

CHAPTER 196

SENATE BILL No. 512*

AN ACT enacting the silica and asbestos claims act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) “AMA guides to the evaluation of permanent impairment” means the American medical association’s guides to the evaluation of permanent impairment as in effect on March 1, 2006.

(b) “Asbestos” means all minerals defined as asbestos in 29 C.F.R. 1910, as in effect on March 1, 2006.

(c) “Asbestos claim” means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in anyway related to inhalation of, exposure to, ingestion of, or contact with asbestos. Asbestos claim also includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child or other relative of that person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person’s health that are caused by the person’s exposure to asbestos.

(d) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(e) “Board-certified” means the physician is currently certified by one of the medical specialty boards approved by either the American board of medical specialties or the American osteopathic board of osteopathic specialties.

(f) “Board-certified gastroenterologist” means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of gastroenterology.

(g) “Board-certified internist” means a physician who is board-certified in the specialty of internal medicine.

(h) “Board-certified occupational medicine specialist” means a physician who is board-certified in the specialty of preventive medicine and the subspecialty of occupational medicine.

(i) “Board-certified oncologist” means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of medical oncology.

(j) “Board-certified pathologist” means a physician who is board-certified in the specialty of pathology.

(k) “Board-certified pulmonary specialist” means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of pulmonary medicine.

(l) “Board-certified radiologist” means a physician who is board-certified in the specialty of radiology.

(m) “Board-certified rheumatologist” means a physician who is board-certified in the specialty of internal medicine and in the subspecialty of rheumatology.

(n) “Civil action” means all suits or claims of a civil nature in a state or federal court, whether cognizable as cases at law or in equity or admiralty. The term “civil action” does not include any civil action:

(1) Relating to workers’ compensation;

(2) alleging any claim or demand made against a trust established pursuant to subsection (g) of 11 U.S.C. section 524(g); or

(3) alleging any claim or demand made against a trust established pursuant to a plan of reorganization confirmed under Chapter 11 of the United States Bankruptcy Code.

(o) “Competent medical authority” means a physician who is medically competent to provide a diagnosis for purposes of constituting prima facie evidence of an exposed person’s physical impairment that meets the requirements specified in sections 2 or 3, and amendments thereto, and

who meets the following requirements:

(1) The physician is a board-certified internist, pulmonary specialist, rheumatologist, oncologist, pathologist, gastroenterologist, radiologist or occupational medicine specialist.

(2) The physician has or had a doctor-patient relationship with the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of the treating physician, or in the case of a board-certified radiologist, has reviewed x-rays of the exposed person at the request of the treating physician.

(3) As the basis for the diagnosis, the physician has not relied, in whole or in part, on the report or opinion of any doctor, clinic, laboratory or testing company that performed an examination, test or screening of the claimant's medical condition:

(A) Has been found in violation of any law, regulation, licensing requirement or medical code of practice of the state in which that examination, test or screening was conducted; or

(B) that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test or screening.

(4) The physician spends not more than 50% of the physician's professional practice time in providing consulting or expert services in connection with actual or potential civil actions, and the physician's medical group, professional corporation, clinic or other affiliated group earns not more than 20% of its revenues from providing those services.

(p) "Employee" means an individual who performs labor or provides construction services pursuant to a construction contract as defined in K.S.A. 16-121, and amendments thereto.

(q) "Established safety standard" means, that for the years after 1971, the concentration of silica or mixed dust in the breathing zone of the workers does not exceed the maximum allowable exposure limits for the eight-hour-time weighted average airborne concentration as promulgated by the occupational safety and health administration (OSHA) in effect at the time of the alleged exposure.

(r) "Exposed person" means a person whose exposure to:

(1) Silica is the basis for a silica claim; or

(2) asbestos is the basis for an asbestos claim.

(s) "FEV-1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

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

(u) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses as in effect on March 1, 2006.

(v) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs and does not include mesothelioma.

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

(x) "Nonmalignant condition" means a condition, other than a diagnosed cancer, that is caused or may be caused by either of the following, whichever is applicable:

(1) Silica; or

(2) asbestos.

(y) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.

(z) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of round silica nodules and birefringent crystals or other demonstration of crystal structures consistent with silica in the lung parenchyma (well-

organized concentric whorls of collagen surrounded by inflammatory cells) and that there is no other more likely explanation for the presence of the fibrosis.

