

SUBSTITUTE FOR
HOUSE BILL NO. 5851

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5827 (MCL 600.5827) and by adding chapter 30
and section 5840.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER 30

SEC. 3001. AS USED IN THIS CHAPTER:

(A) "AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT"
MEANS THE AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION
OF PERMANENT IMPAIRMENT (FIFTH EDITION, 2000).

(B) "ASBESTOS" MEANS ALL MINERALS DEFINED AS ASBESTOS IN 29
CFR 1910.1001.

(C) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL

1 OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF,
2 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS,
3 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
4 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
5 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. ASBESTOS
6 CLAIM DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS'
7 COMPENSATION LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY
8 A PERSON AS A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A
9 WORKERS' COMPENSATION LAW.

10 (D) "ASBESTOSIS" MEANS BILATERAL DIFFUSE INTERSTITIAL FIBROSIS
11 OF THE LUNGS CAUSED BY INHALATION OF ASBESTOS FIBERS.

12 (E) "BOARD-CERTIFIED IN INTERNAL MEDICINE" MEANS CERTIFIED BY
13 THE AMERICAN BOARD OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF
14 OSTEOPATHIC INTERNISTS.

15 (F) "BOARD-CERTIFIED IN OCCUPATIONAL MEDICINE" MEANS CERTIFIED
16 IN THE SUBSPECIALTY OF OCCUPATIONAL-ENVIRONMENTAL OR OCCUPATIONAL
17 MEDICINE BY THE AMERICAN BOARD OF PREVENTIVE MEDICINE OR THE
18 AMERICAN OSTEOPATHIC BOARD OF PREVENTIVE MEDICINE.

19 (G) "BOARD-CERTIFIED IN ONCOLOGY" MEANS CERTIFIED IN THE
20 SUBSPECIALTY OF MEDICAL ONCOLOGY OR ONCOLOGY BY THE AMERICAN BOARD
21 OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
22 INTERNISTS.

23 (H) "BOARD-CERTIFIED IN PATHOLOGY" MEANS A PHYSICIAN WHO HOLDS
24 PRIMARY CERTIFICATION IN ANATOMIC PATHOLOGY OR CLINICAL PATHOLOGY
25 FROM THE AMERICAN BOARD OF PATHOLOGY OR THE AMERICAN OSTEOPATHIC
26 BOARD OF PATHOLOGY AND TO WHOSE PROFESSIONAL PRACTICE BOTH OF THE
27 FOLLOWING APPLY:

1 (i) THE PRACTICE IS PRINCIPALLY IN THE FIELD OF PATHOLOGY.

2 (ii) THE PRACTICE INVOLVES REGULAR EVALUATION OF PATHOLOGY
3 MATERIALS OBTAINED FROM SURGICAL OR POSTMORTEM SPECIMENS.

4 (I) "BOARD-CERTIFIED IN PULMONARY MEDICINE" MEANS CERTIFIED IN
5 THE SUBSPECIALTY OF PULMONARY DISEASE BY THE AMERICAN BOARD OF
6 INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
7 INTERNISTS.

8 (J) "CERTIFIED 'B' READER" MEANS AN INDIVIDUAL QUALIFIED AS A
9 FINAL OR "B" READER UNDER 42 CFR 37.51(B).

10 (K) "CIVIL ACTION" MEANS AN ACTION OR CLAIM OF A CIVIL NATURE
11 IN COURT, WHETHER DEFINED AS A CASE AT LAW OR IN EQUITY OR
12 ADMIRALTY. CIVIL ACTION DOES NOT INCLUDE AN ACTION RELATING TO A
13 WORKERS' COMPENSATION LAW OR A PROCEEDING FOR BENEFITS UNDER A
14 VETERANS' BENEFITS PROGRAM.

15 (L) "ECONOMIC LOSS" MEANS A PECUNIARY LOSS RESULTING FROM
16 PHYSICAL IMPAIRMENT, INCLUDING THE LOSS OF EARNINGS OR OTHER
17 BENEFITS RELATED TO EMPLOYMENT, MEDICAL EXPENSE LOSS, REPLACEMENT
18 SERVICES LOSS, LOSS DUE TO DEATH, BURIAL COSTS, AND LOSS OF
19 BUSINESS OR EMPLOYMENT OPPORTUNITIES.

