

HB0403S01 compared with HB0403

~~{deleted text}~~ shows text that was in HB0403 but was deleted in HB0403S01.

inserted text shows text that was not in HB0403 but was inserted into HB0403S01.

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Representative Brad R. Wilson proposes the following substitute bill:

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

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~~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

78B-6-2002, Utah Code Annotated 1953

78B-6-2003, Utah Code Annotated 1953

78B-6-2004, Utah Code Annotated 1953

78B-6-2005, Utah Code Annotated 1953

78B-6-2006, Utah Code Annotated 1953

78B-6-2007, Utah Code Annotated 1953

78B-6-2008, Utah Code Annotated 1953

~~{ **78B-6-2101**, Utah Code Annotated 1953~~

~~— **78B-6-2102**, Utah Code Annotated 1953~~

~~— **78B-6-2103**, Utah Code Annotated 1953~~

~~— **78B-6-2104**, Utah Code Annotated 1953~~

~~— **78B-6-2105**, Utah Code Annotated 1953~~

~~— **78B-6-2106**, Utah Code Annotated 1953~~

~~— **78B-6-2107**, Utah Code Annotated 1953~~

~~— **78B-6-2108**, Utah Code Annotated 1953~~

~~— **78B-6-2109**, Utah Code Annotated 1953~~

~~— **78B-6-2110**, Utah Code Annotated 1953~~

~~— **78B-6-2111**, Utah Code Annotated 1953~~

~~— **78B-6-2112**, Utah Code Annotated 1953~~

~~— **78B-6-2113**, Utah Code Annotated 1953~~

~~— **78B-6-2114**, Utah Code Annotated 1953~~

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

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

Part 20. Asbestos Bankruptcy Trust Claims Transparency Act

78B-6-2001. Title.

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

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

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

(1) The Legislature finds that:

(a) approximately 100 employers have declared bankruptcy at least partially due to asbestos-related liability;

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

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

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

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

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

(2) This part is enacted to:

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

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

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

78B-6-2003. Definitions.

As used in this part:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform

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amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action is filed.

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

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

(A) loss of consortium;

(B) wrongful death;

(C) mental or emotional injury;

(D) risk or fear of disease or other injury; and

(E) costs of medical monitoring or surveillance; and

(ii) any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

(b) "Asbestos action" does not include a claim for workers' compensation or veterans' benefits.

(3) "Asbestos trust" means a:

(a) government-approved or court-approved trust that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;

(b) qualified settlement fund that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;

(c) compensation fund or claims facility created as a result of an administrative or legal action that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;

(d) court-approved bankruptcy that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products; or

(e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec. 1121(a) or other applicable provision of law that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or

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asbestos-containing products.

(4) "Plaintiff" means:

(a) the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate; or

(b) a conservator or next friend if the asbestos action is brought on behalf of a minor or legally incapacitated individual.

(5) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including:

(a) claims forms and supplementary materials;

(b) affidavits;

(c) depositions and trial testimony;

(d) work history;

(e) medical and health records;

(f) documents reflecting the status of a claim against an asbestos trust; and

(g) all documents relating to the settlement of the trust claim if the trust claim has settled.

(6) "Trust governance documents" means all documents that relate to eligibility and payment levels, including:

(a) claims payment matrices; and

(b) trust distribution procedures or plans for reorganization for an asbestos trust.

(7) "Veterans' benefits" means a program for benefits in connection with military service administered by the Veterans' Administration under United States Code, Title 38, Veterans' Benefits.

(8) (a) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or the employer's insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries.

(b) "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5 U.S.C. Sec. 8101 et seq.

(c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45

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U.S.C. Sec. 51 et seq.

Section 4. Section **78B-6-2004** is enacted to read:

78B-6-2004. Required disclosures by plaintiff.

(1) Within 30 days after an asbestos action is filed, or within 30 days after May 10, 2016, whichever is later, and before any evidence is preserved by deposition in the asbestos action, the plaintiff shall do all of the following:

(a) provide the court and parties with a sworn statement signed by the plaintiff and the plaintiff's counsel, under penalties of perjury, indicating:

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

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

(iii) the disposition of each asbestos trust claim;

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

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

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

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

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

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

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

(a) supplements an existing asbestos trust claim;

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

(c) files an additional asbestos trust claim.

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

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

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

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

(1) (a) A defendant may file a motion requesting a stay of the proceedings on or before the later of 60 days before the date that the trial in the action is set to commence or 15 days after the defendant first obtains information that could support additional trust claims by the plaintiff.

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

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

(a) file the asbestos trust claims;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78B-6-2008. Application.