(aa) “Predicted lower limit of normal” means the calculated standard convention lying at the fifth percentile, below the upper 95% of the reference population, based on factors including, but not limited to, age, height and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA’s guides to the evaluation of permanent impairment.

(bb) “Premises owner” means a person who owns, in whole or in part, leases, rents, maintains or controls privately owned any land or body of water, or any buildings and structures on those lands or bodies of water, and all privately owned and state-owned lands or bodies of water leased to a private person, firm or organization, including any buildings and structures on those lands, ways or waters.

(cc) “Radiological evidence of asbestosis” means:

(1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows small, irregular opacities of s, t or u, graded at least ¼ on the ILO scale; or

(2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of asbestosis.

(dd) “Radiological evidence of diffuse pleural thickening” means:

(1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows bilateral pleural thickening of at least B2 on the ILO scale and blunting of at least one costophrenic angle; or

(2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of diffuse pleural thickening.

(ee) “Radiological evidence of silicosis” means:

(1) An ILO quality one or two chest x-ray, read by a competent medical authority who regularly reviews x-rays in the ordinary course of practice, that shows bilateral small rounded opacities (p, q or r) in the upper lung fields of at least ¼ on the ILO scale; or

(2) a computed tomography scan or high-resolution computed tomography scan read by a competent medical authority showing evidence of silicosis.

(ff) “Regular basis” means more than an isolated or sporadic basis.

(gg) “Silica” means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha quartz, cristobalite and trypmite. The term “silica” also includes a mixture of dusts composed of silica and one or more other fibrogenic dusts capable of inducing pulmonary fibrosis if inhaled in sufficient quantity.

(hh) “Silica claim” means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. Silica claim also includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child or other relative of that person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person’s health that are caused by the person’s exposure to silica.

(ii) “Silicosis” means an interstitial lung disease caused by the pulmonary response to inhaled silica.

(jj) “Substantial contributing factor” means:

(1) Exposure to silica or asbestos is the proximate cause of the physical impairment alleged in the silica or asbestos claim; and

(2) a competent medical authority has determined with a reasonable degree of medical probability that the exposure to silica or asbestos is the proximate cause of the physical impairment.

(kk) “Substantial occupational exposure to silica” means employment in an industry and an occupation in which the exposed person did any of the following for a substantial portion of a normal work year for such occupation:

(1) Handled silica;

(2) fabricated silica-containing products so that the person was exposed to silica in the fabrication process;

(3) altered, repaired or otherwise worked with a silica-containing product in a manner that exposed the person on a regular basis to silica;

(4) worked in close proximity to other workers engaged in any of the activities described in paragraphs (1), (2) or (3) of this subsection in a manner that exposed the person on a regular basis to silica.

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

(mm) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code as in effect on the effective date of this act.

(nn) "Workers' compensation law" means a law respecting a program administered by a state or the United States 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. The term includes the longshore and harbor workers' compensation act, 33 U.S.C. 901-944, 948-950, and chapter 81 of Title 5, U.S.C., the federal employees compensation act, but does not include the act of April 22, 1908, 45 U.S.C. 51 et seq., popularly referred to as the "Federal Employers' Liability Act."

Sec. 2. (a) Physical impairment of the exposed person shall be an essential element in any civil action alleging a silica or asbestos claim.

(b) No person shall bring or maintain a civil action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to asbestos was a substantial contributing factor. Such a prima facie showing shall include:

(1) Evidence confirming that the diagnosing, competent medical authority has taken, or has directly supervised the taking of, a medically appropriate occupational, exposure, medical and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim.

(2) Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to asbestos and the date of diagnosis.

(3) A determination by a competent medical authority, on the basis of a medical examination and pulmonary function testing, that the exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(4) A diagnosis by a competent medical authority of asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis, or radiological evidence of diffuse pleural thickening.

(5) A determination by a competent medical authority that asbestosis or diffuse pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has:

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

(B) forced vital capacity below the lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal; or

(C) a chest x-ray showing small, irregular opacities of s, t or u, graded at least 2/4 on the ILO scale.

(6) A diagnosis by a competent medical authority that the exposed person's medical findings and impairment were proximately caused by asbestos exposure, as revealed by the exposed person's occupational, exposure, medical and smoking history. A diagnosis which only states that the medical findings and impairment are consistent with or compatible with exposure to asbestos does not meet the requirements of this paragraph.

