

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0326.01 Debbie Haskins x2045

SENATE BILL 17-053

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS FOR ASBESTOS LITIGATION CLAIMS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill enacts the "Asbestos Bankruptcy Trust Claims Transparency Act". Federal bankruptcy law provides companies with asbestos-related liabilities the opportunity to reorganize and emerge from bankruptcy with protection from lawsuits. Asbestos trusts established as part of the bankruptcy process assume the debtor company's asbestos-related liabilities. The trusts then pay present and future asbestos-related claims, thus relieving the reorganized company of all present and future asbestos-related liabilities. Plaintiffs may also file

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

asbestos-related personal injury actions against companies that are still solvent and subject to suit in the civil system. The bill addresses this dual compensation system to give defendants access to information regarding all of a plaintiff's trust-related exposures and give fact finders information they need to properly assign fault.

The bill requires that a plaintiff must:

- ! File and disclose all asbestos trust claims before proceeding to trial in any asbestos action;
- ! Provide all parties with all trust claim materials connected to the plaintiff's exposure to asbestos; and
- ! If the plaintiff's asbestos trust claim is based on exposure to asbestos through another individual, produce all trust claims materials submitted by that individual to any asbestos trusts.

The bill allows a defendant to file a motion requesting a stay of the proceedings if the defendant has information that could support the filing of additional trust claims by the plaintiff. If the court determines that there is sufficient basis, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials. The bill addresses discovery and access to materials relating to trust claims materials or trust governance documents by defendants. Prior to 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. If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, there is a rebuttable presumption that the plaintiff is entitled to and will receive compensation specified in the trust governance document applicable to the claim. The court may impose sanctions, including vacating a judgment rendered in an asbestos action, against a plaintiff for failure to comply with the disclosure requirements of this bill.

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 a judgment debtor, has jurisdiction to reopen the judgement in the asbestos action and adjust the judgment or order other appropriate relief.

The bill also establishes procedures for the prioritization of asbestos-related claims. An asbestos action involving a nonmalignant condition shall not be brought or maintained in the absence of prima facie evidence that the exposed person has an asbestos-related physical impairment based on objective criteria developed by the medical community. When filing an asbestos-related claim, the plaintiff must submit signed medical reports from qualified physicians who have a doctor-patient relationship with the plaintiff. If the plaintiff has not established that he or she is sick as a result of the asbestos exposure, the

court shall dismiss the action. The bill prevents the filing of class action lawsuits for asbestos-related exposures. The bill sets forth the elements of proof for asbestos-related actions and the evidence needed to establish evidence of physical impairment.

Until a court enters an order establishing that the exposed person has established prima facie evidence of impairment, an asbestos action is not subject to discovery, except for discovery relating to establishing or challenging the prima facie evidence or by order of the trial court, upon motion of one of the parties and for good cause. A defendant in an asbestos action is not 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.

The bill provides that an exposed person's cause of action shall not accrue and the statute of limitations does not begin running for a person who has been exposed to asbestos prior to the earlier of the date:

- ! The exposed person receives a medical diagnosis of asbestos-related impairment; or
- ! The exposed person discovers facts that would have led a reasonable person to obtain a medical diagnosis with respect to the asbestos-related impairment; or
- ! Of the death of the exposed person having an asbestos-related impairment.

The bill states that an asbestos action arising out of a nonmalignant condition is a distinct cause of action from an action for an asbestos-related cancer. Damages shall not be awarded in an asbestos action based upon the plaintiff's fear of or increased risk for future disease.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** parts 13 and 14
3 to article 21 of title 13 as follows:

4 **PART 13**
5 **ASBESTOS BANKRUPTCY TRUST CLAIMS**
6 **TRANSPARENCY ACT**

7 **13-21-1301. Short title.** THE SHORT TITLE OF THIS PART 13 IS THE
8 "ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT".

9 **13-21-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

1 (1) "ASBESTOS" MEANS CHRYSOTILE, AMOSITE, CROCIDOLITE,
2 TREMOLITE ASBESTOS, ANTHOPHYLLITE ASBESTOS, ACTINOLITE ASBESTOS,
3 ASBESTIFORM WINCHITE, ASBESTIFORM RICHTERITE, ASBESTIFORM
4 AMPHIBOLE MINERALS, AND ANY OF THESE MINERALS THAT HAVE BEEN
5 CHEMICALLY TREATED OR ALTERED, INCLUDING ALL MINERALS DEFINED
6 AS ASBESTOS IN 29 CFR 1910 AT THE TIME THE ASBESTOS ACTION IS FILED.

7 (2) "ASBESTOS ACTION" MEANS A CLAIM FOR DAMAGES OR OTHER
8 CIVIL OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION ARISING OUT OF,
9 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO
10 ASBESTOS, INCLUDING LOSS OF CONSORTIUM, WRONGFUL DEATH, MENTAL
11 OR EMOTIONAL INJURY, RISK OR FEAR OF DISEASE OR OTHER INJURY, COSTS
12 OF MEDICAL MONITORING OR SURVEILLANCE, AND ANY OTHER DERIVATIVE
13 CLAIM MADE BY OR ON BEHALF OF A PERSON EXPOSED TO ASBESTOS OR A
14 REPRESENTATIVE, SPOUSE, PARENT, CHILD, OR OTHER RELATIVE OF THAT
15 PERSON.

16 (3) "ASBESTOS TRUST" MEANS A GOVERNMENT-APPROVED OR
17 COURT-APPROVED TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION
18 FUND OR CLAIMS FACILITY CREATED AS A RESULT OF AN ADMINISTRATIVE
19 OR LEGAL ACTION, A COURT-APPROVED BANKRUPTCY, OR PURSUANT TO 11
20 U.S.C. SEC. 524 (g) OR 11 U.S.C. SEC. 1121 (a) OR OTHER APPLICABLE
21 PROVISION OF LAW, THAT IS INTENDED TO PROVIDE COMPENSATION TO
22 CLAIMANTS ARISING OUT OF, BASED ON, OR RELATED TO THE HEALTH
23 EFFECTS OF EXPOSURE TO ASBESTOS.

24 (4) "PLAINTIFF" MEANS A PERSON BRINGING AN ASBESTOS ACTION,
25 INCLUDING A PERSONAL REPRESENTATIVE, IF THE ASBESTOS ACTION IS
26 BROUGHT BY AN ESTATE OR A CONSERVATOR OR NEXT FRIEND IF THE
27 ASBESTOS ACTION IS BROUGHT ON BEHALF OF A MINOR OR A LEGALLY

1 INCAPACITATED INDIVIDUAL.

2 (5) "TRUST CLAIMS MATERIALS" MEANS A FINAL EXECUTED PROOF
3 OF CLAIM AND ALL OTHER DOCUMENTS AND INFORMATION RELATED TO A
4 CLAIM AGAINST AN ASBESTOS TRUST, INCLUDING CLAIMS FORMS AND
5 SUPPLEMENTARY MATERIALS, AFFIDAVITS, DEPOSITIONS AND TRIAL
6 TESTIMONY, WORK HISTORY, MEDICAL AND HEALTH RECORDS,
7 DOCUMENTS REFLECTING THE STATUS OF A CLAIM AGAINST AN ASBESTOS
8 TRUST, AND, IF THE TRUST CLAIM HAS SETTLED, ALL DOCUMENTS
9 RELATING TO THE SETTLEMENT OF THE TRUST CLAIM.

