

# SENATE BILL No. 236

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-61; IC 34-62.

**Synopsis:** Asbestos litigation. Requires certain disclosures regarding asbestos bankruptcy trust claims in civil asbestos actions. Provides medical criteria to set aside and preserve the claims of asbestos and silica claimants without physical impairment, and gives priority to asbestos and silica claimants with malignant conditions and impairing nonmalignant conditions.

**Effective:** July 1, 2017.

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January 9, 2017, read first time and referred to Committee on Civil Law.

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First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## SENATE BILL No. 236

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-61 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2017]:

### 4 **ARTICLE 61. ASBESTOS BANKRUPTCY TRUST CLAIMS** 5 **TRANSPARENCY ACT**

#### 6 **Chapter 1. Definitions**

7 **Sec. 1. The following definitions in this chapter apply**  
8 **throughout this article.**

9 **Sec. 2. "Asbestos" means:**

10 (1) **chrysotile, amosite, crocidolite, tremolite asbestos,**  
11 **anthophyllite asbestos, actinolite asbestos, asbestiform**  
12 **winchite, asbestiform richterite, or asbestiform amphibole**  
13 **minerals; and**

14 (2) **any of the minerals described in subdivision (1) that have**  
15 **been chemically treated or altered.**

16 **Sec. 3. (a) Except as provided in subsection (b), "asbestos**  
17 **action" means:**



1 (1) a claim for damages or other civil or equitable relief  
 2 presented in a civil action arising out of, based on, or related  
 3 to the health effects of exposure to asbestos, including:

4 (A) loss of consortium;

5 (B) wrongful death;

6 (C) mental or emotional injury;

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

8 (E) costs of medical monitoring or surveillance; or

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

12 (b) An asbestos action does not include a claim for worker's  
 13 compensation benefits paid by or on behalf of an employer to an  
 14 employee under IC 22-3 or a comparable worker's compensation  
 15 law in another jurisdiction.

16 Sec. 4. "Asbestos trust" means a government approved or court  
 17 approved trust, qualified settlement fund, compensation fund, or  
 18 claims facility created:

19 (1) as a result of an administrative or legal action;

20 (2) as a result of a court approved bankruptcy; or

21 (3) under 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other  
 22 applicable provision of law that is intended to provide  
 23 compensation to claimants arising out of, based on, or related  
 24 to the health effects of exposure to asbestos.

25 Sec. 5. "Trust claims materials" means:

26 (1) a final executed proof of claim;

27 (2) all other documents and information related to a claim  
 28 against an asbestos trust, including:

29 (A) claim forms and supplementary materials;

30 (B) affidavits;

31 (C) depositions and trial testimony;

32 (D) employment history;

33 (E) medical records;

34 (F) documents reflecting the status of a claim against an  
 35 asbestos trust; and

36 (G) if the trust claim has settled, all documents relating to  
 37 the settlement of the trust claim.

38 Sec. 6. "Trust governance documents" means all documents that  
 39 relate to eligibility and payment levels for an asbestos trust,  
 40 including:

41 (1) claims payment matrices;

42 (2) trust distribution procedures; and



1 (3) plans for reorganization.

2 **Chapter 2. Required Disclosures by Plaintiff**

3 **Sec. 1. (a) Before January 1, 2018, or not later than thirty (30)**  
 4 **days after an asbestos action is filed that is not otherwise barred by**  
 5 **applicable law, whichever is later, the plaintiff shall:**

6 (1) provide the court and parties with a sworn statement  
 7 signed by the plaintiff and the plaintiff's counsel, under  
 8 penalties of perjury, indicating that an investigation of all  
 9 asbestos trust claims has been conducted and that all asbestos  
 10 trust claims that can be made by the plaintiff or any person on  
 11 the plaintiff's behalf have been filed. The sworn statement  
 12 must:

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

15 (B) provide the disposition of each trust claim; and

16 (2) provide all parties with all trust claims materials,  
 17 including:

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

20 (B) all trust claims materials from all law firms connected  
 21 to the plaintiff in relation to exposure to asbestos,  
 22 including:

23 (i) any referring law firm; and

24 (ii) any other firm that has filed an asbestos trust claim  
 25 for the plaintiff or on the plaintiff's behalf.

26 (b) If the plaintiff's asbestos trust claim is based on exposure to  
 27 asbestos through another individual, the plaintiff shall produce all  
 28 trust claims materials submitted by the other individual to any  
 29 asbestos trusts if the trust claims materials are available to the  
 30 plaintiff or the plaintiff's counsel.

