

Senate File 376 - Enrolled

Senate File 376

AN ACT

RELATING TO DISCLOSURE OF ASBESTOS BANKRUPTCY TRUST CLAIMS  
IN CIVIL ASBESTOS ACTIONS, ASBESTOS AND SILICA CLAIMS  
PRIORITIZATION, AND SUCCESSOR CORPORATION ASBESTOS-RELATED  
LIABILITY, AND INCLUDING APPLICABILITY PROVISIONS.

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

Section 1. NEW SECTION. **686A.1 Title.**

This chapter shall be known and may be cited as the "*Asbestos  
Bankruptcy Trust Claims Transparency Act*".

Sec. 2. NEW SECTION. 686A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

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

2. "*Asbestos action*" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

3. "*Asbestos trust*" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. §524(g) or 11 U.S.C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

4. "*Plaintiff*" means the person bringing an asbestos action, including a personal representative if the asbestos action is brought by an estate, or a conservator or next friend if the asbestos action is brought on behalf of a minor or legally incapacitated individual.

5. "*Trust claims materials*" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, and medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the trust claim has settled, all documents

relating to the settlement of the trust claim.

6. "*Trust governance documents*" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

Sec. 3. NEW SECTION. **686A.3 Required disclosures by plaintiff.**

1. Within ninety days after an asbestos action is filed, or within ninety days after the effective date of this Act, whichever is later, the plaintiff shall do all of the following:

a. Provide the court and parties with a sworn statement signed by the plaintiff and the plaintiff's counsel, under penalty of perjury, indicating that an investigation of all asbestos trust claims has been conducted and that all asbestos trust claims that may be made by the plaintiff or any person on the plaintiff's behalf have been filed. The sworn statement must indicate whether there has been a request to defer, delay, suspend, or toll any asbestos trust claim, and provide the disposition of each asbestos trust claim.

b. Provide all parties with all trust claims materials, including trust claims materials that relate to conditions other than those that are the basis for the asbestos action and including all trust claims materials from all attorneys connected to the plaintiff in relation to exposure to asbestos, including any attorney involved in the asbestos action, any referring attorney, and any other attorney who has filed an asbestos trust claim for the plaintiff or on the plaintiff's behalf.

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

2. The plaintiff shall supplement the information and materials required under subsection 1 within thirty days after the plaintiff or a person on the plaintiff's behalf supplements an existing asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or

files an additional asbestos trust claim.

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

4. An asbestos action shall not be set for trial until at least one hundred eighty days after the requirements of subsection 1 are met.

**Sec. 4. NEW SECTION. 686A.4 Identification of additional or alternative asbestos trusts by defendant.**

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

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

*a.* File the asbestos trust claims.

*b.* File a written response with the court stating the reason there is insufficient evidence for the plaintiff to file the asbestos trust claims.

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

3. *a.* If the court determines that there is a sufficient basis for the plaintiff to file an asbestos trust claim identified in the motion to stay, the court shall stay the asbestos action until the plaintiff files the asbestos trust claim and produces all related trust claims materials.

*b.* If the court determines that the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by that asbestos trust.

4. An asbestos action shall not be set for trial until at least sixty days after the plaintiff provides the documentation

required by this section.

**Sec. 5. NEW SECTION. 686A.5 Discovery — use of materials.**

1. Trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in an asbestos action. Notwithstanding any other provision of law to the contrary, a claim of privilege does not apply to any trust claims materials or trust governance documents.

2. A defendant in an asbestos action may seek discovery from an asbestos trust. Notwithstanding any other provision of law to the contrary, the plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

3. Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that, under applicable law, such exposure may be a substantial contributing factor in causing the plaintiff's injury that is at issue in the asbestos action.

**Sec. 6. NEW SECTION. 686A.6 Trust record — valuation of asbestos trust claims — judicial notice.**

1. Not less than thirty days before trial in an asbestos action, the court shall enter into the record a document that identifies every asbestos trust claim made by the plaintiff or on the plaintiff's behalf.