10 (6) "TRUST GOVERNANCE DOCUMENTS" MEANS ALL DOCUMENTS
11 THAT RELATE TO ELIGIBILITY AND PAYMENT LEVELS, INCLUDING CLAIMS
12 PAYMENT MATRICES, TRUST DISTRIBUTION PROCEDURES, OR PLANS FOR
13 REORGANIZATION FOR AN ASBESTOS TRUST.

14 **13-21-1303. Required disclosures by plaintiff.** (1) WITHIN
15 THIRTY-FIVE DAYS AFTER AN ASBESTOS ACTION IS FILED, OR WITHIN
16 THIRTY-FIVE DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,
17 WHICHEVER IS LATER, A PLAINTIFF SHALL DO ALL OF THE FOLLOWING:

18 (a) PROVIDE THE COURT AND PARTIES WITH A SWORN STATEMENT
19 SIGNED BY THE PLAINTIFF AND THE PLAINTIFF'S COUNSEL, UNDER
20 PENALTIES OF PERJURY, INDICATING THAT AN INVESTIGATION OF ALL
21 ASBESTOS TRUST CLAIMS HAS BEEN CONDUCTED AND THAT ALL ASBESTOS
22 TRUST CLAIMS THAT CAN BE MADE BY THE PLAINTIFF OR ANY PERSON ON
23 THE PLAINTIFF'S BEHALF HAVE BEEN FILED. THE SWORN STATEMENT MUST
24 INDICATE WHETHER THERE HAS BEEN A REQUEST TO DEFER, DELAY,
25 SUSPEND, OR TOLL ANY ASBESTOS TRUST CLAIM AND PROVIDE THE
26 DISPOSITION OF EACH ASBESTOS TRUST CLAIM.

27 (b) PROVIDE ALL PARTIES WITH ALL TRUST CLAIMS MATERIALS,

1 INCLUDING TRUST CLAIMS MATERIALS THAT RELATE TO CONDITIONS
2 OTHER THAN THOSE THAT ARE THE BASIS FOR THE ASBESTOS ACTION AND
3 INCLUDING ALL TRUST CLAIMS MATERIALS FROM ALL LAW FIRMS
4 CONNECTED TO THE PLAINTIFF IN RELATION TO EXPOSURE TO ASBESTOS,
5 INCLUDING ANYONE AT A LAW FIRM INVOLVED IN THE ASBESTOS ACTION,
6 ANY REFERRING LAW FIRM, AND ANY OTHER FIRM THAT HAS FILED AN
7 ASBESTOS TRUST CLAIM FOR THE PLAINTIFF OR ON THE PLAINTIFF'S
8 BEHALF; AND

9 (c) IF THE PLAINTIFF'S ASBESTOS TRUST CLAIM IS BASED ON
10 EXPOSURE TO ASBESTOS THROUGH ANOTHER INDIVIDUAL, THE PLAINTIFF
11 SHALL PRODUCE ALL TRUST CLAIMS MATERIALS SUBMITTED BY THE OTHER
12 INDIVIDUAL TO ANY ASBESTOS TRUSTS IF THE MATERIALS ARE AVAILABLE
13 TO PLAINTIFF OR PLAINTIFF'S COUNSEL.

14 (2) THE PLAINTIFF SHALL SUPPLEMENT THE INFORMATION AND
15 MATERIALS REQUIRED UNDER SUBSECTION (1) OF THIS SECTION WITHIN
16 THIRTY-FIVE DAYS AFTER THE PLAINTIFF OR A PERSON ON THE PLAINTIFF'S
17 BEHALF SUPPLEMENTS AN EXISTING ASBESTOS TRUST CLAIM, RECEIVES
18 ADDITIONAL INFORMATION OR MATERIALS RELATED TO AN ASBESTOS
19 TRUST CLAIM, OR FILES AN ADDITIONAL ASBESTOS TRUST CLAIM.

20 (3) THE COURT MAY DISMISS THE ASBESTOS ACTION IF THE
21 PLAINTIFF FAILS TO COMPLY WITH THIS SECTION.

22 (4) AN ASBESTOS ACTION MAY NOT PROCEED TO TRIAL UNTIL AT
23 LEAST ONE HUNDRED EIGHTY-TWO DAYS AFTER THE REQUIREMENTS OF
24 SUBSECTION (1) OF THIS SECTION HAVE BEEN MET.

25 **13-21-1304. Identification of additional or alternative asbestos**
26 **trusts by defendant.** (1) A DEFENDANT MAY FILE A MOTION REQUESTING
27 A STAY OF THE PROCEEDINGS ON OR BEFORE THE SIXTY-THIRD DAY BEFORE

1 THE DATE A TRIAL IN THE ACTION IS SET TO COMMENCE OR THE
2 TWENTY-FIRST DAY AFTER THE DEFENDANT FIRST OBTAINS INFORMATION
3 THAT COULD SUPPORT ADDITIONAL TRUST CLAIMS BY THE PLAINTIFF,
4 WHICHEVER IS LATER. THE MOTION SHALL IDENTIFY THE ASBESTOS TRUST
5 CLAIMS THE DEFENDANT BELIEVES THE PLAINTIFF CAN FILE AND INCLUDE
6 INFORMATION SUPPORTING THE ASBESTOS TRUST CLAIMS.

7 (2) WITHIN FOURTEEN DAYS AFTER RECEIVING THE DEFENDANT'S
8 MOTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE PLAINTIFF
9 SHALL:

10 (a) FILE THE ASBESTOS TRUST CLAIMS;

11 (b) FILE A WRITTEN RESPONSE WITH THE COURT STATING WHY
12 THERE IS INSUFFICIENT EVIDENCE FOR THE PLAINTIFF TO FILE THE
13 ASBESTOS TRUST CLAIMS; OR

14 (c) FILE A WRITTEN RESPONSE WITH THE COURT REQUESTING A
15 DETERMINATION THAT THE COST TO FILE THE ASBESTOS TRUST CLAIMS
16 EXCEEDS THE PLAINTIFF'S REASONABLY ANTICIPATED RECOVERY.

17 (3) (a) IF THE COURT DETERMINES THAT THERE IS A SUFFICIENT
18 BASIS FOR THE PLAINTIFF TO FILE AN ASBESTOS TRUST CLAIM IDENTIFIED
19 IN THE MOTION TO STAY, THE COURT SHALL STAY THE ASBESTOS ACTION
20 UNTIL THE PLAINTIFF FILES THE ASBESTOS TRUST CLAIM AND PRODUCES
21 ALL RELATED TRUST CLAIMS MATERIALS.

22 (b) IF THE COURT DETERMINES THAT THE COST OF SUBMITTING AN
23 ASBESTOS TRUST CLAIM EXCEEDS THE PLAINTIFF'S REASONABLY
24 ANTICIPATED RECOVERY, THE COURT SHALL STAY THE ASBESTOS ACTION
25 UNTIL THE PLAINTIFF FILES WITH THE COURT AND PROVIDES ALL PARTIES
26 WITH A VERIFIED STATEMENT OF THE PLAINTIFF'S HISTORY OF EXPOSURE,
27 USAGE, OR OTHER CONNECTION TO ASBESTOS COVERED BY THAT ASBESTOS

1 TRUST.

2 (4) NOT LESS THAN SIXTY-THREE DAYS AFTER THE PLAINTIFF
3 PROVIDES THE DOCUMENTATION REQUIRED UNDER THIS SECTION, THE
4 COURT MAY SCHEDULE THE ASBESTOS ACTION FOR TRIAL.