20 (M) "EXPOSED PERSON" MEANS A PERSON WHOSE EXPOSURE TO ASBESTOS
21 OR TO ASBESTOS-CONTAINING PRODUCTS IS THE BASIS FOR AN ASBESTOS
22 CLAIM.

23 (N) "ILO SCALE" MEANS THE SYSTEM FOR THE CLASSIFICATION OF
24 CHEST X-RAYS CONTAINED IN THE INTERNATIONAL LABOUR ORGANIZATION'S
25 GUIDELINES FOR THE USE OF ILO INTERNATIONAL CLASSIFICATION OF
26 RADIOGRAPHS OF PNEUMOCONIOSES (2000).

27 SEC. 3002. AS USED IN THIS CHAPTER:

1 (A) "LUNG CANCER" MEANS A MALIGNANT TUMOR LOCATED INSIDE A
2 LUNG. LUNG CANCER DOES NOT INCLUDE MESOTHELIOMA.

3 (B) "MESOTHELIOMA" MEANS A MALIGNANT TUMOR WITH A PRIMARY SITE
4 IN THE PLEURA OR THE PERITONEUM THAT HAS BEEN DIAGNOSED BY A
5 PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY USING STANDARDIZED
6 AND ACCEPTED CRITERIA OF MICROSCOPIC MORPHOLOGY OR APPROPRIATE
7 STAINING TECHNIQUES, OR BOTH.

8 (C) "NONECONOMIC LOSS" MEANS SUBJECTIVE, NONMONETARY LOSS
9 RESULTING FROM PHYSICAL IMPAIRMENT, INCLUDING PAIN, SUFFERING,
10 INCONVENIENCE, MENTAL ANGUISH, EMOTIONAL DISTRESS, DISFIGUREMENT,
11 LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO
12 REPUTATION, OR ANY OTHER NONPECUNIARY LOSS OF ANY KIND OR NATURE.

13 (D) "NONMALIGNANT CONDITION" MEANS ANY CONDITION THAT IS
14 CAUSED OR MAY BE CAUSED BY ASBESTOS, OTHER THAN A DIAGNOSED CANCER.

15 (E) "NONSMOKER" MEANS A PERSON WHO DID NOT SMOKE CIGARETTES OR
16 USE ANY OTHER INHALABLE TOBACCO PRODUCT WITHIN THE 15 YEARS
17 IMMEDIATELY PRECEDING THE DIAGNOSIS THAT THE PERSON HAS A CONDITION
18 OR DISEASE THAT IS THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

19 (F) "PATHOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A STATEMENT BY
20 A PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY THAT MORE THAN 1
21 REPRESENTATIVE SECTION OF LUNG TISSUE UNINVOLVED WITH ANY OTHER
22 DISEASE PROCESS DEMONSTRATES A PATTERN OF PERIBRONCHIOLAR OR
23 PARENCHYMAL FIBROSIS IN THE PRESENCE OF CHARACTERISTIC ASBESTOS
24 BODIES AND THAT THERE IS NO OTHER, MORE LIKELY EXPLANATION FOR THE
25 PRESENCE OF THE FIBROSIS.

26 (G) "PUNITIVE DAMAGES" MEANS DAMAGES AWARDED AGAINST A
27 DEFENDANT IN ORDER TO PUNISH OR DETER THE DEFENDANT OR OTHERS FROM

1 ENGAGING IN SIMILAR BEHAVIOR IN THE FUTURE.

2 (H) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO HAS ALL OF THE
3 FOLLOWING QUALIFICATIONS:

4 (i) IS BOARD-CERTIFIED IN INTERNAL MEDICINE, ONCOLOGY,
5 PATHOLOGY, PULMONARY MEDICINE, RADIOLOGY, OCCUPATIONAL MEDICINE, OR
6 FAMILY MEDICINE.

7 (ii) HAS CONDUCTED A PHYSICAL EXAMINATION OF THE EXPOSED PERSON
8 OR, IF THE EXPOSED PERSON IS DECEASED, HAS REVIEWED THE PATHOLOGY
9 MATERIAL.