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

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

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

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

~~**78B-6-2101. Title.**~~

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

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

~~**78B-6-2102. Findings and purpose:**~~

~~(1) The Legislature finds that:~~

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

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

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

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

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

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

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

~~(h) approximately 100 employers have declared bankruptcy at least partially because of~~

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asbestos-related liability;

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

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

~~—— (k) silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;~~

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

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

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

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

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

~~—— (2) This part is enacted to:~~

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

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

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

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

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

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

~~78B-6-2103. Definitions:~~

~~As used in this part:~~

~~(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this part.~~

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

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

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

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

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

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

~~(8) "Board-certified in pulmonary medicine" means a physician who is certified in the specialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the~~

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performance of an examination and rendition of a report required by this part:

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

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

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

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

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

—— (14) "FEV1/FVC" means the ratio of the actual values of FEV1 over FVC:

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

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

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

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

—— (19) "Official statements of the American Thoracic Society" means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the

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lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person:

——— (20) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in pathology of asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis:

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

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

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

——— (24) "Predicted lower limit of normal" means the test value that is the calculated standard convention lying at the fifth percentile, below the upper 95% of the reference population, based on age, height, and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation

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of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended:

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

~~—— (26) "Pulmonary function test" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the official statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.~~

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

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

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

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

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

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

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

~~—— (f) the physician prepared or directly supervised the preparation and final review of any medical report under this part; and~~

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

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

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

~~—— (30) "Radiological evidence of silicosis" means a quality 1 chest x-ray under the ILO system, or a quality 2 chest x-ray in a death case when no pathology or quality 1 chest x-ray is available, showing bilateral predominantly nodular or rounded opacities (p, q, or r) occurring primarily in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale or A, B, or C sized opacities representing complicated silicosis or acute silicosis with~~

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~~characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant:~~

~~—— (31) "Silica" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite, and tridymite:~~

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

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

~~—— (A) loss of consortium;~~

~~—— (B) wrongful death;~~

~~—— (C) mental or emotional injury;~~

~~—— (D) risk or fear of disease or other injury; and~~

~~—— (E) costs of medical monitoring or surveillance; and~~

~~—— (ii) any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child, or other relative of that person:~~

~~—— (b) "Silica action" does not include a claim under workers' compensation law or veterans' benefits:~~

~~—— (33) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis, or chronic silicosis caused by the inhalation of respirable silica:~~

~~—— (34) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired:~~

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

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

~~—— (b) B-reading and B-reader reports;~~

~~—— (c) reports of x-ray examinations;~~

~~—— (d) diagnostic imaging of the chest;~~

~~—— (e) pathology reports; and~~

~~—— (f) all other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions:~~

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

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

~~(38) "Veterans' benefits" means the same as that term is defined in Section 78B-6-2003.~~

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

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

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

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

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

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

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

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

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

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

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exposure;

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

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

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

~~—— (e) the identity of the manufacturer of the specific asbestos or silica product for each exposure;~~

~~—— (f) the identity of the defendant or defendants against whom the plaintiff asserts a claim;~~

~~—— (g) the specific asbestos-related or silica-related disease claimed to exist; and~~

~~—— (h) any supporting documentation relating to Subsections (6)(a) through (g);~~

~~—— (7) Asbestos and silica actions shall be individually filed and may not be filed on behalf of a group or class of plaintiffs.~~

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

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

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

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

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

~~—— (b) a detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment~~

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~~involved exposures to airborne contaminants, including asbestos fibers or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;~~

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

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

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

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

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

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

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

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

~~—— (3) A qualified physician's opinion that the medical findings and impairment are~~

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~~"consistent with" or "compatible with" exposure to asbestos, or words to that effect, does not satisfy the requirements described in Subsection (2)(g):~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) The prima facie showing shall be made as to each defendant and include a detailed~~

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~~narrative medical report and diagnosis signed under oath by a qualified physician that includes:~~

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

~~—— (b) a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;~~

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

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

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

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

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

~~—— Section 16. Section 78B-6-2108 is enacted to read:~~

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

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

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

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

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

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

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

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

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

~~—— **78B-6-2109. Elements of physical impairment.**~~

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

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

~~—— (2) the evidence may not be obtained by, or based on, testing or examinations that~~

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~~violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state; and~~

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

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

~~—— **78B-6-2110. Procedures:**~~

~~—— (1) The existence of evidence relating to the prima facie showings required in this part does not create a presumption that the exposed person has an asbestos-related or silica-related injury or impairment and may not be conclusive as to the liability of any defendant.~~

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

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

~~—— (b) the provisions of this part with respect to what constitutes a prima facie showing of asbestos or silica-related impairment;~~

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

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

~~—— (b) by order of the trial court upon motion of a party and for good cause shown;~~

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

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

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

~~—— (d) The provisions of this Subsection (4) do not preclude consolidation of cases by court order for pretrial or discovery purposes;~~

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

~~—— **78B-6-2111. Limitations on liability in asbestos and silica actions:**~~

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

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

~~(3) Punitive damages may not be awarded in an asbestos or silica action:~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) discovered facts that would have led a reasonable person to obtain a medical~~

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~~diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or~~

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

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

~~—— (3) Nothing in this section may be construed to adversely affect, impair, limit, modify, or nullify any settlement or other agreements with respect to an asbestos or silica action entered into before May 10, 2016.~~

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

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

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

~~—— **78B-6-2114. Application.**~~

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

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

Legislative Review Note

Office of Legislative Research and General Counsel}