

SENATE BILL 2062

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 28
and Title 29, Chapter 34, relative to asbestos-
related liability.

WHEREAS, approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability; and

WHEREAS, these bankruptcies have resulted in a search for more solvent companies, resulting in over ten thousand companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy; and

WHEREAS, 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; and

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

WHEREAS, 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, as found in *In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014); and

WHEREAS, justice is promoted by transparency with respect to asbestos bankruptcy trust claims in civil asbestos actions; and

WHEREAS, with the Asbestos Bankruptcy Trust Claims Transparency Act, it is the intent of the General Assembly to provide transparency with respect to asbestos bankruptcy trust

claims in civil asbestos actions and to reduce the opportunity for fraud or suppression of evidence in asbestos actions; and

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

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

WHEREAS, 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; and

WHEREAS, diseases caused by asbestos often have long latency periods; and

WHEREAS, 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; and

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

WHEREAS, lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs; and

WHEREAS, the cost of compensating plaintiffs who have no present asbestos-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; and

WHEREAS, concerns about statutes of limitations and available funds can prompt unimpaired plaintiffs to bring asbestos actions to protect their rights to future compensation should they become impaired; and

WHEREAS, 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 and to

safeguard the jobs, benefits, and savings of workers in this state and the well-being of this state's economy; and

WHEREAS, with the Asbestos Claims Priorities Act, it is the intent of the General Assembly to give priority to asbestos claimants who can demonstrate physical impairment caused by exposure to asbestos, toll the running of statutes of limitations for persons who have been exposed to asbestos, but who have no present physical impairment caused by the exposure, enhance the ability of the courts to supervise and manage asbestos cases, reduce the opportunity for fraud in asbestos litigation, and conserve defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following language as a new part:

29-34-601. This part shall be known and may be cited as the "Asbestos Bankruptcy Trust Claims Transparency Act".

29-34-602. As used in this part:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR 1910 at the time the asbestos action is filed;

(2) "Asbestos 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 the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance,

and 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 such person. "Asbestos action" does not include a claim for workers' compensation or veterans' benefits;

(3) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. § 524(g) or 11 U.S.C. § 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;

(4) "Plaintiff" means the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate, or 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 claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the trust claim has settled, all documents relating to the settlement of the trust claim;

(6) "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, 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 title 38 of the United States Code; and

(8) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 et seq., and Federal Employees' Compensation Act, 5 U.S. Code chapter 81. "Workers' compensation" does not include the Federal Employers' Liability Act of April 22, 1908, 45 U.S.C. §§ 51 et seq.

29-34-603.

(a) Within thirty (30) days after an asbestos action is filed, or within thirty (30) days after the effective date of this part, whichever is later, and before any evidence is preserved by deposition in the asbestos action, the plaintiff shall:

(1) Provide the court and parties with a sworn statement signed by the plaintiff and plaintiff's counsel, under penalties of perjury, indicating 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. The sworn statement must indicate whether there has been a request to defer, delay, suspend, or toll any asbestos trust claim, and provide the disposition of each asbestos trust claim;

(2) Provide all parties with all trust claims materials, including trust claims materials that relate to conditions other than those that are the basis for the asbestos action and including 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

(3) If the plaintiff's asbestos trust claim is based on exposure to asbestos through another individual, produce all trust claims materials submitted by the other individual to any asbestos trusts if the materials are available to the plaintiff or plaintiffs' counsel.

(b) The plaintiff shall supplement the information and materials required under subsection (a) within thirty (30) days after the plaintiff or a person on the plaintiff's behalf supplements an existing asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or files an additional asbestos trust claim.

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

(d) An asbestos action shall not proceed to trial until not less than one hundred eighty (180) days after the requirements of subsection (a) are met.

29-34-604.

(a) A defendant may file a motion requesting a stay of the proceedings on or before the later of the sixtieth day before the date trial in the action is set to commence or the fifteenth day after the defendant first obtains information that could support additional trust claims by the plaintiff. The motion shall identify the additional asbestos trust claims the defendant believes the plaintiff can file and include information supporting the additional asbestos trust claims.