31 **Sec. 2. The court shall dismiss the asbestos action if the plaintiff**  
 32 **fails to comply with this chapter.**

33 **Sec. 3. An asbestos action may not be set for trial until at least**  
 34 **one hundred eighty (180) days after the requirements of section**  
 35 **1(a) of this chapter are met.**

36 **Chapter 3. Identification of Additional Asbestos Trust Claims**  
 37 **by Defendant**

38 **Sec. 1. A defendant may file a motion requesting a stay of the**  
 39 **asbestos action not later than sixty (60) days before the scheduled**  
 40 **trial date of the action is set to commence, or not later than the**  
 41 **fifteenth day after the defendant first obtains information that**  
 42 **could support additional trust claims by the plaintiff. The motion**



- 1       **must:**  
2           (1) identify the asbestos trust claims the defendant believes the  
3           plaintiff can file; and  
4           (2) include information supporting the asbestos trust claims.
- 5       **Sec. 2. Not later than ten (10) days after receiving the**  
6       **defendant's motion, the plaintiff shall:**  
7           (1) file the asbestos trust claims;  
8           (2) file a written response with the court stating why there is  
9           insufficient evidence for the plaintiff to file the asbestos trust  
10          claims; or  
11          (3) file a written response with the court requesting a  
12          determination that the cost to file the asbestos trust claims  
13          exceeds the plaintiff's reasonably anticipated recovery.
- 14       **Sec. 3. (a) If the court determines that there is a sufficient basis**  
15       **for the plaintiff to file an asbestos trust claim identified in the**  
16       **motion to stay under section 1 of this chapter, the court shall stay**  
17       **the asbestos action until the plaintiff:**  
18           (1) files the asbestos trust claim; and  
19           (2) produces all related trust claims materials.
- 20       **(b) If the court determines that the cost of submitting an**  
21       **asbestos trust claim exceeds the plaintiff's reasonably anticipated**  
22       **recovery, the court shall stay the asbestos action until the plaintiff**  
23       **files a verified statement of the plaintiff's history of exposure to,**  
24       **use of, or other connection to asbestos covered by the asbestos**  
25       **trust.**
- 26       **Sec. 4. An asbestos action may not be set for trial until at least**  
27       **sixty (60) days after the plaintiff provides the documentation**  
28       **required by this chapter.**
- 29       **Sec. 5. Not less than thirty (30) days before trial in an asbestos**  
30       **action, the court shall identify each asbestos trust claim made by**  
31       **the plaintiff.**
- 32       **Chapter 4. Discovery**
- 33       **Sec. 1. Trust claims and supporting materials and trust**  
34       **governance documents are presumed to be relevant and authentic**  
35       **and are admissible in evidence in an asbestos action.**
- 36       **Sec. 2. A claim of privilege does not apply to:**  
37           (1) trust claims materials; or  
38           (2) trust governance documents.
- 39       **Sec. 3. (a) A defendant in an asbestos action may seek discovery**  
40       **from an asbestos trust.**  
41       **(b) The plaintiff may not claim privilege or confidentiality to**  
42       **bar discovery.**



1 (c) The plaintiff shall provide consent or other expression of  
 2 permission that may be required by the asbestos trust to release  
 3 information and materials sought by a defendant.

4 Sec. 4. Trust claims materials that are sufficient to entitle a  
 5 claim to consideration for payment under the applicable trust  
 6 governance documents may be sufficient to support a jury finding  
 7 that:

8 (1) the plaintiff may have been exposed to products for which  
 9 the trust was established to provide compensation; and

10 (2) such exposure may be a substantial contributing factor in  
 11 causing the plaintiff's injury at issue in the asbestos action.

12 **Chapter 5. Sanctions for Failure to Provide Information**

13 Sec. 1. (a) A defendant or a judgment debtor may file a motion  
 14 seeking sanctions or other relief in an asbestos action.

15 (b) The court may impose any sanction provided by court rule  
 16 or law, including but not limited to vacating a judgment rendered  
 17 in the action for a plaintiff's failure to comply with the disclosure  
 18 requirements under this article.

19 Sec. 2. (a) If the plaintiff files an asbestos trust claim after the  
 20 plaintiff obtains a judgment in an asbestos action, and that asbestos  
 21 trust was in existence at the time the plaintiff obtained the  
 22 judgment, a defendant or a judgment debtor may seek sanctions or  
 23 other relief.

24 (b) The court may:

25 (1) reopen the judgment in the asbestos action; and

26 (2) adjust the judgment by the amount of any subsequent  
 27 asbestos trust payments obtained by the plaintiff.

28 Sec. 3. A defendant or a judgment debtor must file a motion  
 29 under this chapter within one (1) year after the judgment was  
 30 entered.

