

**HOUSE BILL NO. 1197**

Introduced by

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

Senators Campbell, Klein, Krebsbach

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

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

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

7 **Definitions.**

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

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

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

22           **Required disclosures by plaintiff.**

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

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

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

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

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

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

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

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

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

19                   a. File the asbestos trust claims;

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

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

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

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

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

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

5           **Discovery - Use of materials.**

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

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

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

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

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

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

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

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

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

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

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

10       **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6           **Procedures - Limitation.**

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

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

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

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

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

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

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

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

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

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

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