(b) Within ten (10) days of receiving the defendant's motion, the plaintiff shall:

(1) File the asbestos trust claims;

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

(3) 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.

(c)

(1) 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.

(2) If the court determines that the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably 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.

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

29-34-605.

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in an asbestos action. A claim of privilege does not apply to any trust claims materials or trust governance documents.

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

29-34-606.

(a) Not less than thirty (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.

(b) 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 such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the asbestos action.

29-34-607.

(a) In an asbestos action, on the motion of a defendant or judgment debtor seeking sanctions or other relief, the court may impose any sanction provided by court rule or a law of this state, including, but not limited to, vacating a judgment rendered in the action, for a plaintiff's failure to comply with the disclosure requirements of this part.

(b) If 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 that asbestos trust was in existence at the time the plaintiff obtained the judgment, the trial court, on motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos action and 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.

(c) A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than three (3) years after the judgment was entered.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 34, is further amended by adding the following as a new part:

29-34-701. This part shall be known and may be cited as the "Asbestos Claims Priorities Act".

29-34-702. 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" has the same meaning as defined in § 29-34-602;

(3) "Asbestos action" has the same meaning as defined in § 29-34-602;

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

(5) "Board-certified in internal medicine" means a physician who is certified 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 performance of an examination and rendition of a report required by this part;

(6) "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;

(7) "Board-certified in oncology" means a physician who is certified in the specialty of medical oncology by the American Board of Internal Medicine or the 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;

(8) "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 and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens;

(9) "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 performance of an examination and rendition of a report required by this part;

(10) "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 CFR 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;

(11) "Certified industrial hygienist" means an industrial hygienist having attained the status of diplomat of the American Academy of Industrial Hygiene subject to compliance with requirements established by the American Board of Industrial Hygiene;

(12) "Certified safety professional" means a person who meets all requirements established by the Board of Certified Safety Professionals and is authorized to use the Certified Safety Professional title or the CSP designation;

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

(14) "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;

(15) "Exposed person" means a person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos action;

(16) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one (1) second during performance of simple spirometric tests;

(17) "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC;

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

(19) "ILO system and ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the International Labour 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;

(20) "Lung cancer" means a malignant tumor, diagnosed by a board-certified pathologist or oncologist, in which the primary site of origin is inside the lungs;

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

(22) "Nonmalignant condition" means any condition that can be caused by asbestos other than a diagnosed cancer;

(23) "Nonsmoker" means a person who has not smoked cigarettes or used any tobacco products on a consistent and frequent basis within the last fifteen (15) years preceding the day of diagnosis of an asbestos-related disease through the date the asbestos action is filed;

(24) "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 lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person;

(25) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one (1) 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 (1) 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;

(26) "Plaintiff" has the same meaning as defined in § 29-34-602;

(27) "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;

(28) "Predicted lower limit of normal" means the test value that is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent (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 of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended;

(29) "Premises owner" means a person, firm, or organization that owns, in whole or in part, leases, rents, maintains, or controls privately owned lands or waters, or a building and structure on the lands or waters, or that leases state-owned lands or waters, including a building or other structure on the lands or waters;

(30) "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;

(31) "Qualified physician" means a physician who is a board-certified internist, oncologist, pathologist, pulmonary specialist, or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, and who:

(A) Conducted a physical examination of the exposed person 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 if the exposed person is deceased, 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 action;

(B) Treated or is treating the exposed person, and has or had 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) Spends no more than ten percent (10%) 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 twenty percent (20%) of its revenue providing such services;

(D) Was licensed to practice on the date any examination or pulmonary function testing was conducted, and 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 action was filed;

(E) 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 healthcare plan and not from the exposed person's lawyer or law firm;

(F) Prepared or directly supervised the preparation and final review of any medical report under this part; and

(G) Has not relied on any examinations, tests, radiographs, reports, or opinions 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;

(32) "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;

(33) "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;

(34) "Smoker" means a person who has smoked cigarettes or used any tobacco products on a consistent and frequent basis during the fifteen (15) years preceding the day of diagnosis through the date the asbestos action is filed;

(35) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired;

(36) "Substantial occupational exposure to asbestos" means employment of a cumulative period of ten (10) years or more in an industry and occupation in which, for a

substantial portion of a normal work year for that industry and occupation, the exposed person did any of the following:

(A) Handled raw asbestos fibers;

(B) Fabricated asbestos-containing products;

(C) Altered, repaired, or otherwise worked with an asbestos-containing product; or

(D) Worked in close proximity to other workers engaged in any of these activities;

(37) "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;

(38) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration;

(39) "Veterans' benefits" has the same meaning as defined in § 29-34-602; and

(40) "Workers' compensation" has the same meaning as defined in § 29-34-602.