10 (I) "RADIOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS EVIDENCE OF
11 STRUCTURAL PATHOLOGY CONSISTENT WITH ASBESTOS-RELATED DISEASE AS
12 DOCUMENTED BY IMAGING OR HISTOLOGY. SUCH IMAGING SHALL INCLUDE
13 CHEST RADIOGRAPHS AND COMPUTED TOMOGRAPHY.

14 (J) "RADIOLOGICAL EVIDENCE OF DIFFUSE PLEURAL THICKENING"
15 MEANS EVIDENCE OF STRUCTURAL PATHOLOGY CONSISTENT WITH ASBESTOS-
16 RELATED DISEASE AS DOCUMENTED BY IMAGING OR HISTOLOGY. SUCH IMAGING
17 SHALL INCLUDE CHEST RADIOGRAPHS AND COMPUTED TOMOGRAPHY.

18 SEC. 3003. AS USED IN THIS CHAPTER:

19 (A) "SILICA" MEANS A RESPIRABLE CRYSTALLINE FORM OF SILICON
20 DIOXIDE, INCLUDING, BUT NOT LIMITED TO, ALPHA, QUARTZ,
21 CRISTOBALITE, AND TRYDMITE.

22 (B) "SILICA CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL OR
23 EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF, BASED
24 ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO SILICA,
25 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
26 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
27 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. SILICA CLAIM

1 DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS' COMPENSATION
2 LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY A PERSON AS
3 A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A WORKERS'
4 COMPENSATION LAW.

5 (C) "SILICOSIS" MEANS NODULAR INTERSTITIAL FIBROSIS OF THE
6 LUNGS CAUSED BY INHALATION OF SILICA.

7 (D) "SMOKER" MEANS A PERSON WHO HAS SMOKED CIGARETTES OR USED
8 ANOTHER INHALABLE TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY
9 PRECEDING THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE
10 THAT IS THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

11 (E) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
12 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE NORTHERN MARIANA
13 ISLANDS, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND ANY OTHER
14 TERRITORY OR POSSESSION OF THE UNITED STATES OR A POLITICAL
15 SUBDIVISION OF A POLITICAL ENTITY DEFINED AS A STATE.

16 (F) "SUBSTANTIAL CONTRIBUTING FACTOR" MEANS THAT ALL OF THE
17 FOLLOWING APPLY:

18 (i) EXPOSURE TO ASBESTOS OR SILICA IS A PROXIMATE CAUSE OF THE
19 PHYSICAL HARM ALLEGED IN THE CLAIM.

20 (ii) THE EXPOSURE TO ASBESTOS OR SILICA TOOK PLACE ON A REGULAR
21 BASIS OVER AN EXTENDED PERIOD OF TIME AND IN CLOSE PROXIMITY TO THE
22 EXPOSED PERSON.

23 (iii) A QUALIFIED PHYSICIAN HAS DETERMINED WITH A REASONABLE
24 DEGREE OF MEDICAL CERTAINTY THAT THE PHYSICAL HARM TO THE EXPOSED
25 PERSON WOULD NOT HAVE OCCURRED BUT FOR THE EXPOSURE TO ASBESTOS OR
26 SILICA.

27 (G) "THIRD PARTY PAYER" MEANS A PUBLIC OR PRIVATE HEALTH CARE

1 PAYMENT OR BENEFITS PROGRAM, INCLUDING, BUT NOT LIMITED TO, ALL OF
2 THE FOLLOWING:

3 (i) A HEALTH INSURER.

4 (ii) A NONPROFIT HEALTH CARE CORPORATION.

5 (iii) A HEALTH MAINTENANCE ORGANIZATION.

6 (iv) A PREFERRED PROVIDER ORGANIZATION.

7 (v) MEDICAID OR MEDICARE.

8 (H) "VETERANS' BENEFIT PROGRAM" MEANS A PROGRAM FOR BENEFITS
9 IN CONNECTION WITH MILITARY SERVICE ADMINISTERED BY THE VETERANS'
10 ADMINISTRATION UNDER TITLE 38 OF THE UNITED STATES CODE.

