-2113** is enacted to read:

726 **78B-6-2113. Statute of limitations -- Two-disease rule.**

727 (1) The period of limitations for an asbestos or silica action that is not barred as of May
728 10, 2016, may not accrue, nor may the running of limitations commence, prior to the earlier of
729 the date the exposed person:

730 (a) received a medical diagnosis of an asbestos-related impairment or silica-related
731 impairment;

732 (b) discovered facts that would have led a reasonable person to obtain a medical
733 diagnosis with respect to the existence of an asbestos-related impairment or silica-related
734 impairment; or

735 (c) died having an asbestos-related or silica-related impairment.

736 (2) Nothing in this section may be construed to revive or extend limitations with
737 respect to any claim for asbestos- or silica-related impairment that was otherwise time-barred
738 as of May 10, 2016.

739 (3) Nothing in this section may be construed to adversely affect, impair, limit, modify,
740 or nullify any settlement or other agreements with respect to an asbestos or silica action entered

741 into before May 10, 2016.

742 (4) An asbestos or silica action arising out of a nonmalignant condition shall be a
743 distinct cause of action from an action for an asbestos-related or silica-related cancer.

744 (5) If otherwise permitted under state law, damages may not be awarded in an asbestos
745 or silica action for fear of increased risk of future disease.

746 Section 22. Section **78B-6-2114** is enacted to read:

747 **78B-6-2114. Application.**

748 (1) This part applies to asbestos and silica actions filed on or after May 10, 2016, as
749 well as any pending asbestos and silica actions in which trial has not commenced as of May 10,
750 2016.

751 (2) This part may only be applied prospectively if the application of a provision in this
752 part would unconstitutionally affect a vested right.

Legislative Review Note
Office of Legislative Research and General Counsel