2. 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, the compensation specified in the trust governance document applicable to the plaintiff's claim at the time of trial. The court shall take judicial notice that the trust governance document specifies compensation amounts and payment percentages and shall establish an attributed value to the plaintiff's asbestos trust claims.

**Sec. 7. NEW SECTION. 686A.7 Setoff — credit.**

In any asbestos action in which damages are awarded and setoffs are permitted under applicable law, a defendant is entitled to a setoff or credit in the amount the plaintiff has been awarded from an asbestos trust identified in section 686A.6, subsection 1, and the amount of the valuation established under section 686A.6, subsection 2. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally between the defendants, according to the liability of each defendant.

**Sec. 8. NEW SECTION. 686A.8 Failure to provide information — sanctions.**

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

2. If the plaintiff or a person on the plaintiff's behalf files an asbestos trust claim after the plaintiff obtains a judgment in an asbestos action, and that asbestos trust was in existence at the time the plaintiff obtained the judgment, the trial court, on motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos action and adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff and order any other relief to the parties that the court considers just and proper.

3. A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than one year after the judgment was entered.

**Sec. 9. NEW SECTION. 686A.9 Application.**

1. This chapter applies to all asbestos actions filed on or after the effective date of this Act.

2. This chapter applies to all pending asbestos actions in which trial has not commenced as of the effective date of this Act unless the court finds that the application of a provision in this chapter would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall

apply prior law.

Sec. 10. NEW SECTION. 686B.1 Title.

This chapter shall be known and may be cited as the "*Asbestos and Silica Claims Priorities Act*".

Sec. 11. NEW SECTION. 686B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*AMA guides*" means the American medical association's guides to the evaluation of permanent impairment in effect at the time of the performance of any examination or test on the exposed person required under this chapter.

2. "*Asbestos*" means the same as defined in section 686A.2.

3. "*Asbestos action*" means the same as defined in section 686A.2.

4. "*Asbestosis*" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

5. "*Board-certified in internal medicine*" means certified by the American board of internal medicine or the American osteopathic board of internal medicine at the time of the performance of an examination and rendition of a report required by this chapter.

6. "*Board-certified in occupational medicine*" means certified in the specialty of occupational medicine by the American board of preventive medicine or the specialty of occupational/environmental medicine by the American osteopathic board of preventive medicine at the time of the performance of an examination and rendition of a report required by this chapter.

7. "*Board-certified in pathology*" means holding primary certification in anatomic pathology or clinical pathology from the American board of pathology or the American osteopathic board of pathology at the time of the performance of an examination and rendition of a report required by this chapter, and practicing principally in the field of pathology including regular evaluation of pathology materials obtained from surgical or postmortem specimens.

8. "*Board-certified in pulmonary medicine*" means certified in the specialty of pulmonary medicine by the American board of internal medicine or the American osteopathic board of internal

medicine at the time of the performance of an examination and rendition of a report required by this chapter.

9. "*Certified B-reader*" means an individual who has qualified as a national institute for occupational safety and health final or B-reader of X rays under 42 C.F.R. §37.51(b), whose certification was current at the time of any readings required under this chapter, and whose B-reads comply with the national institute for occupational safety and health B-reader's code of ethics, issues in classification of chest radiographs, and classification of chest radiographs in contested proceedings.

10. "*Exposed person*" means a person whose exposure to asbestos or silica or to asbestos-containing products or silica-containing products is the basis for an asbestos action or silica action.

11. "*FEV1*" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during the performance of simple spirometric tests.

12. "*FEV1/FVC*" means the ratio between the actual values for FEV1 over FVC.

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

14. "*ILO system*" and "*ILO scale*" mean the radiological ratings and system for the classification of chest X rays of the international labour office provided in guidelines for the use of ILO international classification of radiographs of pneumoconioses in effect on the day any X rays of the exposed person were reviewed by a certified B-reader.

15. "*Nonmalignant condition*" means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

16. "*Official statements of the American thoracic society*" means lung function testing standards set forth in statements from the American thoracic society, including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the

exposed person.