31 **Chapter 6. Severability**

32 Sec. 1. The provisions of this article are severable in the manner  
 33 provided by IC 1-1-1-8(b).

34 SECTION 2. IC 34-62 IS ADDED TO THE INDIANA CODE AS  
 35 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 36 2017]:

37 **ARTICLE 62. ASBESTOS AND SILICA CLAIMS**  
 38 **PRIORITIES ACT**

39 **Chapter 1. Definitions**

40 Sec. 1. The definitions in this chapter apply throughout this  
 41 article.

42 Sec. 2. "American Medical Association's Guides to the



1 **Evaluation of Permanent Impairment"** refers to the American  
 2 **Medical Association's Guides to Evaluation of Permanent**  
 3 **Impairment in effect at the time of the performance of any**  
 4 **examination or test on an exposed person required under this**  
 5 **article.**

6 **Sec. 3. "Asbestos" means:**

7 (1) **chrysotile, amosite, crocidolite, tremolite asbestos,**  
 8 **anthophyllite asbestos, actinolite asbestos, asbestiform**  
 9 **winchite, asbestiform richterite, asbestiform amphibole**  
 10 **minerals; and**

11 (2) **any of the minerals in subdivision (1) that have been**  
 12 **chemically treated or altered.**

13 **Sec. 4. (a) Except as provided in subsection (b), "asbestos**  
 14 **action" means:**

15 (1) **a claim for damages or other civil or equitable relief**  
 16 **presented in a civil action arising out of, based on, or related**  
 17 **to the health effects of exposure to asbestos, including:**

18 (A) **loss of consortium;**

19 (B) **wrongful death;**

20 (C) **mental or emotional injury;**

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

22 (E) **costs of medical monitoring or surveillance; and**

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

26 (b) **An asbestos action does not include a claim for worker's**  
 27 **compensation benefits paid by or on behalf of an employer to an**  
 28 **employee under IC 22-3 or a comparable worker's compensation**  
 29 **law in another jurisdiction.**

30 **Sec. 5. "Asbestosis" means bilateral diffuse interstitial fibrosis**  
 31 **of the lungs caused by inhalation of asbestos fibers.**

32 **Sec. 6. "Board certified" refers to a physician:**

33 (1) **certified by a recognized association in the physician's**  
 34 **specialty area; and**

35 (2) **whose certification was current when the physician**  
 36 **performed an examination and rendered a medical report as**  
 37 **required by this article.**

38 **Sec. 7. "Certified B-reader" means an individual:**

39 (1) **who has qualified as a National Institute for Occupational**  
 40 **Safety and Health final or B-reader of x-rays under 42 CFR**  
 41 **37.52(b);**

42 (2) **whose certification was current at the time of any readings**



1           required under this article; and

2           (3) whose readings comply with the National Institute for  
3           Occupational Safety and Health B-reader's Code of Ethics,  
4           Issues in Classification of Chest Radiographs, and  
5           Classification of Chest Radiograph in Contested Proceedings.

6           Sec. 8. "Diffusing capacity of the lungs" refers to a medical test  
7           that determines how much oxygen travels from the alveoli of the  
8           lungs to the bloodstream.

9           Sec. 9. "FEV1/FVC" refers to the ratio between the actual  
10          values for forced expiratory volume in the first second over forced  
11          vital capacity.

12          Sec. 10. "Forced expiratory volume in the first second"  
13          represents the proportion of a person's vital capacity that the  
14          person is able to expire in the first second of forced expiration.

15          Sec. 11. "Forced vital capacity" means the amount of air that  
16          can be forcibly exhaled from the lungs after taking the deepest  
17          breath possible.

18          Sec. 12. "International Labour Office scale" and "International  
19          Labour Office system" refer to the radiological ratings and system  
20          for the classification of chest x-rays of the International Labour  
21          Office provided in Guidelines for the Use of International Labour  
22          Office Internal Classification of Radiographs of Pneumoconioses  
23          in effect on the day any chest x-rays of the exposed person were  
24          reviewed by a certified B-reader.

25          Sec. 13. "Nonmalignant condition" refers to any condition that  
26          can be caused by asbestos or silica other than a diagnosed cancer.

27          Sec. 14. "Official statements of the American Thoracic Society"  
28          refers to lung function testing standards set forth in statements  
29          from the American Thoracic Society in effect on the day of the  
30          pulmonary function test of the exposed person, including:

- 31           (1) standardizations of spirometry;  
32           (2) standardizations of lung volume tests;  
33           (3) standardizations of diffusion capacity testing or single  
34           breath determination of carbon monoxide uptake in the lung;  
35           and  
36           (4) interpretive strategies for lung function tests.