11 (I) "WORKERS' COMPENSATION LAW" MEANS A LAW RESPECTING A
12 PROGRAM ADMINISTERED BY A STATE OR THE UNITED STATES TO PROVIDE
13 BENEFITS, FUNDED BY A RESPONSIBLE EMPLOYER OR ITS INSURANCE
14 CARRIER, FOR OCCUPATIONAL DISEASES OR INJURIES OR FOR DISABILITY OR
15 DEATH CAUSED BY OCCUPATIONAL DISEASES OR INJURIES. WORKERS'
16 COMPENSATION LAW INCLUDES THE LONGSHORE AND HARBOR WORKERS'
17 COMPENSATION ACT, 33 USC 901 TO 950, AND 5 USC 8101 TO 8193,
18 POPULARLY KNOWN AS THE FEDERAL EMPLOYEES' COMPENSATION ACT.
19 WORKERS' COMPENSATION LAW DOES NOT INCLUDE 45 USC 51 TO 60,
20 POPULARLY KNOWN AS THE FEDERAL EMPLOYERS' LIABILITY ACT.

21 SEC. 3005. (1) A PERSON IS NOT ENTITLED TO ASSERT AN ASBESTOS
22 CLAIM OR A SILICA CLAIM UNLESS THE EXPOSED PERSON HAS BEEN
23 DIAGNOSED WITH AN ASBESTOS-RELATED DISEASE AND THE DIAGNOSIS WAS
24 REACHED IN COMPLIANCE WITH THE AMERICAN THORACIC SOCIETY'S POSITION
25 STATEMENT, "DIAGNOSIS AND INITIAL MANAGEMENT OF NON-MALIGNANT
26 DISEASES RELATED TO ASBESTOS".

27 (2) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION

1 ALLEGING AN ASBESTOS CLAIM BASED ON A NONMALIGNANT CONDITION UNLESS
2 THE PERSON MAKES A PRIMA FACIE SHOWING THAT THE EXPOSED PERSON HAS
3 BEEN DIAGNOSED WITH AN ASBESTOS-RELATED DISEASE AND THAT THAT
4 ASBESTOS-RELATED DISEASE CONSTITUTES INJURY AND HARM TO THE EXPOSED
5 INDIVIDUAL. A PRIMA FACIE SHOWING REQUIRED BY THIS SUBSECTION
6 INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

7 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
8 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
9 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
10 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
11 ASBESTOS CLAIM, INCLUDING BOTH OF THE FOLLOWING:

12 (i) THE IDENTIFICATION OF THE EXPOSED PERSON'S PRINCIPAL PLACES
13 OF EMPLOYMENT AND EXPOSURES TO AIRBORNE CONTAMINANTS.

14 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
15 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, ASBESTOS
16 FIBERS OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
17 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF EACH EXPOSURE.

18 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
19 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
20 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
21 MOST PROBABLE CAUSE OF THE PROBLEMS.

22 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
23 A MEDICAL EXAMINATION AND TESTING, THAT THE EXPOSED PERSON HAS OR
24 HAD A PERMANENT INJURY TO HIS OR HER RESPIRATORY SYSTEM AND THAT
25 SUCH PERMANENT INJURY CONSTITUTES HARM TO THE INDIVIDUAL.

26 (D) A DIAGNOSIS BY A QUALIFIED PHYSICIAN OF ASBESTOSIS OR
27 DIFFUSE PLEURAL THICKENING, BASED AT A MINIMUM ON RADIOLOGICAL OR

1 PATHOLOGICAL EVIDENCE OF ASBESTOSIS OR RADIOLOGICAL EVIDENCE OF
2 DIFFUSE PLEURAL THICKENING.

3 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
4 PERSON'S MEDICAL FINDINGS AND CONDITION WERE NOT MORE PROBABLY THE
5 RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE REVEALED BY THE
6 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

7 (3) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
8 ALLEGING AN ASBESTOS CLAIM BASED ON LUNG CANCER UNLESS THE PERSON
9 MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE
10 FOLLOWING:

11 (A) DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-CERTIFIED
12 IN PATHOLOGY, PULMONARY MEDICINE, ONCOLOGY, OR OCCUPATIONAL
13 MEDICINE OF A PRIMARY LUNG CANCER AND THAT EXPOSURE TO ASBESTOS WAS
14 A SUBSTANTIAL CONTRIBUTING FACTOR TO THE CANCER.

15 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
16 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
17 DATE OF DIAGNOSIS OF THE LUNG CANCER.