5 **13-21-1305. Discovery - use of materials.** (1) TRUST CLAIMS
6 MATERIALS AND TRUST GOVERNANCE DOCUMENTS ARE PRESUMED TO BE
7 RELEVANT AND AUTHENTIC AND ARE ADMISSIBLE IN EVIDENCE IN AN
8 ASBESTOS ACTION. A CLAIM OF PRIVILEGE DOES NOT APPLY TO ANY TRUST
9 CLAIMS MATERIALS OR TRUST GOVERNANCE DOCUMENTS.

10 (2) A DEFENDANT IN AN ASBESTOS ACTION MAY SEEK DISCOVERY
11 FROM AN ASBESTOS TRUST. THE PLAINTIFF SHALL NOT CLAIM PRIVILEGE
12 OR CONFIDENTIALITY TO BAR DISCOVERY AND SHALL PROVIDE CONSENT
13 OR OTHER EXPRESSION OF PERMISSION THAT MAY BE REQUIRED BY THE
14 ASBESTOS TRUST TO RELEASE INFORMATION AND MATERIALS SOUGHT BY
15 A DEFENDANT.

16 (3) TRUST CLAIMS MATERIALS THAT ARE SUFFICIENT TO ENTITLE
17 A CLAIM TO CONSIDERATION FOR PAYMENT UNDER THE APPLICABLE TRUST
18 GOVERNANCE DOCUMENTS MAY BE SUFFICIENT TO SUPPORT A JURY
19 FINDING THAT THE PLAINTIFF MAY HAVE BEEN EXPOSED TO PRODUCTS FOR
20 WHICH THE TRUST WAS ESTABLISHED TO PROVIDE COMPENSATION AND
21 THAT SUCH EXPOSURE MAY BE A SUBSTANTIAL CONTRIBUTING FACTOR IN
22 CAUSING THE PLAINTIFF'S INJURY THAT IS AT ISSUE IN THE ASBESTOS
23 ACTION.

24 **13-21-1306. Trust record - valuation of asbestos trust claims**
25 **- judicial notice.** (1) NOT LESS THAN THIRTY-FIVE DAYS BEFORE TRIAL IN
26 AN ASBESTOS ACTION, THE COURT SHALL ENTER INTO THE RECORD A
27 DOCUMENT THAT IDENTIFIES EVERY ASBESTOS TRUST CLAIM MADE BY THE

1 PLAINTIFF OR ON THE PLAINTIFF'S BEHALF.

2 (2) IF A PLAINTIFF PROCEEDS TO TRIAL IN AN ASBESTOS ACTION
3 BEFORE AN ASBESTOS TRUST CLAIM IS RESOLVED, THERE IS A REBUTTABLE
4 PRESUMPTION THAT THE PLAINTIFF IS ENTITLED TO, AND WILL RECEIVE,
5 THE COMPENSATION SPECIFIED IN THE TRUST GOVERNANCE DOCUMENT
6 APPLICABLE TO HIS OR HER CLAIM AT THE TIME OF TRIAL. THE COURT
7 SHALL TAKE JUDICIAL NOTICE THAT THE TRUST GOVERNANCE DOCUMENT
8 SPECIFIES COMPENSATION AMOUNTS AND PAYMENT PERCENTAGES AND
9 SHALL ESTABLISH AN ATTRIBUTED VALUE TO THE PLAINTIFF'S ASBESTOS
10 TRUST CLAIMS.

11 **13-21-1307. Failure to provide information - sanctions.** (1) ON
12 THE MOTION OF A DEFENDANT OR JUDGMENT DEBTOR SEEKING SANCTIONS
13 OR OTHER RELIEF IN AN ASBESTOS ACTION, THE COURT MAY IMPOSE ANY
14 SANCTION PROVIDED BY COURT RULE OR A LAW OF THIS STATE,
15 INCLUDING, BUT NOT LIMITED TO, VACATING A JUDGMENT RENDERED IN
16 THE ACTION, FOR A PLAINTIFF'S FAILURE TO COMPLY WITH THE DISCLOSURE
17 REQUIREMENTS OF THIS PART 13.

18 (2) IF THE PLAINTIFF OR A PERSON ON THE PLAINTIFF'S BEHALF
19 FILES AN ASBESTOS TRUST CLAIM AFTER THE PLAINTIFF OBTAINS A
20 JUDGMENT IN AN ASBESTOS ACTION, AND THAT ASBESTOS TRUST WAS IN
21 EXISTENCE AT THE TIME THE PLAINTIFF OBTAINED THE JUDGMENT, THE
22 TRIAL COURT, ON MOTION BY A DEFENDANT OR JUDGMENT DEBTOR
23 SEEKING SANCTIONS OR OTHER RELIEF, HAS JURISDICTION TO REOPEN THE
24 JUDGMENT IN THE ASBESTOS ACTION AND ADJUST THE JUDGMENT BY THE
25 AMOUNT OF ANY SUBSEQUENT ASBESTOS TRUST PAYMENTS OBTAINED BY
26 THE PLAINTIFF AND ORDER ANY OTHER RELIEF TO THE PARTIES THAT THE
27 COURT CONSIDERS JUST AND PROPER.

1 (3) A DEFENDANT OR JUDGMENT DEBTOR MUST FILE ANY MOTION
2 UNDER THIS SECTION WITHIN A REASONABLE TIME AND NOT MORE THAN
3 ONE YEAR AFTER THE JUDGMENT WAS ENTERED.

4 **13-21-1308. Application of part 13.** (1) THIS PART 13 APPLIES
5 TO:

6 (a) ALL ASBESTOS ACTIONS FILED ON OR AFTER THE EFFECTIVE
7 DATE OF THIS PART 13; AND

8 (b) ANY PENDING ASBESTOS ACTIONS IN WHICH TRIAL HAS NOT
9 COMMENCED AS OF THE EFFECTIVE DATE OF THIS PART 13.

10 (2) IF THE APPLICATION OF A PROVISION IN THIS PART 13 WOULD
11 HAVE RETROSPECTIVE EFFECT, THAT PROVISION MAY ONLY BE APPLIED
12 PROSPECTIVELY.

13 PART 14

14 ASBESTOS CLAIMS PRIORITIES

15 **13-21-1401. Short title.** THE SHORT TITLE OF THIS PART 14 IS THE
16 "ASBESTOS CLAIMS PRIORITIES ACT".

17 **13-21-1402. Definitions.** AS USED IN THIS PART 14, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "AMA GUIDES TO THE EVALUATION OF PERMANENT
20 IMPAIRMENT" MEANS THE "AMERICAN MEDICAL ASSOCIATION GUIDES TO
21 THE EVALUATION OF PERMANENT IMPAIRMENT" IN EFFECT AT THE TIME
22 OF THE PERFORMANCE OF ANY EXAMINATION OR TEST ON THE EXPOSED
23 PERSON REQUIRED UNDER THIS PART 14.

24 (2) "ASBESTOS" MEANS CHRYSOTILE, AMOSITE, CROCIDOLITE,
25 TREMOLITE ASBESTOS, ANTHOPHYLLITE ASBESTOS, ACTINOLITE ASBESTOS,
26 ASBESTIFORM WINCHITE, ASBESTIFORM RICHTERITE, ASBESTIFORM
27 AMPHIBOLE MINERALS, AND ANY OF THESE MINERALS THAT HAVE BEEN

1 CHEMICALLY TREATED OR ALTERED, INCLUDING ALL MINERALS DEFINED
2 AS ASBESTOS IN 29 CFR 1910 AT THE TIME THE ASBESTOS ACTION IS FILED.