17. "*Pathological evidence of asbestosis*" means a statement by a physician who is board-certified in pathology 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 graded 1(B) or higher under the criteria published in asbestos-associated diseases, 106 Archive of Pathology and Laboratory Medicine 11, appendix 3 (October 8, 1982), or grade one or higher in pathology of asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (tables 2 and 3), as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

18. "*Pathological evidence of silicosis*" means a statement by a physician who is board-certified in pathology that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica, well-organized concentric whorls of collagen surrounded by inflammatory cells, in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

19. "*Plaintiff*" means the person bringing an asbestos action or silica action, including a personal representative if the asbestos action or silica action is brought by an estate, or a conservator or next friend if the asbestos action or silica action is brought on behalf of a minor or legally incapacitated individual.

20. "*Predicted lower limit of normal*" means the test value that is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height, and gender, according to the recommendations by the American thoracic society and as referenced in the applicable AMA guides,

primarily national health and nutrition examination survey predicted values, or as amended.

21. "*Pulmonary function test*" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA guides and all standards provided in the official statements of the American thoracic society in effect on the day pulmonary function testing of the exposed person was conducted.

22. "*Qualified physician*" means a physician who is board-certified in internal medicine, board-certified in pathology, board-certified in pulmonary medicine, or board-certified in occupational medicine, as may be appropriate to the actual diagnostic specialty in question, and for whom all of the following are true:

a. The physician conducted a physical examination of the exposed person and has taken a detailed occupational, exposure, medical, smoking, and social history from the exposed person, or if the exposed person is deceased, has reviewed the pathology material and has taken a detailed history from the person most knowledgeable about the information forming the basis of the asbestos action or silica action.

b. The physician treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination, or in the case of a physician who is board-certified in pathology, examined tissue samples or pathological slides of the exposed person at the request of the treating physician.

c. The physician spends no more than twenty-five percent of the physician's professional practice time providing consulting or expert services in actual or potential civil actions, and whose medical group, professional corporation, clinic, or other affiliated group earns not more than twenty-five percent of its revenue providing such services.

d. The physician was licensed to practice on the date any examination or pulmonary function testing was conducted, and actively practices or practiced in the state where the exposed person resides or resided at the time of the examination or

pulmonary function testing, or the state where the asbestos action or silica action was filed.

e. The physician received or is receiving payment for the treatment of the exposed person from the exposed person, a member of the exposed person's family, or the exposed person's health care plan and not from the exposed person's attorney.

f. The physician prepared or directly supervised the preparation and final review of any medical report under this chapter.

g. The physician has not relied on any examinations, tests, radiographs, reports, or opinions of any physician, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed person in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or that was conducted without establishing a physician-patient relationship with the exposed person or medical personnel involved in the examination, test, or screening process, or that required the exposed person to agree to retain the service of an attorney.

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

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

25. "*Radiological evidence of silicosis*" means a quality 1 chest X ray under the ILO system, or a quality 2 chest X ray in a death case when no pathology or quality 1 chest X ray is available, showing bilateral predominantly nodular or rounded opacities (p, q, or r) occurring primarily in the upper lung fields graded by a certified B-reader as at

least 1/1 on the ILO scale or A, B, or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

26. "*Silica*" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite, and tridymite.

27. "*Silica action*" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child, or other relative of that person.

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

29. "*Supporting test results*" means copies of the B-reading; pulmonary function tests, including printouts of the flow volume loops, volume time curves, diffusing capacity of the lung for carbon monoxide graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards set forth in this chapter; B-reader reports; reports of X ray examinations; diagnostic imaging of the chest; pathology reports; and all other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

**Sec. 12. NEW SECTION. 686B.3 Filing claims — establishment of prima facie case — individual actions to be filed.**

1. A plaintiff in an asbestos action involving a nonmalignant condition or a silica action involving silicosis shall file with the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, which constitute prima facie evidence that the

exposed person meets the requirements of this chapter. The report shall not be prepared by an attorney or person working for or on behalf of an attorney.