37          Sec. 15. "Pathological evidence of asbestosis" means a statement  
38          by a board certified pathologist that:

- 39           (1) more than one (1) representative section of lung tissue  
40           uninvolved with any other disease process demonstrates a  
41           pattern of peribronchiolar or parenchymal scarring in the  
42           presence of characteristic asbestos bodies graded:





- 1 (A) 1(B) or higher under the criteria published in  
 2 Asbestos-Associated Diseases, 106 Archive of Pathology  
 3 and Laboratory Medicine 11, Appendix 3 (October 8,  
 4 1982); or  
 5 (B) grade 1 or higher in pathology of asbestosis, 134  
 6 Archive of Pathology and Laboratory Medicine 462-80  
 7 (March 2010) (tables 2 and 3), or as amended at the time  
 8 of the examination; and  
 9 (2) there is no other more likely explanation for the presence  
 10 of the fibrosis.

11 **Sec. 16. "Pathological evidence of silicosis" means a statement**  
 12 **by a board certified pathologist that:**

- 13 (1) more than one (1) representative section of lung tissue  
 14 uninvolved with any other disease process demonstrates  
 15 complicated silicosis with characteristic confluent silicotic  
 16 nodules or lesions equal to or greater than one (1) centimeter  
 17 and birefringent crystals or other demonstration of crystal  
 18 structures consistent with silica (well organized concentric  
 19 whorls of collagen surrounded by inflammatory cells) in the  
 20 lung parenchyma, and there exists no other more likely  
 21 explanation for the presence of the fibrosis; or  
 22 (2) the plaintiff has acute silicosis with characteristic  
 23 pulmonary edema, interstitial inflammation, and the  
 24 accumulation within the alveoli or proteinaceous fluid rich in  
 25 surfactant.

26 **Sec. 17. "Plethysmography" means the test for determining lung**  
 27 **volume in which the exposed person is enclosed in a chamber**  
 28 **equipped to measure pressure, flow, or volume change.**

29 **Sec. 18. "Predicted lower limit of normal" means the test value**  
 30 **that is the calculated standard convention lying at the fifth**  
 31 **percentile, below the upper ninety-five percent (95%) of the**  
 32 **reference population, based on age, height, and gender, according**  
 33 **to the recommendation by the American Thoracic Society and as**  
 34 **referenced in the applicable American Medical Association's**  
 35 **Guides to the Evaluation of Permanent Impairment, or as**  
 36 **amended.**

37 **Sec. 19. "Pulmonary function test" means:**

- 38 (1) spirometry;  
 39 (2) lung volume testing; and  
 40 (3) diffusion capacity testing, including appropriate  
 41 measurements, quality control data, and graphs, performed  
 42 in accordance with:



1 (A) the methods of calibration and techniques provided in  
 2 the applicable American Medical Association's Guides to  
 3 the Evaluation of Permanent Impairment; and

4 (B) all standards provided in the official statements of the  
 5 American Thoracic Society in effect on the day pulmonary  
 6 function testing of the exposed person was conducted.

7 **Sec. 20. "Qualified physician" refers to a physician who:**

8 (1) is board certified in internal medicine, pathology,  
 9 pulmonary medicine, or occupational medicine, as is  
 10 appropriate to the actual diagnostic speciality in question;  
 11 and

12 (2) spends not more than twenty-five percent (25%) of the  
 13 physician's professional practice time providing consulting  
 14 services or expert services in actual or potential civil actions  
 15 and whose medical group, professional corporation, clinic, or  
 16 other affiliated group earns not more than twenty-five percent  
 17 (25%) of its revenue providing such services.

18 **Sec. 21. "Radiological evidence of asbestosis" means evidence**  
 19 **of bilateral small irregular opacities (s, t, or u) occurring primarily**  
 20 **in the lower lung zones graded by a certified B-reader as at least**  
 21 **1/1 on the International Labour Office scale, as seen on:**

22 (1) a quality 1 chest x-ray under the International Labour  
 23 Office system; or

24 (2) a quality 2 chest x-ray under the International Labour  
 25 Office system in a death case when no pathology or quality 1  
 26 chest x-ray is available.

27 **Sec. 22. "Radiological evidence of diffuse bilateral pleural**  
 28 **thickening" means evidence of diffuse bilateral pleural thickening**  
 29 **of at least b2 on the International Labour Office scale and blunting**  
 30 **of at least one (1) costophrenic angle as classified by a certified**  
 31 **B-reader, as seen on:**

32 (1) a quality 1 chest x-ray under the International Labour  
 33 Office system; or

34 (2) a quality 2 chest x-ray under the International Labour  
 35 Office system in a death case when no pathology or quality 1  
 36 chest x-ray is available.