18 (C) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
19 PERSON'S MEDICAL FINDINGS AND PHYSICAL INJURY WERE NOT MORE
20 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
21 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

22 (4) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
23 ALLEGING AN ASBESTOS CLAIM BASED ON CANCER OF THE COLON, RECTUM,
24 LARYNX, PHARYNX, ESOPHAGUS, OR STOMACH UNLESS THE PERSON MAKES A
25 PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, BOTH OF THE
26 FOLLOWING:

27 (A) A DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-

1 CERTIFIED IN PATHOLOGY, PULMONARY MEDICINE, ONCOLOGY, OR
2 OCCUPATIONAL MEDICINE OF PRIMARY CANCER OF THE COLON, RECTUM,
3 LARYNX, PHARYNX, ESOPHAGUS, OR STOMACH, AS APPLICABLE, AND THAT
4 EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE
5 CANCER.

6 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
7 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
8 DATE OF DIAGNOSIS OF CANCER OF THE COLON, RECTUM, LARYNX, PHARYNX,
9 ESOPHAGUS, OR STOMACH.

10 (C) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
11 PERSON'S MEDICAL FINDINGS AND PHYSICAL INJURY WERE NOT MORE
12 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
13 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

14 (5) A PRIMA FACIE SHOWING UNDER THIS SECTION IS NOT REQUIRED
15 IN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON MESOTHELIOMA.

16 (6) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
17 ALLEGING A SILICOSIS CLAIM UNLESS THE PERSON MAKES A PRIMA FACIE
18 SHOWING THAT THE EXPOSED PERSON SUFFERED A PHYSICAL IMPAIRMENT AS A
19 RESULT OF A MEDICAL CONDITION TO WHICH EXPOSURE TO SILICA WAS A
20 SUBSTANTIAL CONTRIBUTING FACTOR. A PRIMA FACIE SHOWING UNDER THIS
21 SUBSECTION SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

22 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
23 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
24 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
25 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
26 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES ALL OF THE
27 FOLLOWING:

1 (i) THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT AND
2 EXPOSURES TO AIRBORNE CONTAMINANTS.

3 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
4 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
5 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
6 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF ANY SUCH
7 EXPOSURE.

8 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
9 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
10 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
11 MOST PROBABLE CAUSE OF THE PROBLEMS, AND VERIFYING A SUFFICIENT
12 LATENCY PERIOD FOR THE APPLICABLE STAGE OF SILICOSIS.

13 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
14 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE
15 EXPOSED PERSON HAS A PERMANENT RESPIRATORY IMPAIRMENT RATING OF AT
16 LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA
17 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.

18 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
19 PERSON HAS EITHER OF THE FOLLOWING:

20 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
21 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND QUALITY 1 X-RAY ARE
22 NOT AVAILABLE, A QUALITY 2 X-RAY, THAT HAS BEEN READ BY A CERTIFIED
23 "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE, BILATERAL
24 NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE UPPER
25 LUNG FIELDS, GRADED 1/1 OR HIGHER.

26 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
27 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF

1 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

2 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
3 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
4 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
5 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

6 (7) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
7 ALLEGING A SILICA CLAIM OTHER THAN A CLAIM DESCRIBED IN SUBSECTION
8 (6) UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT
9 A MINIMUM, ALL OF THE FOLLOWING:

10 (A) A REPORT THAT MEETS EITHER OF THE FOLLOWING REQUIREMENTS:

11 (i) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
12 PULMONARY MEDICINE, INTERNAL MEDICINE, ONCOLOGY, OR PATHOLOGY AND
13 STATES A DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED LUNG
14 CANCER AND THAT, TO A REASONABLE DEGREE OF MEDICAL PROBABILITY,
15 EXPOSURE TO SILICA WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE
16 DIAGNOSED LUNG CANCER.

17 (ii) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
18 PULMONARY MEDICINE, INTERNAL MEDICINE, OR PATHOLOGY AND STATES A
19 DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED PROGRESSIVE
20 MASSIVE FIBROSIS OR ACUTE SILICOPROTEINOSIS OR OF SILICOSIS
21 COMPLICATED BY DOCUMENTED TUBERCULOSIS.

22 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
23 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
24 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
25 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
26 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES BOTH OF THE
27 FOLLOWING:

1 (i) THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT AND
2 EXPOSURES TO AIRBORNE CONTAMINANTS.