3 (3) "ASBESTOS ACTION" MEANS A CLAIM FOR DAMAGES OR OTHER
4 CIVIL OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION ARISING OUT OF,
5 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO
6 ASBESTOS, INCLUDING LOSS OF CONSORTIUM, WRONGFUL DEATH, MENTAL
7 OR EMOTIONAL INJURY, RISK OR FEAR OF DISEASE OR OTHER INJURY, COSTS
8 OF MEDICAL MONITORING OR SURVEILLANCE, AND ANY OTHER DERIVATIVE
9 CLAIM MADE BY OR ON BEHALF OF A PERSON EXPOSED TO ASBESTOS OR A
10 REPRESENTATIVE, SPOUSE, PARENT, CHILD, OR OTHER RELATIVE OF THAT
11 PERSON.

12 (4) "ASBESTOSIS" MEANS BILATERAL DIFFUSE INTERSTITIAL
13 FIBROSIS OF THE LUNGS CAUSED BY INHALATION OF ASBESTOS FIBERS.

14 (5) "BOARD-CERTIFIED IN INTERNAL MEDICINE" MEANS A
15 PHYSICIAN WHO IS CERTIFIED BY THE AMERICAN BOARD OF INTERNAL
16 MEDICINE OR THE AMERICAN OSTEOPATHIC BOARD OF INTERNAL
17 MEDICINE AND WHOSE CERTIFICATION WAS CURRENT AT THE TIME OF THE
18 PERFORMANCE OF AN EXAMINATION AND RENDITION OF A REPORT
19 REQUIRED BY THIS PART 14.

20 (6) "BOARD-CERTIFIED IN OCCUPATIONAL MEDICINE" MEANS A
21 PHYSICIAN WHO IS CERTIFIED IN THE SPECIALTY OF OCCUPATIONAL
22 MEDICINE BY THE AMERICAN BOARD OF PREVENTIVE MEDICINE OR THE
23 SPECIALTY OF OCCUPATIONAL OR ENVIRONMENTAL MEDICINE BY THE
24 AMERICAN OSTEOPATHIC BOARD OF PREVENTIVE MEDICINE AND WHOSE
25 CERTIFICATION WAS CURRENT AT THE TIME OF THE PERFORMANCE OF AN
26 EXAMINATION AND RENDITION OF A REPORT REQUIRED BY THIS PART 14.

27 (7) "BOARD-CERTIFIED IN PATHOLOGY" MEANS A PHYSICIAN WHO

1 HOLDS PRIMARY CERTIFICATION IN ANATOMIC PATHOLOGY OR CLINICAL
2 PATHOLOGY FROM THE AMERICAN BOARD OF PATHOLOGY OR THE
3 AMERICAN OSTEOPATHIC BOARD OF PATHOLOGY, WHOSE CERTIFICATION
4 WAS CURRENT AT THE TIME OF THE PERFORMANCE OF AN EXAMINATION
5 AND RENDITION OF A REPORT REQUIRED BY THIS PART 14, AND WHOSE
6 PROFESSIONAL PRACTICE IS PRINCIPALLY IN THE FIELD OF PATHOLOGY AND
7 INVOLVES REGULAR EVALUATION OF PATHOLOGY MATERIALS OBTAINED
8 FROM SURGICAL OR POSTMORTEM SPECIMENS.

9 (8) "BOARD-CERTIFIED IN PULMONARY MEDICINE" MEANS A
10 PHYSICIAN WHO IS CERTIFIED IN THE SPECIALTY OF PULMONARY MEDICINE
11 BY THE AMERICAN BOARD OF INTERNAL MEDICINE OR THE AMERICAN
12 OSTEOPATHIC BOARD OF INTERNAL MEDICINE AND WHOSE CERTIFICATION
13 WAS CURRENT AT THE TIME OF THE PERFORMANCE OF AN EXAMINATION
14 AND RENDITION OF A REPORT REQUIRED BY THIS PART 14.

15 (9) "CERTIFIED B-READER" MEANS AN INDIVIDUAL WHO HAS
16 QUALIFIED AS A NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND
17 HEALTH (NIOSH) FINAL OR B-READER OF X-RAYS UNDER 42 CFR 37.51
18 (b), WHOSE CERTIFICATION WAS CURRENT AT THE TIME OF ANY READINGS
19 REQUIRED UNDER THIS PART 14, AND WHOSE B-READS COMPLY WITH THE
20 NIOSH B-READER'S CODE OF ETHICS, ISSUES IN CLASSIFICATION OF CHEST
21 RADIOGRAPHS, AND CLASSIFICATION OF CHEST RADIOGRAPHS IN
22 CONTESTED PROCEEDINGS.

23 (10) "CHEST X-RAY" MEANS CHEST FILMS TAKEN IN ACCORDANCE
24 WITH ALL APPLICABLE STATE AND FEDERAL REGULATORY STANDARDS AND
25 TAKEN IN THE POSTERIOR-ANTERIOR VIEW.

26 (11) "DLCO" MEANS DIFFUSING CAPACITY OF THE LUNG FOR
27 CARBON MONOXIDE, WHICH IS THE MEASUREMENT OF CARBON MONOXIDE

1 TRANSFER FROM INSPIRED GAS TO PULMONARY CAPILLARY BLOOD.

2 (12) "EXPOSED PERSON" MEANS A PERSON WHOSE EXPOSURE TO
3 ASBESTOS OR TO ASBESTOS-CONTAINING PRODUCTS IS THE BASIS FOR AN
4 ASBESTOS ACTION.

5 (13) "FEV1" MEANS FORCED EXPIRATORY VOLUME IN THE FIRST
6 SECOND, WHICH IS THE MAXIMAL VOLUME OF AIR EXPELLED IN ONE
7 SECOND DURING PERFORMANCE OF SIMPLE SPIROMETRIC TESTS.

8 (14) "FEV1/FVC" MEANS THE RATIO BETWEEN THE ACTUAL
9 VALUES FOR FEV1 OVER FVC.

10 (15) "FVC" MEANS FORCED VITAL CAPACITY, WHICH IS THE
11 MAXIMAL VOLUME OF AIR EXPIRED WITH MAXIMUM EFFORT FROM A
12 POSITION OF FULL INSPIRATION.

13 (16) "ILO SYSTEM" AND "ILO SCALE" MEAN THE RADIOLOGICAL
14 RATINGS AND SYSTEM FOR THE CLASSIFICATION OF CHEST X-RAYS OF THE
15 INTERNATIONAL LABOUR OFFICE PROVIDED IN "THE GUIDELINES FOR THE
16 USE OF ILO INTERNATIONAL CLASSIFICATION OF RADIOGRAPHS OF
17 PNEUMOCONIOSES" IN EFFECT ON THE DAY ANY X-RAYS OF THE EXPOSED
18 PERSON WERE REVIEWED BY A CERTIFIED B-READER.

19 (17) "NONMALIGNANT CONDITION" MEANS ANY CONDITION THAT
20 CAN BE CAUSED BY ASBESTOS OTHER THAN A DIAGNOSED CANCER.