37 **Sec. 23. "Radiological evidence of silicosis" means:**

38 (1) a quality 1 chest x-ray under the International Labour  
 39 Office system, or a quality 2 chest x-ray under the  
 40 International Labour Office system in a death case when no  
 41 pathology or quality 1 chest x-ray is available; and

42 (2) one (1) or more of the following:



1 (A) Bilateral predominantly nodular or rounded opacities  
 2 (p, q, or r) occurring primarily in the upper lung fields  
 3 graded by a certified B-reader as at least 1/1 on the  
 4 International Labour Office scale.

5 (B) Acute silicosis with characteristic pulmonary edema,  
 6 interstitial inflammation, and the accumulation within the  
 7 alveoli of proteinaceous fluid rich in surfactant.

8 (C) A, B, or C sized opacities representing complicated  
 9 silicosis.

10 Sec. 24. "Silica" means a respirable crystalline form of silicon  
 11 dioxide, including quartz, cristobalite, and tridymite.

12 Sec. 25. (a) Except as provided in subsection (b), "silica action"  
 13 means:

14 (1) a claim for damages or other civil or equitable relief  
 15 presented in a civil action arising out of, based on, or related  
 16 to the health effects of exposure to silica, including:

17 (A) loss of consortium;

18 (B) wrongful death;

19 (C) mental or emotional injury;

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

21 (E) costs of medical monitoring or surveillance; and

22 (2) any other derivative claim made by or on behalf of a  
 23 person exposed to silica or a representative, spouse, parent,  
 24 child, or other relative of that person.

25 (b) A silica action does not include a claim for worker's  
 26 compensation benefits paid by or on behalf of an employer to an  
 27 employee under IC 22-3 or a comparable worker's compensation  
 28 law in another jurisdiction.

29 Sec. 26. "Silicosis" means:

30 (1) simple silicosis;

31 (2) acute silicosis;

32 (3) accelerated silicosis; or

33 (4) chronic silicosis caused by the inhalation of respirable  
 34 silica.

35 Sec. 27. "Spirometry" means a test of air capacity of the lung  
 36 through a spirometer to measure the volume of air inspired and  
 37 expired.

38 Sec. 28. "Supporting test results" means:

39 (1) copies of a B-reading;

40 (2) pulmonary function tests;

41 (3) certified B-reader reports;

42 (4) reports of chest x-ray examinations;



- 1           (5) diagnostic imaging of the chest;
- 2           (6) pathology reports; and
- 3           (7) all other tests reviewed by the diagnosing physician or a
- 4           qualified physician in reaching the physician's conclusions.

5           **Sec. 29. "Timed gas dilution" means a method for measuring**  
 6 **total lung capacity in which the subject breathes into a spirometer**  
 7 **containing a known concentration of an inert and insoluble gas for**  
 8 **a specific time, and the concentration of the inert and insoluble gas**  
 9 **in the lung is compared to the concentration of that type of gas in**  
 10 **the spirometer.**

11           **Chapter 2. Qualified Physician**

12           **Sec. 1. Before preparing a medical report and diagnosis**  
 13 **required under this article, a qualified physician must complete the**  
 14 **following:**

- 15           (1) Perform a physical examination of the exposed person.
- 16           (2) Obtain a detailed occupational, exposure, medical,
- 17           smoking, and social history from the exposed person or, if the
- 18           exposed person is deceased, review pathology material and
- 19           obtain a detailed history from the person most knowledgeable
- 20           about the information that forms the basis of the asbestos
- 21           action or silica action.

22           **Sec. 2. A qualified physician must have treated the exposed**  
 23 **person and formed a doctor-patient relationship with the exposed**  
 24 **person at the time of the physical examination, or in the case of a**  
 25 **board certified pathologist, examined tissue samples or**  
 26 **pathological slides of the exposed person at the request of the**  
 27 **treating physician.**

28           **Sec. 3. (a) A qualified physician must have been licensed to**  
 29 **practice on the date any examination or pulmonary function test**  
 30 **was conducted.**

31           **(b) A qualified physician must have actively practiced in the**  
 32 **state where the exposed person resides or resided at the time of the**  
 33 **examination or pulmonary function test, or the state where the**  
 34 **asbestos action or silica action was filed.**

35           **Sec. 4. A qualified physician may not receive payment for the**  
 36 **treatment of the exposed person from the exposed person's**  
 37 **attorney or law firm.**

38           **Sec. 5. A qualified physician must have prepared or directly**  
 39 **supervised the preparation and final review of any medical report**  
 40 **under this article.**

41           **Sec. 6. A qualified physician may not rely on any examinations,**  
 42 **tests, radiographs, reports, or opinions of any doctor, clinic,**



1 laboratory, or testing company that performed an examination,  
2 test, radiograph, or screening of the exposed person:

- 3 (1) in violation of any law, regulation, licensing requirement,  
4 or medical code of practice of the state in which the  
5 examination, test, radiograph, or screening was conducted;  
6 (2) that was conducted without establishing a doctor-patient  
7 relationship with the exposed person; or  
8 (3) that required the exposed person to agree to retain the  
9 legal services of a law firm.