3 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
4 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
5 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
6 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF THE EXPOSURE.

7 (C) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
8 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
9 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
10 MOST PROBABLE CAUSE OF THE PROBLEMS.

11 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
12 PERSON HAS EITHER OF THE FOLLOWING:

13 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
14 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-
15 RAY ARE NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT HAS BEEN READ
16 BY A CERTIFIED "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE,
17 BILATERAL NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE
18 UPPER LUNG FIELDS, GRADED 1/1 OR HIGHER.

19 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
20 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF
21 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

22 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
23 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
24 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
25 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

26 (8) TO QUALIFY FOR CONSIDERATION UNDER THIS SECTION AS
27 EVIDENCE RELATING TO PHYSICAL IMPAIRMENT, EVIDENCE, INCLUDING

1 PULMONARY FUNCTION TESTING AND DIFFUSING STUDIES, SHALL MEET BOTH
2 OF THE FOLLOWING CRITERIA:

3 (A) COMPLY WITH THE TECHNICAL RECOMMENDATIONS FOR
4 EXAMINATIONS, TESTING PROCEDURES, QUALITY ASSURANCE, QUALITY
5 CONTROL, AND EQUIPMENT OF THE AMA GUIDES TO THE EVALUATION OF
6 PERMANENT IMPAIRMENT, AS SET FORTH IN 20 CFR PART 404, SUBPART P,
7 APPENDIX 1, PART A, SECTION 3.00 E. AND F., AND THE INTERPRETIVE
8 STANDARDS IN THE OFFICIAL STATEMENT OF THE AMERICAN THORACIC
9 SOCIETY ENTITLED "LUNG FUNCTION TESTING: SELECTION OF REFERENCE
10 VALUES AND INTERPRETIVE STRATEGIES" AS PUBLISHED IN AMERICAN REVIEW
11 OF RESPIRATORY DISEASE, 1991: 144:1202-1218.

12 (B) NOT BE OBTAINED THROUGH TESTING OR EXAMINATIONS THAT
13 VIOLATE ANY APPLICABLE LAW, REGULATION, LICENSING REQUIREMENT, OR
14 MEDICAL CODE OF PRACTICE.

15 SEC. 3007. (1) A COURT MAY CONSOLIDATE FOR TRIAL ANY NUMBER
16 AND TYPE OF ASBESTOS OR SILICA CLAIMS IF THE COURT DETERMINES THAT
17 THERE IS SUFFICIENT COMMONALITY AMONG THE CLAIMS SUCH THAT THE
18 FAILURE TO CONSOLIDATE WOULD RESULT IN A WASTE OF JUDICIAL
19 RESOURCES BY REQUIRING LITIGANTS OFFERING SIMILAR OR IDENTICAL
20 EVIDENCE WITH RESPECT TO DEFENDANT'S LIABILITY, ASBESTOS DISEASE IN
21 GENERAL, AND THE SPECIFIC PLAINTIFF'S DIAGNOSIS.

22 (2) A CIVIL ACTION ALLEGING AN ASBESTOS OR SILICA CLAIM MAY
23 ONLY BE BROUGHT IN THIS STATE IF ALL OR PART OF THE EXPOSURE TO
24 ASBESTOS OR SILICA ON WHICH THE CLAIM IS BASED OCCURRED IN THIS
25 STATE.

26 (3) IF A COURT DETERMINES THAT A PLAINTIFF HAS FAILED TO MAKE
27 THE PRIMA FACIE SHOWING REQUIRED BY THIS CHAPTER, THE PLAINTIFF'S

1 CLAIM SHALL BE DISMISSED WITHOUT PREJUDICE.

2 SEC. 3009. (1) THE PERIOD OF LIMITATIONS FOR AN ASBESTOS OR
3 SILICA CLAIM THAT IS NOT BARRED AS OF THE EFFECTIVE DATE OF THE
4 AMENDATORY ACT THAT ADDED THIS CHAPTER ACCRUES WHEN THE EXPOSED
5 PERSON DISCOVERS, OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE
6 SHOULD HAVE DISCOVERED, THAT HE OR SHE IS PHYSICALLY INJURED BY AN
7 ASBESTOS OR SILICA EXPOSURE.