29-34-703.

(a) A plaintiff in an asbestos 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, that constitute prima facie evidence that the exposed person meets the requirements of this part. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm. For an asbestos action pending on the effective date of this part, the detailed narrative medical report and diagnosis and supporting test results shall be provided to all

parties not later than ninety (90) days after the effective date of this part or not later than ninety (90) days before trial, whichever is earlier.

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

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

(d) A plaintiff in an asbestos action filed on or after the effective date of this part shall include a sworn information form containing all of the following:

(1) 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 exposure;

(2) The plaintiff's relationship to the exposed person or person through which the exposure is alleged;

(3) 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; the beginning and ending dates of each alleged exposure; and the identity of the manufacturer of the specific asbestos product for each exposure;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related disease claimed to exist; and

(6) Supporting documentation relating to subdivisions (d)(3)-(5).

(e) Asbestos actions shall be individually filed. No asbestos actions shall be permitted on behalf of a group or class of plaintiffs.

29-34-704.

No asbestos action related to an alleged nonmalignant asbestos-related condition shall 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. 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 all of the following:

(1) 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;

(2) 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 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;

(3) A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

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

(5) 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's 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;

(6) 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:

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

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) 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

(7) The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, does not satisfy this subdivision (7).

29-34-705.

No asbestos action related to alleged asbestos-related lung cancer shall be brought or maintained in the absence of prima facie evidence that the exposed person has a primary lung cancer for which exposure to asbestos was a substantial contributing factor. 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 all of the following:

(1) 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 principal places of employment of the exposed person and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause cancer and the nature, duration, and level of any exposure;

(2) A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(3) Evidence verifying that the exposed person has a primary lung cancer, including pathological evidence of the presence of a primary lung cancer if the diagnosis is made by a qualified physician who is board-certified in pulmonary medicine;

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

(5)

(A) If the exposed person is a nonsmoker and subdivision (5)(C) does not apply, 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, substantial occupational exposure to asbestos, or exposure to asbestos at least equal to twenty-five (25) fiber-years per cubic centimeter as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information concerning occupational and exposure history;

(B) If the exposed person is a smoker and subdivision (5)(C) does not apply, 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 and substantial occupational exposure to asbestos or exposure to asbestos at least equal to twenty-five (25) fiber-years per cubic centimeter as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or

certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information concerning occupational and exposure history; or

(C) If the alleged asbestos-related lung cancer is a result of the exposed person living with or having extended contact with another exposed person, radiological or pathological evidence of asbestosis, radiological evidence of diffuse bilateral pleural thickening, or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse bilateral pleural thickening, and substantial occupational exposure to asbestos by the other exposed person during the relevant time period or exposure to asbestos at least equal to twenty-five (25) fiber-years per cubic centimeter as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information concerning occupational and exposure history; and

(6) The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial factor to the lung cancer of the exposed person and not more probably the result of other causes. An opinion stating that the medical findings and lung cancer are consistent with or compatible with exposure to asbestos, or words to that effect, does not satisfy this subdivision (6).

29-34-706.