10 **Chapter 3. Filing Claims**

11 **Sec. 1. (a)** Not later than thirty (30) days after initiating an  
12 asbestos action involving a nonmalignant condition that is not  
13 otherwise barred by applicable law, or not later than thirty (30)  
14 days after initiating a silica action involving silicosis that is not  
15 otherwise barred by applicable law, the plaintiff shall file a  
16 detailed narrative medical report and diagnosis, signed under oath  
17 by a qualified physician and accompanied by supporting test  
18 results, that constitutes prima facie evidence that the exposed  
19 person meets the requirements of this article.

20 (b) The detailed narrative medical report may not be prepared  
21 by an attorney or a person working for or on behalf of an attorney  
22 or law firm.

23 (c) The detailed narrative medical report must contain a sworn  
24 information form containing the following:

- 25 (1) The name, address, date of birth, Social Security number,  
26 marital status, occupation, and employer of the exposed  
27 person, and any person through which the exposed person  
28 alleges exposure.  
29 (2) The plaintiff's relationship to the exposed person or person  
30 through which the exposure is alleged.  
31 (3) The specific location and manner of each alleged exposure,  
32 including:  
33 (A) the specific location and manner of exposure for any  
34 person through which the exposed person alleges exposure;  
35 (B) the beginning and ending dates of each alleged  
36 exposure; and  
37 (C) the identity of the manufacture of the specific asbestos  
38 product or silica product for each exposure.  
39 (4) The identity of the defendant against whom the plaintiff  
40 asserts a claim.  
41 (5) The specific asbestos related or silica related disease  
42 claimed to exist.



1           **(6) Any supporting documentation relating to this section.**

2           **Sec. 2. For an asbestos action or silica action pending on July 1,**  
 3 **2017, the detailed narrative medical report and supporting test**  
 4 **results and a sworn information form described in section 1 of this**  
 5 **chapter must be provided to all parties not later than ninety (90)**  
 6 **days before trial.**

7           **Sec. 3. A defendant shall be afforded a reasonable opportunity**  
 8 **to challenge the adequacy of the prima facie evidence before trial.**

9           **Sec. 4. The court shall dismiss the asbestos action or silica action**  
 10 **without prejudice if the court finds that the plaintiff has failed to**  
 11 **make the prima facie showing required by this article or failed to**  
 12 **comply with the requirements of this chapter.**

13           **Sec. 5. Asbestos actions and silica actions must be individually**  
 14 **filed. No asbestos actions or silica actions shall be permitted on**  
 15 **behalf of a group or class of plaintiffs.**

16           **Chapter 4. Elements of Proof for Asbestos Actions Involving**  
 17 **Nonmalignant Conditions**

18           **Sec. 1. (a) An asbestos action involving a nonmalignant**  
 19 **condition that is not otherwise barred by applicable law may not**  
 20 **be brought or maintained in the absence of prima facie evidence**  
 21 **that the exposed person has a physical impairment for which**  
 22 **asbestos exposure was a substantial contributing factor as**  
 23 **determined under IC 34-62-3.**

24           **(b) The prima facie showing must be made as to each defendant**  
 25 **and include a detailed narrative medical report and diagnosis,**  
 26 **signed under oath by a qualified physician that includes the**  
 27 **following:**

28           **(1) Radiological evidence of asbestosis or pathological**  
 29 **evidence of asbestosis or radiological evidence of diffuse**  
 30 **bilateral pleural thickening, or a high resolution computed**  
 31 **tomography scan showing evidence of asbestosis or diffuse**  
 32 **pleural thickening.**

33           **(2) A detailed occupational and exposure history from the**  
 34 **exposed person or, if the exposed person is deceased, from the**  
 35 **person most knowledgeable about the exposures that form the**  
 36 **basis of the action, including:**

37           **(A) identification of all the exposed person's principal**  
 38 **places of employment and exposures to airborne**  
 39 **contaminants; and**

40           **(B) whether each principal place of employment involved**  
 41 **exposures to airborne contaminants that may cause**  
 42 **pulmonary impairment and the nature, duration, and level**