8 (2) AN ASBESTOS OR SILICA CLAIM ARISING OUT OF A NONMALIGNANT
9 CONDITION IS A DISTINCT CAUSE OF ACTION FROM AN ASBESTOS OR SILICA
10 CLAIM RELATING TO THE SAME EXPOSED PERSON ARISING OUT OF ASBESTOS-
11 OR SILICA-RELATED CANCER.

12 (3) DAMAGES FOR RISK OF CANCER SHALL NOT BE AWARDED IN A CIVIL
13 ACTION ASSERTING A NONMALIGNANT ASBESTOS CLAIM. DAMAGES FOR A WELL-
14 FOUNDED FEAR OF CANCER SHALL BE AVAILABLE TO AN INDIVIDUAL
15 ASSERTING AN ASBESTOS NONCANCEROUS DISEASE CLAIM.

16 (4) THE SETTLEMENT OF A NONMALIGNANT ASBESTOS OR SILICA CLAIM
17 CONCLUDED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
18 THIS CHAPTER SHALL NOT REQUIRE, AS A CONDITION OF THE SETTLEMENT,
19 THE RELEASE OF ANY FUTURE CLAIM FOR ASBESTOS- OR SILICA-RELATED
20 CANCER.

21 SEC. 3011. (1) THE LIMITATIONS ON DAMAGES, AS ADJUSTED, IN
22 SECTION 2946A APPLY IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS
23 CLAIM, REGARDLESS OF WHETHER THE ACTION IS A PRODUCT LIABILITY
24 ACTION.

25 (2) PUNITIVE DAMAGES SHALL NOT BE AWARDED IN A CIVIL ACTION
26 THAT INCLUDES AN ASBESTOS OR SILICA CLAIM.

27 (3) AT THE TIME OF TRIAL IN A CIVIL ACTION ALLEGING PERSONAL

1 INJURY DUE TO ASBESTOS EXPOSURE, THE PLAINTIFF SHALL PROVIDE TO THE
2 COURT AND TO THE DEFENDANTS A VERIFIED WRITTEN REPORT DISCLOSING
3 THE TOTAL AMOUNT OF ANY COLLATERAL SOURCE PAYMENTS RECEIVED,
4 INCLUDING PAYMENTS THE PLAINTIFF WILL RECEIVE IN THE FUTURE, AS A
5 RESULT OF SETTLEMENTS OR JUDGMENTS BASED ON THE SAME CLAIM.

6 SEC. 3013. A MANUFACTURER OF A PRODUCT IS ONLY LIABLE FOR
7 DAMAGES IN AN ASBESTOS CLAIM OR A SILICA CLAIM UNDER 1 OR MORE OF
8 THE FOLLOWING LEGAL THEORIES:

9 (A) FAILURE TO WARN.

10 (B) FAILURE TO TEST.

11 (C) NEGLIGENT DESIGN.

12 (D) BREACH OF IMPLIED WARRANTY.

13 (E) GROSS NEGLIGENCE.

14 SEC. 3015. (1) A PRODUCT SELLER OTHER THAN A MANUFACTURER IS
15 LIABLE TO A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS
16 OR SILICA CLAIM ONLY IF THE PLAINTIFF ESTABLISHES 1 OR MORE OF THE
17 FOLLOWING:

18 (A) ALL OF THE FOLLOWING:

19 (i) THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE
20 SUBJECT OF THE COMPLAINT WAS SOLD, RENTED, OR LEASED BY THE PRODUCT
21 SELLER.

22 (ii) THE PRODUCT SELLER FAILED TO EXERCISE REASONABLE CARE WITH
23 RESPECT TO THE PRODUCT.

24 (iii) THE FAILURE TO EXERCISE REASONABLE CARE WAS A PROXIMATE
25 CAUSE OF THE HARM TO THE EXPOSED PERSON.

26 (B) ALL OF THE FOLLOWING:

27 (i) THE PRODUCT SELLER MADE AN EXPRESS WARRANTY APPLICABLE TO

1 THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE SUBJECT OF
2 THE COMPLAINT, INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY THE
3 MANUFACTURER AS TO THE SAME PRODUCT.

4 (ii) THE PRODUCT FAILED TO CONFORM TO THE WARRANTY.