No asbestos action related to an alleged asbestos-related cancer of the larynx, pharynx, or esophagus shall be brought or maintained in the absence of prima facie evidence that the exposed person has a primary cancer of the larynx, pharynx, or esophagus for which exposure to asbestos was a substantial contributing factor. 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 or oncology, gastroenterology or otolaryngology, as appropriate for the type of cancer claimed, that includes all of the following:

(1) 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 principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause cancer and the nature, duration, and level of any exposure;

(2) A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(3) Evidence verifying that the exposed person has a primary cancer of the larynx, pharynx, or esophagus;

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

(5) 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;

(6) If subdivision (7) does not apply, substantial occupational exposure or exposure to asbestos at least equal to twenty-five (25) fiber-years per cubic centimeter as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information concerning the occupational and exposure history of the exposed person;

(7) If the alleged asbestos-related cancer of the larynx, pharynx, or esophagus is a result of the exposed person living with or having extended contact with another exposed person, the exposed person with alleged asbestos-related cancer of the larynx, pharynx, or esophagus shall confirm substantial occupational exposure to asbestos by the other exposed person during the relevant time period or exposure to asbestos at least equal to twenty-five (25) fiber-years per cubic centimeter as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information concerning occupational and exposure history;
and

(8) The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial factor to the cancer of the larynx, pharynx, or esophagus of the exposed person and not more probably the result of other causes. An 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 this subdivision (8).

29-34-707.

No asbestos action related to alleged mesothelioma shall be brought or maintained in the absence of prima facie evidence that the exposed person has mesothelioma for which exposure to asbestos was a substantial contributing factor. The prima facie showing shall be made as to each defendant and shall include a medical report and diagnosis signed under oath by a qualified physician, who is board-certified in pathology, pulmonary medicine, or oncology, that includes all of the following:

(1) Evidence verifying that the exposed person has mesothelioma, including pathological evidence of the presence of a mesothelioma if the diagnosis is made by a qualified physician who is board-certified in pulmonary medicine; and

(2) Evidence of substantial occupational exposure to asbestos or exposure to asbestos from living with or having extended contact with a person with substantial occupational exposure to asbestos during the relevant time period.

29-34-708.

(a) No asbestos action other than an asbestos-related nonmalignant condition, asbestos-related lung cancer, asbestos-related cancer of the larynx, pharynx, or esophagus, or mesothelioma, shall 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. 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 all of the following:

(1) A diagnosis of an asbestos-related cancer other than cancer of the lung, larynx, pharynx, or esophagus, or mesothelioma and substantial occupational exposure to asbestos or exposure to asbestos from living with or having extended contact with another exposed person that had substantial occupational exposure to asbestos during the relevant time period; and

(2) The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial factor to the exposed person's cancer and not more probably the result of other causes. An 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 this subdivision (a)(2).

(b) 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.

29-34-709.

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 all of the following requirements:

(1) The evidence shall comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in

the official statements of the American Thoracic Society that are in effect on the date of any examination or pulmonary function testing of the exposed person required by this part;

(2) The evidence shall not be obtained by or based on testing or examinations that 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 shall 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.

29-34-710.

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

(b) No evidence shall be offered at trial regarding, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos action under this part; or

(2) The provisions of this part with respect to what constitutes a prima facie showing of asbestos-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of a party and for good cause shown.

(d)

(1) A court may consolidate for trial any number and type of asbestos actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one (1) exposed person and members of that person's household shall be permitted.

(3) This subsection (d) does not preclude consolidation of cases by court order for pretrial or discovery purposes.

29-34-711.

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

(b) A defendant in an asbestos action shall 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.

(c) Punitive damages shall not be awarded in an asbestos action.

29-34-712.

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

(1) The plaintiff shall establish the dose of asbestos fibers to which the exposed person was exposed to 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) To establish substantial factor causation in the absence of direct evidence of causation, the plaintiff shall prove 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.

29-34-713.

(a) The period of limitations for an asbestos action that is not barred as of the effective date of this part shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an asbestos-related impairment;

(2) The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment; or

(3) The date of death of the exposed person having an asbestos-related impairment.

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment that was otherwise time-barred on the effective date of this part.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement or other agreements with respect to an asbestos action entered into prior to the effective date of this part.

(d) An asbestos action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related cancer.

(e) If otherwise permitted under state law, damages shall not be awarded in an asbestos action for fear or increased risk of future disease.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to actions filed on or after such date and shall also apply to any actions filed before such date if the trial has not commenced; provided, that if a provision of this act would unconstitutionally affect a vested right in such previously filed action, the provision shall only be applied prospectively.