21 (18) "OFFICIAL STATEMENTS OF THE AMERICAN THORACIC
22 SOCIETY" MEANS LUNG FUNCTION TESTING STANDARDS SET FORTH IN
23 STATEMENTS FROM THE AMERICAN THORACIC SOCIETY, INCLUDING
24 STANDARDIZATIONS OF SPIROMETRY, STANDARDIZATIONS OF LUNG
25 VOLUME TESTING, STANDARDIZATIONS OF DIFFUSION CAPACITY TESTING
26 OR SINGLE-BREATH DETERMINATION OF CARBON MONOXIDE UPTAKE IN
27 THE LUNG, AND INTERPRETIVE STRATEGIES FOR LUNG FUNCTION TESTS,

1 THAT ARE IN EFFECT ON THE DAY OF THE PULMONARY FUNCTION TESTING
2 OF THE EXPOSED PERSON.

3 (19) "PATHOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A
4 STATEMENT BY A BOARD-CERTIFIED PATHOLOGIST THAT MORE THAN ONE
5 REPRESENTATIVE SECTION OF LUNG TISSUE UNINVOLVED WITH ANY OTHER
6 DISEASE PROCESS DEMONSTRATES A PATTERN OF PERIBRONCHIOLAR OR
7 PARENCHYMAL SCARRING IN THE PRESENCE OF CHARACTERISTIC ASBESTOS
8 BODIES GRADED 1(B) OR HIGHER UNDER THE CRITERIA PUBLISHED IN
9 "ASBESTOS-ASSOCIATED DISEASES", 106 *ARCHIVE OF PATHOLOGY AND*
10 *LABORATORY MEDICINE* 11, APPENDIX 3 (OCTOBER 8, 1982), OR GRADE
11 ONE OR HIGHER IN "PATHOLOGY OF ASBESTOSIS", 134 *ARCHIVE OF*
12 *PATHOLOGY AND LABORATORY MEDICINE* 462-80 (MARCH 2010) (TABLES
13 2 AND 3), OR AS AMENDED AT THE TIME OF THE EXAM, AND THERE IS NO
14 OTHER MORE LIKELY EXPLANATION FOR THE PRESENCE OF THE FIBROSIS.

15 (20) "PLAINTIFF" MEANS A PERSON BRINGING AN ASBESTOS
16 ACTION, INCLUDING A PERSONAL REPRESENTATIVE IF THE ASBESTOS
17 ACTION IS BROUGHT BY AN ESTATE, OR A CONSERVATOR OR NEXT FRIEND
18 IF THE ASBESTOS ACTION IS BROUGHT ON BEHALF OF A MINOR OR LEGALLY
19 INCAPACITATED INDIVIDUAL.

20 (21) "PLETHYSMOGRAPHY" MEANS THE TEST FOR DETERMINING
21 LUNG VOLUME IN WHICH THE EXPOSED PERSON IS ENCLOSED IN A CHAMBER
22 EQUIPPED TO MEASURE PRESSURE, FLOW, OR VOLUME CHANGE.

23 (22) "PREDICTED LOWER LIMIT OF NORMAL" MEANS THE TEST
24 VALUE THAT IS THE CALCULATED STANDARD CONVENTION LYING AT THE
25 FIFTH PERCENTILE, BELOW THE UPPER NINETY-FIVE PERCENT OF THE
26 REFERENCE POPULATION, BASED ON AGE, HEIGHT, AND GENDER,
27 ACCORDING TO THE RECOMMENDATIONS BY THE AMERICAN THORACIC

1 SOCIETY AND AS REFERENCED IN THE APPLICABLE "AMA GUIDES TO THE
2 EVALUATION OF PERMANENT IMPAIRMENT", PRIMARILY NATIONAL
3 HEALTH AND NUTRITION EXAMINATION SURVEY (NHANES) PREDICTED
4 VALUES, OR AS AMENDED.

5 (23) "PULMONARY FUNCTION TEST" MEANS SPIROMETRY, LUNG
6 VOLUME TESTING, AND DIFFUSION CAPACITY TESTING, INCLUDING
7 APPROPRIATE MEASUREMENTS, QUALITY CONTROL DATA, AND GRAPHS,
8 PERFORMED IN ACCORDANCE WITH THE METHODS OF CALIBRATION AND
9 TECHNIQUES PROVIDED IN THE APPLICABLE "AMA GUIDES TO THE
10 EVALUATION OF PERMANENT IMPAIRMENT" AND ALL STANDARDS
11 PROVIDED IN THE OFFICIAL STATEMENTS OF THE AMERICAN THORACIC
12 SOCIETY IN EFFECT ON THE DAY PULMONARY FUNCTION TESTING OF THE
13 EXPOSED PERSON WAS CONDUCTED.

14 (24) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO IS
15 BOARD-CERTIFIED IN INTERNAL MEDICINE, PATHOLOGY, PULMONARY
16 MEDICINE, OR OCCUPATIONAL MEDICINE, AS MAY BE APPROPRIATE TO THE
17 ACTUAL DIAGNOSTIC SPECIALTY IN QUESTION, AND WHO:

18 (a) CONDUCTED A PHYSICAL EXAMINATION OF THE EXPOSED
19 PERSON AND HAS TAKEN OR HAS DIRECTED TO BE TAKEN UNDER THE
20 PHYSICIAN'S SUPERVISION, DIRECTION, AND CONTROL, A DETAILED
21 OCCUPATIONAL, EXPOSURE, MEDICAL, SMOKING, AND SOCIAL HISTORY
22 FROM THE EXPOSED PERSON, OR IF THE EXPOSED PERSON IS DECEASED, HAS
23 REVIEWED THE PATHOLOGY MATERIAL AND HAS TAKEN OR HAS DIRECTED
24 TO BE TAKEN UNDER THE PHYSICIAN'S SUPERVISION, DIRECTION, AND
25 CONTROL, A DETAILED HISTORY FROM THE PERSON MOST
26 KNOWLEDGEABLE ABOUT THE INFORMATION FORMING THE BASIS OF THE
27 ASBESTOS ACTION;

1 (b) TREATED OR IS TREATING THE EXPOSED PERSON AND HAS OR
2 HAD A DOCTOR-PATIENT RELATIONSHIP WITH THE EXPOSED PERSON AT THE
3 TIME OF THE PHYSICAL EXAMINATION, OR IN THE CASE OF A
4 BOARD-CERTIFIED PATHOLOGIST, EXAMINED TISSUE SAMPLES OR
5 PATHOLOGICAL SLIDES OF THE EXPOSED PERSON AT THE REQUEST OF THE
6 TREATING PHYSICIAN;

7 (c) SPENDS NO MORE THAN TWENTY-FIVE PERCENT OF THE
8 PHYSICIAN'S PROFESSIONAL PRACTICE TIME PROVIDING CONSULTING OR
9 EXPERT SERVICES IN ACTUAL OR POTENTIAL CIVIL ACTIONS AND WHOSE
10 MEDICAL GROUP, PROFESSIONAL CORPORATION, CLINIC, OR OTHER
11 AFFILIATED GROUP EARNS NOT MORE THAN TWENTY-FIVE PERCENT OF ITS
12 REVENUE PROVIDING SUCH SERVICES;

13 (d) WAS LICENSED TO PRACTICE ON THE DATE ANY EXAMINATION
14 OR PULMONARY FUNCTION TESTING WAS CONDUCTED AND ACTIVELY
15 PRACTICES OR PRACTICED IN THE STATE WHERE THE EXPOSED PERSON
16 RESIDES OR RESIDED AT THE TIME OF THE EXAMINATION OR PULMONARY
17 FUNCTION TESTING, OR THE STATE WHERE THE ASBESTOS ACTION WAS
18 FILED;

19 (e) RECEIVED OR IS RECEIVING PAYMENT FOR THE TREATMENT OF
20 THE EXPOSED PERSON FROM THE EXPOSED PERSON, A MEMBER OF THE
21 EXPOSED PERSON'S FAMILY, OR THE EXPOSED PERSON'S HEALTH CARE PLAN
22 AND NOT FROM THE EXPOSED PERSON'S LAWYER OR LAW FIRM;