- 1 of any exposures.
- 2 (3) A detailed medical, social, and smoking history from the
- 3 exposed person or, if the exposed person is deceased, from the
- 4 person most knowledgeable of the histories, including a
- 5 thorough review of the past and present medical problems of
- 6 the exposed person and the most probable cause of the
- 7 problems.
- 8 (4) Evidence verifying that at least fifteen (15) years have
- 9 elapsed between the exposed person's date of first exposure to
- 10 asbestos and the date of diagnosis.
- 11 (5) Evidence from a personal medical examination and
- 12 pulmonary function test of the exposed person or, if the
- 13 exposed person is deceased, based upon the person's medical
- 14 records, that the exposed person has or the deceased exposed
- 15 person had:
- 16 (A) a permanent respiratory impairment rating of at least
- 17 Class 2 as defined by and evaluated under the American
- 18 Medical Association's Guides to the Evaluation of
- 19 Permanent Impairment; or
- 20 (B) reported significant changes year to year in lung
- 21 function for forced vital capacity, forced expiratory
- 22 volume in the first second, or diffusing capacity of the
- 23 lungs for carbon monoxide as defined by the American
- 24 Thoracic Society's interpretative strategies for lung
- 25 function tests, 26 European Respiratory Journal 948-68,
- 26 961-62, table 12 (2005) and as updated.
- 27 (6) Evidence that asbestosis or diffuse bilateral pleural
- 28 thickening, rather than chronic obstructive pulmonary
- 29 disease, is a substantial contributing factor to the exposed
- 30 person's physical impairment, based on a determination the
- 31 exposed person has:
- 32 (A) forced vital capacity below the predicted lower limit of
- 33 normal and the FEV1/FVC ratio (using actual values) at or
- 34 above the predicted lower limit of normal;
- 35 (B) total lung capacity, by plethysmography or timed gas
- 36 dilution, below the predicted lower limit of normal; or
- 37 (C) a chest x-ray showing bilateral small, irregular
- 38 opacities (s, t, or u) graded by a certified B-reader as at
- 39 least 2/1 on the International Labour Office scale.
- 40 Sec. 2. (a) The qualified physician signing the detailed narrative
- 41 medical report under IC 34-62-3 must state that exposure to
- 42 asbestos was a substantial contributing factor to the exposed



1 person's physical impairment and was not the result of other  
2 causes.

3 (b) An opinion that the medical findings and physical  
4 impairment are consistent with or compatible with exposure to  
5 asbestos, or words to that effect, does not satisfy subsection (a).

6 Chapter 5. Elements of Proof for Silica Actions Involving  
7 Silicosis

8 Sec. 1. A silica action involving silicosis that is not otherwise  
9 barred by applicable law may not be brought or maintained in the  
10 absence of prima facie evidence that the exposed person has a  
11 physical impairment for which exposure to silica was a substantial  
12 contributing factor. The prima facie showing must be made as to  
13 each defendant and include a detailed narrative medical report and  
14 diagnosis, signed under oath by a qualified physician that includes  
15 all of the following:

16 (1) Radiological evidence of silicosis or pathological evidence  
17 of silicosis or a high resolution computed tomography scan  
18 showing evidence of silicosis.

19 (2) A detailed occupational and exposure history from the  
20 exposed person or, if the exposed person is deceased, from the  
21 person most knowledgeable about the exposures that form the  
22 basis of the action, including:

23 (A) identification of all principal places of employment and  
24 exposures to airborne contaminants; and

25 (B) whether each principal place of employment involved  
26 exposures to airborne contaminants that may cause  
27 pulmonary impairment and the nature, duration, and level  
28 of any exposure.

29 (3) A detailed medical, social, and smoking history from the  
30 exposed person or, if the exposed person is deceased, from the  
31 person most knowledgeable of the histories, including a  
32 thorough review of the past and present medical problems  
33 and the most probable cause of the problems.

34 (4) Evidence that a sufficient latency period has elapsed  
35 between the exposed person's date of first exposure to silica  
36 and the day of diagnosis.

37 (5) Evidence based upon a personal medical examination and  
38 pulmonary function test of the exposed person, or if the  
39 exposed person is deceased, based upon the person's medical  
40 records, that the exposed person has or the deceased exposed  
41 person had:

42 (A) a permanent respiratory impairment rating of at least





1           **Class 2 as defined by and evaluated under the American**  
 2           **Medical Association's Guides to the Evaluation of**  
 3           **Permanent Impairment; or**

4           **(B) reported significant changes year to year in lung**  
 5           **function for forced vital capacity, forced expiratory**  
 6           **volume in the first second, or diffusing capacity of the**  
 7           **lungs for carbon monoxide as defined by the American**  
 8           **Thoracic Society's interpretative strategies for lung**  
 9           **function tests.**

10          **Sec. 2. (a) The qualified physician who signs the detailed**  
 11          **narrative medical report must state that exposure to silica was a**  
 12          **substantial contributing factor to the exposed person's physical**  
 13          **impairment and not the result of other causes.**