2. A plaintiff shall include with the detailed narrative medical report a sworn information form containing all of the following:

*a.* The name, address, date of birth, social security number, marital status, occupation, and employer of the exposed person, and any person through whom the exposed person alleges exposure.

*b.* The plaintiff's relationship to the exposed person or person through whom the exposure is alleged.

*c.* The specific location and manner of each alleged exposure, including the specific location and manner of exposure for any person through whom the exposed person alleges exposure.

*d.* The beginning and ending dates of each alleged exposure.

*e.* The identity of the manufacturer of the specific asbestos or silica product for each exposure.

*f.* The identity of the defendant or defendants against whom the plaintiff asserts a claim.

*g.* The specific asbestos-related or silica-related disease claimed to exist.

*h.* Any supporting documentation relating to the information required under this subsection.

3. For an asbestos action or silica action pending as of the effective date of this Act, the detailed narrative medical report and supporting test results and sworn information form described in subsections 1 and 2 shall be provided to all parties not later than ninety days after the effective date of this Act or not later than ninety days before trial, whichever is earlier.

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

5. The court shall dismiss the asbestos action or silica action without prejudice on finding that the plaintiff has failed to make the prima facie showing required by this chapter or failed to comply with the requirements of this section.

6. An asbestos action or silica action must be individually filed and shall not be filed on behalf of a group or class of plaintiffs.

Sec. 13. NEW SECTION. **686B.4 Asbestos claims involving nonmalignant conditions — elements of proof.**

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 a physical impairment for which asbestos exposure was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse bilateral pleural thickening.

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure.

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

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

5. Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, that the exposed person has or the deceased

person had a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or diffusing capacity of the lung for carbon monoxide as defined by the American thoracic society's interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-62, table 12 (2005), as updated.

6. Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based on a determination that the exposed person has any of the following:

a. FVC below the predicted lower limit of normal and FEV1/FVC ratio, using actual values, at or above the predicted lower limit of normal.

b. Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

c. A chest X ray showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 2/1 on the ILO scale.

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

**Sec. 14. NEW SECTION. 686B.5 Silica claims involving silicosis — elements of proof.**

A silica action involving silicosis shall not be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which exposure to silica was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis.

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure.

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

4. Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis.

5. Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or diffusing capacity of the lung for carbon monoxide as defined by the American thoracic society's interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-62, table 12 (2005), as updated.

6. The qualified physician signing the detailed narrative medical report has concluded that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or similar opinion, does not satisfy the requirements

of this subsection.

**Sec. 15. NEW SECTION. 686B.6 Evidence of physical impairment.**

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in an action governed by this chapter, must satisfy all of the following requirements:

1. The evidence must comply with the quality controls, equipment requirements, methods of calibration, and techniques set forth in the AMA guides and all standards set forth in the official statements of the American thoracic society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this chapter.

2. The evidence must not be obtained by or based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state.

3. The evidence must not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney sponsoring the examination, test, or screening.

**Sec. 16. NEW SECTION. 686B.7 Procedures — limitation.**

1. Evidence relating to the prima facie showings required under this chapter shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment, and shall not be conclusive as to the liability of any defendant.

2. No evidence shall be offered at trial, and the jury shall not be informed, of any of the following:

a. The grant or denial of a motion to dismiss an asbestos action or silica action under the provisions of this chapter.

b. The provisions of this chapter with respect to what constitutes a prima facie showing of asbestos-related impairment or silica-related impairment.

3. Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, an asbestos action or silica action shall not be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the

trial court upon motion of one of the parties and for good cause shown.

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

*b.* This subsection does not preclude the consolidation of cases by court order for pretrial or discovery purposes.

5. A defendant in an asbestos action or silica action shall not be liable for exposures from a product or component part made or sold by a third party.

**Sec. 17. NEW SECTION. 686B.8 Statute of limitations — two-disease rule.**

1. With respect to an asbestos action or silica action not barred by limitations as of the effective date of this Act, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earliest of the following:

*a.* The exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment.

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

*c.* The date of death of the exposed person having an asbestos-related impairment or silica-related impairment.