23 (f) PREPARED OR DIRECTLY SUPERVISED THE PREPARATION AND
24 FINAL REVIEW OF ANY MEDICAL REPORT UNDER THIS PART 14; AND

25 (g) HAS NOT RELIED ON ANY EXAMINATIONS, TESTS,
26 RADIOGRAPHS, REPORTS, OR OPINIONS OF ANY DOCTOR, CLINIC,
27 LABORATORY, OR TESTING COMPANY THAT PERFORMED AN EXAMINATION,

1 TEST, RADIOGRAPH, OR SCREENING OF THE EXPOSED PERSON IN VIOLATION
2 OF ANY LAW, RULE, LICENSING REQUIREMENT, OR MEDICAL CODE OF
3 PRACTICE OF THE STATE IN WHICH THE EXAMINATION, TEST, OR SCREENING
4 WAS CONDUCTED, OR THAT WAS CONDUCTED WITHOUT ESTABLISHING A
5 DOCTOR-PATIENT RELATIONSHIP WITH THE EXPOSED PERSON OR MEDICAL
6 PERSONNEL INVOLVED IN THE EXAMINATION, TEST, OR SCREENING
7 PROCESS, OR THAT REQUIRED THE EXPOSED PERSON TO AGREE TO RETAIN
8 THE LEGAL SERVICE OF A LAW FIRM.

9 (25) "RADIOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A QUALITY
10 1 CHEST X-RAY UNDER THE ILO SYSTEM, OR A QUALITY 2 CHEST X-RAY IN
11 A DEATH CASE WHEN NO PATHOLOGY OR QUALITY 1 CHEST X-RAY IS
12 AVAILABLE, SHOWING BILATERAL SMALL, IRREGULAR OPACITIES (s, t, OR
13 u) OCCURRING PRIMARILY IN THE LOWER LUNG ZONES GRADED BY A
14 CERTIFIED B-READER AS AT LEAST 1/1 ON THE ILO SCALE.

15 (26) "RADIOLOGICAL EVIDENCE OF DIFFUSE BILATERAL PLEURAL
16 THICKENING" MEANS A QUALITY 1 CHEST X-RAY UNDER THE ILO SYSTEM,
17 OR A QUALITY 2 CHEST X-RAY IN A DEATH CASE WHEN NO PATHOLOGY OR
18 QUALITY 1 CHEST X-RAY IS AVAILABLE, SHOWING DIFFUSE BILATERAL
19 PLEURAL THICKENING OF AT LEAST b2 ON THE ILO SCALE AND BLUNTING
20 OF AT LEAST ONE COSTOPHRENIC ANGLE AS CLASSIFIED BY A CERTIFIED
21 B-READER.

22 (27) "SPIROMETRY" MEANS A TEST OF AIR CAPACITY OF THE LUNG
23 THROUGH A SPIROMETER TO MEASURE THE VOLUME OF AIR INSPIRED AND
24 EXPIRED.

25 (28) "SUPPORTING TEST RESULTS" MEANS COPIES OF THE
26 B-READING, PULMONARY FUNCTION TESTS, INCLUDING PRINTOUTS OF THE
27 FLOW VOLUME LOOPS, VOLUME TIME CURVES, DLCO GRAPHS, LUNG

1 VOLUME TESTS AND GRAPHS, QUALITY CONTROL DATA AND OTHER
2 PERTINENT DATA FOR ALL TRIALS AND ALL OTHER ELEMENTS REQUIRED TO
3 DEMONSTRATE COMPLIANCE WITH THE EQUIPMENT, QUALITY,
4 INTERPRETATION AND REPORTING STANDARDS SET FORTH HEREIN,
5 B-READER REPORTS, REPORTS OF X-RAY EXAMINATIONS, DIAGNOSTIC
6 IMAGING OF THE CHEST, PATHOLOGY REPORTS, AND ALL OTHER TESTS
7 REVIEWED BY THE DIAGNOSING PHYSICIAN OR A QUALIFIED PHYSICIAN IN
8 REACHING THE PHYSICIAN'S CONCLUSIONS.

9 (29) "TIMED GAS DILUTION" MEANS A METHOD FOR MEASURING
10 TOTAL LUNG CAPACITY IN WHICH THE SUBJECT BREATHE INTO A
11 SPIROMETER CONTAINING A KNOWN CONCENTRATION OF AN INERT AND
12 INSOLUBLE GAS FOR A SPECIFIC TIME, AND THE CONCENTRATION OF THAT
13 INERT AND INSOLUBLE GAS IN THE LUNG IS COMPARED TO THE
14 CONCENTRATION OF THAT TYPE OF GAS IN THE SPIROMETER.

15 (30) "TOTAL LUNG CAPACITY" MEANS THE VOLUME OF GAS
16 CONTAINED IN THE LUNGS AT THE END OF A MAXIMAL INSPIRATION.

17 **13-21-1403. Filing claims - establishment of prima facie case**
18 **- individual actions to be filed.** (1) A PLAINTIFF IN AN ASBESTOS ACTION
19 INVOLVING A NONMALIGNANT CONDITION SHALL FILE WITH THE
20 COMPLAINT OR OTHER INITIAL PLEADING A DETAILED NARRATIVE MEDICAL
21 REPORT AND DIAGNOSIS, SIGNED UNDER OATH BY A QUALIFIED PHYSICIAN
22 AND ACCOMPANIED BY SUPPORTING TEST RESULTS, THAT CONSTITUTES
23 PRIMA FACIE EVIDENCE THAT THE EXPOSED PERSON MEETS THE
24 REQUIREMENTS OF THIS PART 14. A LAWYER OR PERSON WORKING FOR OR
25 ON BEHALF OF A LAWYER OR LAW FIRM SHALL NOT PREPARE THE REPORT.

26 (2) A PLAINTIFF MUST INCLUDE WITH THE DETAILED NARRATIVE
27 MEDICAL REPORT A SWORN INFORMATION FORM CONTAINING ALL OF THE

1 FOLLOWING:

2 (a) THE NAME, ADDRESS, DATE OF BIRTH, SOCIAL SECURITY
3 NUMBER, MARITAL STATUS, OCCUPATION, AND EMPLOYER OF THE EXPOSED
4 PERSON, AND ANY PERSON THROUGH WHICH THE EXPOSED PERSON
5 ALLEGES EXPOSURE;

6 (b) THE PLAINTIFF'S RELATIONSHIP TO THE EXPOSED PERSON OR
7 PERSON THROUGH WHICH THE EXPOSURE IS ALLEGED;

8 (c) THE SPECIFIC LOCATION AND MANNER OF EACH ALLEGED
9 EXPOSURE, INCLUDING THE SPECIFIC LOCATION AND MANNER OF EXPOSURE
10 FOR ANY PERSON THROUGH WHICH THE EXPOSED PERSON ALLEGES
11 EXPOSURE; THE BEGINNING AND ENDING DATES OF EACH ALLEGED
12 EXPOSURE; AND THE IDENTITY OF THE MANUFACTURER OF THE SPECIFIC
13 ASBESTOS PRODUCT FOR EACH EXPOSURE;

14 (d) THE IDENTITY OF THE DEFENDANT OR DEFENDANTS AGAINST
15 WHOM THE PLAINTIFF ASSERTS A CLAIM;

16 (e) THE SPECIFIC ASBESTOS-RELATED DISEASE CLAIMED TO EXIST;
17 AND

18 (f) ANY SUPPORTING DOCUMENTATION RELATING TO SUBSECTIONS
19 (2)(a) TO (2)(e) OF THIS SECTION.