(c) No person shall bring or maintain a civil action alleging an asbestos claim which is based upon an asbestos-related cancer in the absence of a prima facie showing which shall include all of the following minimum requirements;

(1) A diagnosis by a competent medical authority, who is board certified in pathology, pulmonary medicine, gastroenterology or oncology, of

a primary asbestos-related cancer and that exposure to asbestos was a substantial contributing factor to the condition.

(2) Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to asbestos and the date of diagnosis of the primary asbestos-related cancer.

(3) A diagnosis by a competent medical authority that the exposed person's asbestos-related cancer was proximately caused by asbestos exposure, as revealed by the exposed person's occupational, exposure, medical, and smoking history. A diagnosis which only states that the lung cancer is consistent with or compatible with exposure to asbestos does not meet the requirements of this subsection.

(d) In a civil action alleging an asbestos claim based upon mesothelioma, no prima facie showing is required.

(e) (1) No person shall bring or maintain a civil action alleging a silica claim based on a nonmalignant condition in the absence of a prima facie showing that the:

- (A) Exposed person has a physical impairment;
- (B) physical impairment is a result of a medical condition; and
- (C) person's exposure is a substantial contributing factor to the medical condition.

(2) The prima facie evidence shall include:

(A) Evidence confirming that a competent medical authority has taken, or has directly supervised the taking of, a medically appropriate occupational, exposure and smoking history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the silica claim for a nonmalignant condition, including the general nature and duration of the exposure, to extent known;

(B) if the claim is based upon a respiratory impairment, a diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person:

(i) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment; and

(ii) the exposed person has silicosis based at a minimum on radiological or pathological evidence of silicosis.

(C) A diagnosis by a competent medical authority that the exposed person's medical findings and impairment were proximately caused by silica as revealed by the exposed person's occupational, exposure, medical and smoking history. A diagnosis which only states that the medical findings and impairment are consistent with or compatible with exposure to silica does not meet the requirements of this paragraph.

(f) (1) No person shall bring or maintain a civil action alleging that silica caused that person to contract lung cancer in the absence of a prima facie evidence showing that the:

- (A) Exposed person has lung cancer; and
- (B) the person's exposure is a substantial contributing factor to the lung cancer.

(2) The prima facie evidence shall include:

(A) A diagnosis by a competent medical authority that:

- (i) The exposed person has primary lung cancer; and
- (ii) exposure to silica is a substantial contributing factor to the cancer.

(B) Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to silica and the date of diagnosis of the cancer.

(C) Evidence of the exposed person's substantial occupational exposure to silica.

(D) A diagnosis by a competent medical authority that the exposed person's lung cancer was proximately caused by silica exposure, as revealed by the exposed person's occupational, exposure, medical and smoking history. A diagnosis which only states that the lung cancer is consistent with or compatible with exposure to silica does not meet the requirements of this paragraph.

(g) (1) No person shall bring or maintain a civil action alleging a silica or asbestos claim based on wrongful death of an exposed person, in the absence of a prima facie showing that the:

- (A) Death of the exposed person was the result of a physical impairment;
- (B) death and physical impairment were the result of a medical con-

dition; and

(C) person's exposure to silica or asbestos was a substantial contributing factor to the medical condition.

(2) The prima facie evidence shall include:

(A) A diagnosis by a competent medical authority that exposure to silica or asbestos was a substantial contributing factor to the death of the exposed person;

(B) evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to asbestos and the date of death of the exposed person; or, in the case of a wrongful death based on silica-related cancer, evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to silica and the date of diagnosis of the cancer.

(C) Evidence of the exposed person's substantial occupational exposure to silica or exposure to asbestos.

(D) A diagnosis by a competent medical authority that the exposed person's death was proximately caused by silica or asbestos exposure, as revealed by the exposed person's occupational, exposure, medical and smoking history. A diagnosis which only states that the medical findings and impairment are consistent with or compatible with exposure to silica or asbestos does not meet the requirements of this paragraph.