2. This section shall not be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as of the effective date of this Act.

3. An asbestos action or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related cancer or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos action or silica action.

**Sec. 18. NEW SECTION. 686B.9 Application.**

1. This chapter applies to all asbestos actions and silica actions filed on or after the effective date of this Act.

2. This chapter applies to all pending asbestos actions and silica actions in which trial has not commenced as of the effective date of this Act unless the court finds that the application of a provision in this chapter would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall apply prior law.

Sec. 19. NEW SECTION. 686C.1 Title.

This chapter shall be known and may be cited as the "*Successor Corporation Asbestos-Related Liability Fairness Act*".

Sec. 20. NEW SECTION. 686C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Asbestos action*" means the same as defined in section 686A.2, but also includes any claim for damage or loss caused by the installation, presence, or removal of asbestos.

2. "*Corporation*" means any corporation established under either domestic or foreign charter and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner, or a joint venture.

3. "*Successor*" means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities through operation of law, including but not limited to a merger or consolidation or plan of merger or consolidation related to such consolidation or merger or by appointment as an administrator or as a trustee in bankruptcy, debtor in possession, liquidation, or receivership and that became a successor before January 1, 1972. "*Successor*" includes any of that successor corporation's successors.

4. "*Successor asbestos-related liability*" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related in any way to an asbestos action and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another

corporation, or that are related in any way to an asbestos action based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. "*Successor asbestos-related liability*" includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 686C.4, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

5. "*Transferor*" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Sec. 21. NEW SECTION. **686C.3 Limitations on successor asbestos-related liabilities.**

1. Except as provided in subsection 2, the cumulative successor asbestos-related liabilities of a successor are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. A successor shall not have responsibility for successor asbestos-related liabilities in excess of this limitation.

2. If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total gross assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection 1 for purposes of determining the limitation of liability of a successor.

3. The limitations in this section shall apply to any successor but shall not apply to any of the following:

a. Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of chapter 85 or 85A, or a comparable workers' compensation law of another jurisdiction.

b. Any claim against a corporation that does not constitute a successor asbestos-related liability.

*c.* Any obligation under the federal National Labor Relations Act, 29 U.S.C. §151 et seq., as amended, or under any collective bargaining agreement.

*d.* A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

**Sec. 22. NEW SECTION. 686C.4 Establishing fair market value of total gross assets.**

1. A successor may establish the fair market value of total gross assets, which include intangible assets, for the purpose of the limitations under section 686C.3, through any method reasonable under the circumstances, including any of the following:

*a.* By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction.

*b.* In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

2. To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this chapter, nor shall this chapter otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or any related agreement, including, without limitation, preenactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the

extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of this Act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Sec. 23. NEW SECTION. **686C.5 Adjustment.**

1. Except as provided in subsections 2, 3, and 4, the fair market value of total gross assets at the time of a merger or consolidation shall increase annually at a rate equal to the sum of the prime rate as listed in the first edition of the Wall street journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall street journal, in which case any reasonable determination of the prime rate on the first day of the year may be used, plus one percent.

2. The rate determined under subsection 1 shall not be compounded.

3. The adjustment of the fair market value of total gross assets shall continue as provided in subsection 1 until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

4. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the total gross assets pursuant to section 686C.4, subsection 2.

Sec. 24. NEW SECTION. **686C.6 Scope of chapter — application.**

1. This chapter shall be liberally construed with regard to successors.

2. This chapter applies to all asbestos claims filed against a successor on or after the effective date of this Act.

3. This chapter applies to all pending asbestos actions in which trial has not commenced as of the effective date of this

Act unless the court finds that the application of a provision in this chapter would unconstitutionally affect a vested right. In that case, the provision does not apply and the court shall apply prior law.

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JACK WHITVER  
President of the Senate

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LINDA UPMEYER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 376, Eighty-seventh General Assembly.

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W. CHARLES SMITHSON  
Secretary of the Senate

Approved \_\_\_\_\_, 2017

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TERRY E. BRANSTAD  
Governor