20 (3) FOR AN ASBESTOS ACTION PENDING ON THE EFFECTIVE DATE OF
21 THIS SECTION, THE PLAINTIFF MUST PROVIDE THE DETAILED NARRATIVE
22 MEDICAL REPORT AND SUPPORTING TEST RESULTS AND SWORN
23 INFORMATION FORM DESCRIBED IN SUBSECTIONS (1) AND (2) OF THIS
24 SECTION TO ALL PARTIES NOT LATER THAN NINETY-ONE DAYS AFTER THE
25 EFFECTIVE DATE OR NOT LATER THAN NINETY-ONE DAYS BEFORE TRIAL,
26 WHICHEVER IS EARLIER.

27 (4) A DEFENDANT SHALL BE AFFORDED A REASONABLE

1 OPPORTUNITY TO CHALLENGE THE ADEQUACY OF THE PRIMA FACIE
2 EVIDENCE BEFORE TRIAL.

3 (5) THE COURT SHALL DISMISS THE ASBESTOS ACTION WITHOUT
4 PREJUDICE ON FINDING THAT THE PLAINTIFF HAS FAILED TO MAKE THE
5 PRIMA FACIE SHOWING REQUIRED BY THIS PART 14 OR FAILED TO COMPLY
6 WITH THE REQUIREMENTS OF THIS SECTION.

7 (6) ASBESTOS ACTIONS MUST BE INDIVIDUALLY FILED. ASBESTOS
8 ACTIONS SHALL NOT BE PERMITTED ON BEHALF OF A GROUP OR CLASS OF
9 PLAINTIFFS.

10 **13-21-1404. Elements of proof for asbestos actions involving**

11 **nonmalignant conditions.** (1) AN ASBESTOS ACTION INVOLVING A
12 NONMALIGNANT CONDITION SHALL NOT BE BROUGHT OR MAINTAINED IN
13 THE ABSENCE OF PRIMA FACIE EVIDENCE THAT THE EXPOSED PERSON HAS
14 A PHYSICAL IMPAIRMENT FOR WHICH ASBESTOS EXPOSURE WAS A
15 SUBSTANTIAL CONTRIBUTING FACTOR. THE PRIMA FACIE SHOWING MUST
16 BE MADE AS TO EACH DEFENDANT AND INCLUDE A DETAILED NARRATIVE
17 MEDICAL REPORT AND DIAGNOSIS SIGNED UNDER OATH BY A QUALIFIED
18 PHYSICIAN THAT INCLUDES ALL OF THE FOLLOWING:

19 (a) RADIOLOGICAL EVIDENCE OF ASBESTOSIS OR PATHOLOGICAL
20 EVIDENCE OF ASBESTOSIS OR RADIOLOGICAL EVIDENCE OF DIFFUSE
21 BILATERAL PLEURAL THICKENING OR A HIGH-RESOLUTION COMPUTED
22 TOMOGRAPHY SCAN SHOWING EVIDENCE OF ASBESTOSIS OR DIFFUSE
23 PLEURAL THICKENING;

24 (b) A DETAILED OCCUPATIONAL AND EXPOSURE HISTORY FROM
25 THE EXPOSED PERSON OR, IF THAT PERSON IS DECEASED, FROM THE PERSON
26 MOST KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF
27 THE ACTION, INCLUDING IDENTIFICATION OF ALL OF THE EXPOSED

1 PERSON'S PRINCIPAL PLACES OF EMPLOYMENT AND EXPOSURES TO
2 AIRBORNE CONTAMINANTS AND WHETHER EACH PLACE OF EMPLOYMENT
3 INVOLVED EXPOSURES TO AIRBORNE CONTAMINANTS, INCLUDING
4 ASBESTOS FIBERS OR OTHER DISEASE-CAUSING DUSTS OR FUMES, THAT
5 MAY CAUSE PULMONARY IMPAIRMENT AND THE NATURE, DURATION, AND
6 LEVEL OF ANY EXPOSURE;

7 (c) A DETAILED MEDICAL, SOCIAL, AND SMOKING HISTORY FROM
8 THE EXPOSED PERSON OR, IF THAT PERSON IS DECEASED, FROM THE PERSON
9 MOST KNOWLEDGEABLE, INCLUDING A THOROUGH REVIEW OF THE PAST
10 AND PRESENT MEDICAL PROBLEMS OF THE EXPOSED PERSON AND HIS OR
11 HER MOST PROBABLE CAUSE;

12 (d) EVIDENCE VERIFYING THAT AT LEAST FIFTEEN YEARS HAVE
13 ELAPSED BETWEEN THE EXPOSED PERSON'S DATE OF FIRST EXPOSURE TO
14 ASBESTOS AND THE DATE OF DIAGNOSIS;

15 (e) EVIDENCE FROM A PERSONAL MEDICAL EXAMINATION AND
16 PULMONARY FUNCTION TESTING OF THE EXPOSED PERSON OR, IF THE
17 EXPOSED PERSON IS DECEASED, BASED UPON THE PERSON'S MEDICAL
18 RECORDS, THAT THE EXPOSED PERSON HAS OR THE DECEASED PERSON HAD
19 A PERMANENT RESPIRATORY IMPAIRMENT RATING OF AT LEAST CLASS 2 AS
20 DEFINED BY AND EVALUATED PURSUANT TO THE "AMA GUIDES TO THE
21 EVALUATION OF PERMANENT IMPAIRMENT" OR REPORTED SIGNIFICANT
22 CHANGES YEAR TO YEAR IN LUNG FUNCTION FOR FVC, FEV1, OR DLCO
23 AS DEFINED BY THE AMERICAN THORACIC SOCIETY'S "INTERPRETATIVE
24 STRATEGIES FOR LUNG FUNCTION TESTS, 26 *EUROPEAN RESPIRATORY*
25 *JOURNAL* 948-68, 961-62, TABLE 12 (2005) AND AS UPDATED;

26 (f) EVIDENCE THAT ASBESTOSIS OR DIFFUSE BILATERAL PLEURAL
27 THICKENING, RATHER THAN CHRONIC OBSTRUCTIVE PULMONARY DISEASE,

1 IS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE EXPOSED PERSON'S
2 PHYSICAL IMPAIRMENT, BASED ON A DETERMINATION THE EXPOSED
3 PERSON HAS:

4 (I) FVC BELOW THE PREDICTED LOWER LIMIT OF NORMAL AND
5 FEV1/FVC RATIO, USING ACTUAL VALUES, AT OR ABOVE THE PREDICTED
6 LOWER LIMIT OF NORMAL;

7 (II) TOTAL LUNG CAPACITY, BY PLETHYSMOGRAPHY OR TIMED GAS
8 DILUTION, BELOW THE PREDICTED LOWER LIMIT OF NORMAL; OR

9 (III) A CHEST X-RAY SHOWING BILATERAL SMALL, IRREGULAR
10 OPACITIES (s, t, OR u) GRADED BY A CERTIFIED B-READER AS AT LEAST 2/1
11 ON THE ILO SCALE; AND

12 (g) THE QUALIFIED PHYSICIAN'S CONCLUSION THAT EXPOSURE TO
13 ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE EXPOSED
14 PERSON'S PHYSICAL IMPAIRMENT AND NOT MORE PROBABLY THE RESULT
15 OF OTHER CAUSES. AN OPINION THAT THE MEDICAL FINDINGS AND
16 IMPAIRMENT ARE CONSISTENT WITH OR COMPATIBLE WITH EXPOSURE TO
17 ASBESTOS, OR WORDS TO THAT EFFECT, DOES NOT SATISFY THIS
18 SUBSECTION (1)(g).