(3) To the extent otherwise permitted by state law, if an heir files a civil action that alleges a silica or asbestos claim based on wrongful death and further alleges in the action that the death was the result of living with an exposed person who, if the civil action had been filed by the exposed person, would have met the requirements specified in subparagraph (C) of paragraph (2) of subsection (g) of this section, and amendments thereto, and that the decedent lived with the exposed person specified in subsection (kk) of section 1, and amendments thereto, for silica claims, or with the exposed person during the time of the exposed person's exposure to asbestos for asbestos claims, the decedent is considered as having satisfied the requirements specified in subparagraph (C) of paragraph (2) of subsection (g) of this section and amendments thereto.

(4) In a civil action alleging an asbestos claim for wrongful death of an exposed person based on mesothelioma, no prima facie showing is required.

(h) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall be consistent with the technical recommendations for examinations, testing procedures, quality assurance, quality control and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., as in effect on March 1, 2006 and the interpretive standards set forth in the official statement of the American thoracic society entitled, "lung function testing: Selection of reference values and interpretive strategies," as in effect on March 1, 2006.

(i) (1) The court's findings and decision on the prima facie showing that meets the requirements of subsections (b) through (h) of this section shall not:

(A) Result in any presumption at trial that the exposed person has a physical impairment that is caused by a condition related to silica or asbestos exposure.

(B) Be conclusive as to the liability of any defendant in the case.

(C) Be admissible at trial.

(2) If the trier of fact is a jury:

(A) The court shall not instruct the jury with respect to the court's findings or decision on the prima facie showing; and

(B) neither counsel for any party nor a witness shall inform the jury or potential jurors of the prima facie showing.

(j) A court may consolidate for trial any number and type of silica or asbestos claims with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only claims relating to the exposed person and members of such person's past or present household.

Sec. 3. (a) The plaintiff in any civil action alleging a silica or asbestos claim shall file within 60 days of the filing of the complaint or petition or other initial pleading a written report and supporting test results constituting prima facie evidence of the exposed person's physical impairment. The written report and supporting test results shall meet the minimum requirements specified in section 2, and amendments thereto. The de-

defendant has 120 days from the date the prima facie evidence of the exposed person's physical impairment is proffered or 120 days from the date of the first responsive pleading, whichever is later, to challenge the adequacy of the proffered prima facie evidence of the physical impairment for failure to comply with the minimum requirements specified in section 2, and amendments thereto. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in section 1, and amendments thereto.

(b) If the defendant challenges the adequacy of the prima facie evidence of the exposed person's physical impairment as provided in subsection (a), the court shall determine from all of the evidence submitted whether the proffered prima facie evidence meets the minimum requirements specified in section 2, and amendments thereto. The court shall resolve the issue of whether the plaintiff has made the prima facie showing required by applying the standard for resolving a motion for summary judgment.

(c) The court shall dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima facie showing required by section 2, and amendments thereto. Any plaintiff whose case has been dismissed without prejudice under this subsection may move to reinstate such case if the plaintiff makes a prima facie showing that meets the minimum requirements specified in section 2, and amendments thereto.

(d) All silica and asbestos claims filed on or after the effective date of this act shall include a sworn information form containing:

(1) the claimant's name, address, date of birth, social security number and marital status;

(2) the exposed person's name, last address, date of birth, social security number and marital status;

(3) if the claimant alleges exposure to asbestos through another person's exposure, the name, address, date of birth, social security number, marital status, for each person by which claimant alleges exposure (hereafter the "index person") and the claimant's relationship to each such person;

(4) for each alleged exposure of the exposed person and for each index person, the specific location and manner of each such exposure; the beginning and ending dates of each such exposure; and the identity of the manufacturer of the specific asbestos or silica product to which the exposed person or index person was exposed;

(5) the occupation and name of employer of the exposed person at the time of each alleged exposure;

(6) if the silica or asbestos claim involves more than one claimant, the identity of the defendant or defendants against whom each claimant asserts a claim;

(7) the specific disease related to silica or asbestos claimed to exist; and

(8) any supporting documentation of the condition claimed to exist, and documentation to support the claimant or index person's identification of the silica or asbestos product that such person was exposed to. Such documentation shall include copies of the x-ray, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein), lung volume tests, reports of x-ray examinations, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the diagnosing, competent medical authority in reaching the physician's conclusions.

(e) A separate information form must be filed for each claimant alleging a silica or asbestos claim.