14          **(b) An opinion stating that the medical findings and impairment**  
 15          **are consistent with or compatible with exposure to silica, or words**  
 16          **to that effect, does not satisfy subsection (a).**

17          **Chapter 6. Evidence of Physical Impairment**

18          **Sec. 1. Evidence relating to physical impairment offered in an**  
 19          **action governed by this article must comply with:**

20               **(1) the quality controls, equipment requirements, methods of**  
 21               **calibration and techniques as set forth in the American**  
 22               **Medical Association's Guides to the Evaluation of Permanent**  
 23               **Impairment; and**

24               **(2) all standards set forth in the official statements of the**  
 25               **American Thoracic Society that are in effect on the date of**  
 26               **any examination or pulmonary function test of the exposed**  
 27               **person required by this article.**

28          **Sec. 2. Evidence relating to physical impairment offered in an**  
 29          **action governed by this article must not be obtained by or based on**  
 30          **an examination, test, or screening that violates any law, regulation,**  
 31          **licensing requirements, or medical code of practice of this state or**  
 32          **the state in which the examination, test, or screening was**  
 33          **conducted.**

34          **Sec. 3. Evidence relating to physical impairment offered in an**  
 35          **action governed by this article must not be obtained under the**  
 36          **condition that the plaintiff or exposed person retains the legal**  
 37          **services of the attorney or law firm sponsoring the examination,**  
 38          **test, or screening.**

39          **Chapter 7. Procedures and Limitations**

40          **Sec. 1. (a) Evidence relating to the prima facie showings**  
 41          **required under this article:**

42               **(1) may not create any presumption that the exposed person**



- 1           **has an asbestos related or silica related injury or impairment;**  
 2           **and**  
 3           **(2) may not be conclusive as to the liability of any defendant.**  
 4           **(b) No evidence may be offered at trial, and the jury may not be**  
 5 **informed of:**  
 6           **(1) the grant or denial of a motion to dismiss an asbestos**  
 7 **action or silica action under this article; or**  
 8           **(2) the provisions of this article with respect to what**  
 9 **constitutes a prima facie showing of asbestos related or silica**  
 10 **related impairment.**  
 11           **Sec. 2. Until a court enters an order determining that the**  
 12 **exposed person has established prima facie evidence of**  
 13 **impairment, no asbestos action or silica action is subject to**  
 14 **discovery, except:**  
 15           **(1) discovery related to establishing or challenging the prima**  
 16 **facie evidence; or**  
 17           **(2) by order of the court upon motion of a party and for good**  
 18 **cause shown.**  
 19           **Sec. 3. (a) A court may consolidate for trial any number or type**  
 20 **of asbestos actions or silica actions with the consent of all the**  
 21 **parties. In the absence of such consent, the court may consolidate**  
 22 **for trial only asbestos actions or silica actions relating to the**  
 23 **exposed person and members of that person's household.**  
 24           **(b) This section does not preclude consolidation of cases by**  
 25 **court order for pretrial or discovery purposes.**  
 26           **Sec. 4. A defendant in an asbestos action is not liable for**  
 27 **exposure from a product or component part made or sold by a**  
 28 **third party.**  
 29           **Chapter 8. Statute of Limitations**  
 30           **Sec. 1. (a) With respect to an asbestos action or silica action not**  
 31 **barred by limitations as of July 1, 2017, an exposed person's cause**  
 32 **of action may not accrue, nor may the statute of limitations begin**  
 33 **to run, prior to the earliest of:**  
 34           **(1) the date the exposed person received a medical diagnosis**  
 35 **of an asbestos related or silica related impairment;**  
 36           **(2) the date the exposed person discovered facts that would**  
 37 **have led a reasonable person to obtain a diagnosis with**  
 38 **respect to the existence of an asbestos related or silica related**  
 39 **impairment; or**  
 40           **(3) the date of death of the exposed person having an asbestos**  
 41 **related or silica related impairment.**  
 42           **(b) This section may not be construed to revive or extend**



1        **limitations with respect to any claim for asbestos related or silica**  
2        **related impairment that was otherwise time barred on July 1, 2017.**  
3        **Sec. 2. (a) An asbestos action or silica action arising out of a**  
4        **nonmalignant condition is a distinct cause of action from an action**  
5        **for an asbestos related or silica related cancer.**  
6        **(b) Where otherwise permitted under state law, no damages**  
7        **shall be awarded for fear or increased risk of future disease in an**  
8        **asbestos action or silica action.**  
9        **Chapter 9. Severability**  
10       **Sec. 1. The provisions of this article are severable in the manner**  
11       **provided by IC 1-1-1-8(b).**