19 **13-21-1405. Evidence of physical impairment.** (1) EVIDENCE
20 RELATING TO PHYSICAL IMPAIRMENT, INCLUDING PULMONARY FUNCTION
21 TESTING AND DIFFUSING STUDIES, OFFERED IN AN ASBESTOS ACTION
22 GOVERNED BY THIS PART 14, MUST SATISFY ALL OF THE FOLLOWING
23 REQUIREMENTS:

24 (a) THE EVIDENCE MUST COMPLY WITH THE QUALITY CONTROLS,
25 EQUIPMENT REQUIREMENTS, METHODS OF CALIBRATION AND TECHNIQUES
26 SET FORTH IN THE "AMA GUIDES TO THE EVALUATION OF PERMANENT
27 IMPAIRMENT", AND ALL STANDARDS SET FORTH IN THE OFFICIAL

1 STATEMENTS OF THE AMERICAN THORACIC SOCIETY THAT ARE IN EFFECT
2 ON THE DATE OF ANY EXAMINATION OR PULMONARY FUNCTION TESTING
3 OF THE EXPOSED PERSON REQUIRED BY THIS PART 14;

4 (b) THE EVIDENCE MUST NOT BE OBTAINED BY OR BASED ON
5 TESTING OR EXAMINATIONS THAT VIOLATE ANY LAW, REGULATION,
6 LICENSING REQUIREMENT, OR MEDICAL CODE OF PRACTICE OF THE STATE
7 IN WHICH THE EXAMINATION, TEST, OR SCREENING WAS CONDUCTED, OR
8 OF THIS STATE; AND

9 (c) THE EVIDENCE MUST NOT BE OBTAINED UNDER THE CONDITION
10 THAT THE PLAINTIFF OR EXPOSED PERSON RETAINS THE LEGAL SERVICES
11 OF THE ATTORNEY OR LAW FIRM SPONSORING THE EXAMINATION, TEST, OR
12 SCREENING.

13 **13-21-1406. Procedures - limitation.** (1) EVIDENCE RELATING
14 TO THE PRIMA FACIE SHOWINGS REQUIRED UNDER THIS PART 14 DO NOT
15 CREATE ANY PRESUMPTION THAT THE EXPOSED PERSON HAS AN
16 ASBESTOS-RELATED INJURY OR IMPAIRMENT AND ARE NOT CONCLUSIVE AS
17 TO THE LIABILITY OF ANY DEFENDANT.

18 (2) EVIDENCE SHALL NOT BE OFFERED AT TRIAL, AND THE JURY
19 SHALL NOT BE INFORMED, OF:

20 (a) THE GRANT OR DENIAL OF A MOTION TO DISMISS AN ASBESTOS
21 ACTION PURSUANT TO THE PROVISIONS OF THIS PART 14; OR

22 (b) THE PROVISIONS OF THIS PART 14 WITH RESPECT TO WHAT
23 CONSTITUTES A PRIMA FACIE SHOWING OF ASBESTOS-RELATED
24 IMPAIRMENT.

25 (3) UNTIL A COURT ENTERS AN ORDER DETERMINING THAT THE
26 EXPOSED PERSON HAS ESTABLISHED PRIMA FACIE EVIDENCE OF
27 IMPAIRMENT, AN ASBESTOS ACTION SHALL NOT BE SUBJECT TO DISCOVERY,

1 EXCEPT DISCOVERY RELATED TO ESTABLISHING OR CHALLENGING THE
2 PRIMA FACIE EVIDENCE OR BY ORDER OF THE TRIAL COURT UPON MOTION
3 OF ONE OF THE PARTIES AND FOR GOOD CAUSE SHOWN.

4 (4) **Consolidation of cases.** (a) A COURT MAY CONSOLIDATE FOR
5 TRIAL ANY NUMBER AND TYPE OF ASBESTOS ACTIONS WITH THE CONSENT
6 OF ALL THE PARTIES. IN THE ABSENCE OF SUCH CONSENT, THE COURT MAY
7 CONSOLIDATE FOR TRIAL ONLY ASBESTOS ACTIONS RELATING TO THE
8 EXPOSED PERSON AND MEMBERS OF THAT PERSON'S HOUSEHOLD.

9 (b) THE FILING OF A CLASS ACTION OR ANY OTHER FORM OF MASS
10 AGGREGATION RELATING TO MORE THAN ONE EXPOSED PERSON AND
11 MEMBERS OF THAT PERSON'S HOUSEHOLD SHALL NOT BE PERMITTED.

12 (c) THIS SUBSECTION (4) DOES NOT PRECLUDE CONSOLIDATION OF
13 CASES BY COURT ORDER FOR PRETRIAL OR DISCOVERY PURPOSES.

14 (5) A DEFENDANT IN AN ASBESTOS ACTION IS NOT LIABLE FOR
15 EXPOSURES FROM A PRODUCT OR COMPONENT PART MADE OR SOLD BY A
16 THIRD PARTY, EVEN IF THE THIRD PARTY IS INSOLVENT OR OTHERWISE NOT
17 AMENABLE TO SUIT.

18 **13-21-1407. Statute of limitations - two-disease rule.** (1) WITH
19 RESPECT TO AN ASBESTOS ACTION NOT BARRED BY ANY STATUTE OF
20 LIMITATIONS AS OF THE EFFECTIVE DATE OF THIS PART 14, AN EXPOSED
21 PERSON'S CAUSE OF ACTION SHALL NOT ACCRUE, NOR SHALL THE RUNNING
22 OF ANY STATUTE OF LIMITATIONS COMMENCE, PRIOR TO THE EARLIER OF
23 THE DATE:

24 (a) THE EXPOSED PERSON RECEIVED A MEDICAL DIAGNOSIS OF AN
25 ASBESTOS-RELATED IMPAIRMENT; OR

26 (b) THE EXPOSED PERSON DISCOVERED FACTS THAT WOULD HAVE
27 LED A REASONABLE PERSON TO OBTAIN A MEDICAL DIAGNOSIS WITH

1 RESPECT TO THE EXISTENCE OF AN ASBESTOS-RELATED IMPAIRMENT; OR

2 (c) OF THE DEATH OF THE EXPOSED PERSON HAVING AN
3 ASBESTOS-RELATED IMPAIRMENT.

4 (2) NOTHING IN THIS SECTION REVIVES OR EXTENDS LIMITATIONS
5 WITH RESPECT TO ANY CLAIM FOR ASBESTOS-RELATED IMPAIRMENT THAT
6 WAS OTHERWISE TIME-BARRED ON THE EFFECTIVE DATE OF THIS PART 14.

7 (3) AN ASBESTOS ACTION ARISING OUT OF A NONMALIGNANT
8 CONDITION IS A DISTINCT CAUSE OF ACTION FROM AN ACTION FOR AN
9 ASBESTOS-RELATED CANCER. DAMAGES SHALL NOT BE AWARDED IN AN
10 ASBESTOS ACTION FOR FEAR OF OR INCREASED RISK FOR FUTURE DISEASE.

11 **13-21-1408. Applicability of part 14.** (1) THIS PART 14 APPLIES
12 TO:

13 (a) ALL ASBESTOS ACTIONS FILED ON OR AFTER THE EFFECTIVE
14 DATE OF THIS PART 14; AND

15 (b) ANY PENDING ASBESTOS ACTIONS IN WHICH TRIAL HAS NOT
16 COMMENCED AS OF THE EFFECTIVE DATE OF THIS PART 14.

17 (2) IF THE APPLICATION OF A PROVISION IN THIS PART 14 WOULD
18 HAVE RETROSPECTIVE EFFECT, THAT PROVISION MAY BE APPLIED ONLY
19 PROSPECTIVELY.

20 **SECTION 2. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.