Sec. 4. (a) Notwithstanding any other provision of the Kansas Statutes Annotated, and amendments thereto, for any claim based upon a nonmalignant condition resulting from silica or asbestos that is not barred as of the effective date of this act, the period of limitations shall not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that such person has a physical impairment due to a nonmalignant condition resulting from silica or asbestos. A claim based upon a nonmalignant condition resulting from silica or asbestos is preserved for purposes of the period of limitations if such was filed before the cause of action arises pursuant to this section and amendments thereto.

(b) A silica or asbestos claim for a nonmalignant condition shall not preclude or bar a subsequent claim by the same exposed person for silica-related cancer or asbestos-related cancer. No damages shall be awarded for fear or risk of cancer in any civil action asserting only a silica or asbestos claim for a nonmalignant condition.

(c) No settlement of a silica or asbestos claim for a nonmalignant condition that is concluded after the effective date of this section shall require the release of any future claim for silica-related cancer or asbestos-related cancer as a condition of settlement.

Sec. 5. The following apply to all civil actions for silica or asbestos claims brought against a premises owner to recover damages or other relief for exposure to silica or asbestos on the premises owner's property:

(a) No premises owner shall be liable for any injury to any individual resulting from silica or asbestos exposure unless such individual's alleged exposure occurred while the individual was at or near the premises owner's property.

(b) If exposure to silica or asbestos is alleged to have occurred before January 1, 1972, it is presumed that a premises owner knew that this state had adopted safe levels of exposure for silica or asbestos and that products containing silica or asbestos were used on its property only at levels below those safe levels of exposure. To rebut this presumption, the plaintiff must prove by a preponderance of the evidence that the premises owner knew or should have known that the premises were unreasonably dangerous to invitees and the premises owner allowed that condition to persist.

(c) (1) A premises owner that hired a contractor to perform the type of work at the premises owner's property that the contractor was qualified to perform cannot be liable for any injury to any individual resulting from silica or asbestos exposure caused by any of the contractor's employees or agents on the premises owner's property unless the premises owner directed the activity that resulted in the injury or gave or denied permission for the critical acts that led to the individual's injury or knowingly allowed a dangerous condition caused by the contractor to persist.

(2) If exposure to silica or asbestos is alleged to have occurred after January 1, 1972, a premises owner shall not be liable for any injury to any individual resulting from that exposure caused by a contractor's employee or agent on the premises owner's property unless the plaintiff establishes the premises owner's violation of an established safety standard that was in effect at the time of the exposure and that the alleged violation was in the plaintiff's breathing zone and was the proximate cause of the plaintiff's medical condition.

Sec. 6. (a) Nothing in sections 1 to 5, inclusive, and amendments thereto, is intended or shall be construed to:

(1) Apply to or affect the rights of any party in bankruptcy proceedings.

(2) Apply to or affect the ability of any person who is able to make a showing that the person satisfies the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand against that trust.

(b) Sections 1 to 5, inclusive, and amendments thereto, shall not:

(1) Apply to or affect the scope or operation of any workers' compensation law or veterans' benefit program or the exclusive remedy of subrogation under the provisions of that law or program; and

(2) authorize any lawsuit that is barred by any provision of any workers' compensation law.

(c) Nothing in this act, and amendments thereto, shall require the exhumation of bodies in making the prima facie showing as required by section 2, and amendments thereto, or rebutting the presumption as provided in section 2, and amendments thereto.

Sec. 7. (a) In any civil action under this act, and amendments thereto, alleging an asbestos or silica claim, the party with the burden of establishing the claim or affirmative defense must show that the alleged exposure attributable to a given person or party was a substantial factor in causing the injury, loss or damages.

(b) In determining whether any given claimed or alleged exposure was a substantial factor in causing the plaintiff's injury, loss or damages, the court shall consider, without limitation, all of the following:

(1) The manner in which the plaintiff was exposed.

(2) The proximity to the plaintiff when the exposure occurred.

- (3) The frequency and length of the plaintiff's exposure;
- (4) any factors that mitigated or enhanced the plaintiff's exposure.

Sec. 8. This act shall apply to all civil actions that allege a silica or asbestos claim that are filed on or after the effective date of this act.

Sec. 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 10. If any provision of this act or the application thereof to any person or circumstance is held to be preempted by federal law, the preemption shall not affect other provisions or applications of the act which can be given effect.

Sec. 11. Sections 1 through 11 may be cited as the silica and asbestos claims act.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 19, 2006.