5 (iii) THE FAILURE OF THE PRODUCT TO CONFORM TO THE WARRANTY
6 CAUSED THE HARM TO THE EXPOSED PERSON.

7 (C) ALL OF THE FOLLOWING:

8 (i) THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE
9 SUBJECT OF THE COMPLAINT WAS DEFECTIVE.

10 (ii) THE DEFECT WAS A BREACH OF AN IMPLIED WARRANTY.

11 (iii) THE DEFECT CAUSED THE HARM TO THE EXPOSED PERSON.

12 (D) BOTH OF THE FOLLOWING:

13 (i) THE PRODUCT SELLER ENGAGED IN INTENTIONAL WRONGDOING, AS
14 DETERMINED UNDER APPLICABLE STATE LAW.

15 (ii) THE INTENTIONAL WRONGDOING CAUSED THE HARM THAT IS THE
16 SUBJECT OF THE COMPLAINT.

17 (2) FOR PURPOSES OF SUBSECTION (1) (A) (ii), A PRODUCT SELLER'S
18 FAILURE TO INSPECT THE PRODUCT IS NOT A FAILURE TO EXERCISE
19 REASONABLE CARE WITH RESPECT TO THE PRODUCT IF EITHER OF THE
20 FOLLOWING APPLIES:

21 (A) THE FAILURE OCCURRED BECAUSE THERE WAS NO REASONABLE
22 OPPORTUNITY TO INSPECT THE PRODUCT.

23 (B) AN INSPECTION OF THE PRODUCT, IN THE EXERCISE OF
24 REASONABLE CARE, WOULD NOT HAVE REVEALED THE ASPECT OF THE PRODUCT
25 THAT ALLEGEDLY CAUSED THE EXPOSED PERSON'S IMPAIRMENT.

26 (3) IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA
27 CLAIM, A PERSON ENGAGED IN THE BUSINESS OF RENTING OR LEASING A

1 PRODUCT IS NOT LIABLE FOR THE TORTIOUS ACT OF ANOTHER SOLELY BY
2 REASON OF OWNERSHIP OF THE PRODUCT.

3 SEC. 3017. THIS CHAPTER DOES NOT AFFECT THE SCOPE OR OPERATION
4 OF ANY WORKERS' COMPENSATION LAW OR VETERANS' BENEFIT PROGRAM OR
5 THE EXCLUSIVE REMEDY OR SUBROGATION PROVISIONS OF ANY SUCH LAW OR
6 AUTHORIZE ANY LAWSUIT THAT IS BARRED BY SUCH LAW.

7 SEC. 3019. THIS CHAPTER APPLIES PROSPECTIVELY ONLY AND
8 SPECIFICALLY DOES NOT APPLY TO CIVIL ACTIONS FILED BEFORE THE
9 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER. THIS
10 CHAPTER DOES NOT DO EITHER OF THE FOLLOWING:

11 (A) AFFECT THE RIGHTS OF ANY PARTY IN BANKRUPTCY PROCEEDINGS.

12 (B) AFFECT THE ABILITY OF ANY PERSON WHO IS ABLE TO MAKE A
13 SHOWING THAT THE PERSON SATISFIES THE CLAIMS CRITERIA FOR
14 COMPENSABLE CLAIMS OR DEMANDS UNDER A TRUST ESTABLISHED PURSUANT TO
15 A PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE FEDERAL BANKRUPTCY
16 CODE, 11 USC 1101 TO 1174, TO MAKE A CLAIM OR DEMAND AGAINST THAT
17 TRUST.

18 Sec. 5827. Except as otherwise expressly provided, the period
19 of limitations runs from the time the claim accrues. The claim
20 accrues at the time provided in sections 5829 to ~~5838~~ 5840, and
21 in cases not covered by these sections the claim accrues at the
22 time the wrong upon which the claim is based was done regardless of
23 the time when damage results.

24 SEC. 5840. (1) AN ASBESTOS OR SILICA CLAIM DESCRIBED IN
25 SECTION 3009(1) ACCRUES AS PROVIDED IN SECTION 3009(1).

26 (2) AS USED IN THIS SECTION:

27 (A) "ASBESTOS CLAIM" MEANS THAT TERM AS DEFINED IN SECTION

1 3001.

2 (B) "SILICA CLAIM" MEANS THAT TERM AS DEFINED IN SECTION 3003.