

Senate File 376 - Introduced

SENATE FILE 376
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1095)

(COMPANION TO LSB 1990HV BY
COMMITTEE ON JUDICIARY)

A BILL FOR

1 An Act relating to disclosure of asbestos bankruptcy trust
2 claims in civil asbestos actions, asbestos and silica claims
3 prioritization, and successor corporation asbestos-related
4 liability, and including applicability provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 behalf.

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

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

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

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

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

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

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

30 *a.* File the asbestos trust claims.

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

34 *c.* File a written response with the court requesting a
35 determination that the cost to file the asbestos trust claims

1 exceeds the plaintiff's reasonably anticipated recovery.

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

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

14 4. An asbestos action shall not be set for trial until at
15 least sixty days after the plaintiff provides the documentation
16 required by this section.

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

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

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

31 3. Trust claim materials that are sufficient to entitle
32 a claim to consideration for payment under the applicable
33 trust governance documents may be sufficient to support a jury
34 finding that the plaintiff may have been exposed to products
35 for which the trust was established to provide compensation and

1 that, under applicable law, such exposure may be a substantial
2 contributing factor in causing the plaintiff's injury that is
3 at issue in the asbestos action.

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

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

10 2. If a plaintiff proceeds to trial in an asbestos
11 action before an asbestos trust claim is resolved, there is
12 a rebuttable presumption that the plaintiff is entitled to,
13 and will receive, the compensation specified in the trust
14 governance document applicable to the plaintiff's claim at the
15 time of trial. The court shall take judicial notice that the
16 trust governance document specifies compensation amounts and
17 payment percentages and shall establish an attributed value to
18 the plaintiff's asbestos trust claims.

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

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

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

32 1. On the motion of a defendant or judgment debtor seeking
33 sanctions or other relief in an asbestos action, the court
34 may impose any sanction provided by court rule or a law of
35 this state, including but not limited to vacating a judgment

1 rendered in the action, for a plaintiff's failure to comply
2 with the disclosure requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 8. "*Board-certified in pulmonary medicine*" means certified in
26 the specialty of pulmonary medicine by the American board of
27 internal medicine or the American osteopathic board of internal
28 medicine at the time of the performance of an examination and
29 rendition of a report required by this chapter.

30 9. "*Certified B-reader*" means an individual who has
31 qualified as a national institute for occupational safety and
32 health final or B-reader of X rays under 42 C.F.R. §37.51(b),
33 whose certification was current at the time of any readings
34 required under this chapter, and whose B-reads comply with
35 the national institute for occupational safety and health

1 B-reader's code of ethics, issues in classification of chest
2 radiographs, and classification of chest radiographs in
3 contested proceedings.

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

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

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

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

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

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

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

33 17. "*Pathological evidence of asbestosis*" means a statement
34 by a physician who is board-certified in pathology that more
35 than one representative section of lung tissue uninvolved

1 with any other disease process demonstrates a pattern of
2 peribronchiolar or parenchymal scarring in the presence of
3 characteristic asbestos bodies graded 1(B) or higher under the
4 criteria published in asbestos-associated diseases, 106 Archive
5 of Pathology and Laboratory Medicine 11, appendix 3 (October
6 8, 1982), or grade one or higher in pathology of asbestosis,
7 134 Archive of Pathology and Laboratory Medicine 462-80 (March
8 2010) (tables 2 and 3), as amended at the time of the exam, and
9 there is no other more likely explanation for the presence of
10 the fibrosis.

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

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

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

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

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

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

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

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

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

1 *d.* The physician was licensed to practice on the date any
2 examination or pulmonary function testing was conducted, and
3 actively practices or practiced in the state where the exposed
4 person resides or resided at the time of the examination or
5 pulmonary function testing, or the state where the asbestos
6 action or silica action was filed.

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

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

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

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

31 24. "*Radiological evidence of diffuse bilateral pleural*
32 *thickening*" means a quality 1 chest X ray under the ILO system,
33 or a quality 2 chest X ray in a death case when no pathology or
34 quality 1 chest X ray is available, showing diffuse bilateral
35 pleural thickening of at least b2 on the ILO scale and blunting

1 of at least one costophrenic angle as classified by a certified
2 B-reader.

3 25. "*Radiological evidence of silicosis*" means a quality
4 1 chest X ray under the ILO system, or a quality 2 chest X
5 ray in a death case when no pathology or quality 1 chest X
6 ray is available, showing bilateral predominantly nodular
7 or rounded opacities (p, q, or r) occurring primarily in
8 the upper lung fields graded by a certified B-reader as at
9 least 1/1 on the ILO scale or A, B, or C sized opacities
10 representing complicated silicosis or acute silicosis with
11 characteristic pulmonary edema, interstitial inflammation, and
12 the accumulation within the alveoli of proteinaceous fluid rich
13 in surfactant.

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

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

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

28 29. "*Supporting test results*" means copies of the B-reading;
29 pulmonary function tests, including printouts of the flow
30 volume loops, volume time curves, diffusing capacity of the
31 lung for carbon monoxide graphs, lung volume tests and graphs,
32 quality control data and other pertinent data for all trials
33 and all other elements required to demonstrate compliance with
34 the equipment, quality, interpretation, and reporting standards
35 set forth in this chapter; B-reader reports; reports of X

1 ray examinations; diagnostic imaging of the chest; pathology
2 reports; and all other tests reviewed by the diagnosing
3 physician or a qualified physician in reaching the physician's
4 conclusions.

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

7 1. A plaintiff in an asbestos action involving a
8 nonmalignant condition or a silica action involving silicosis
9 shall file with the complaint or other initial pleading a
10 detailed narrative medical report and diagnosis, signed under
11 oath by a qualified physician and accompanied by supporting
12 test results, which constitute prima facie evidence that the
13 exposed person meets the requirements of this chapter. The
14 report shall not be prepared by an attorney or person working
15 for or on behalf of an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 An asbestos action involving a nonmalignant condition shall
23 not be brought or maintained in the absence of prima facie
24 evidence that the exposed person has a physical impairment for
25 which asbestos exposure was a substantial contributing factor.
26 The prima facie showing shall be made as to each defendant
27 and include a detailed narrative medical report and diagnosis
28 signed under oath by a qualified physician that includes all
29 of the following:

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

34 2. A detailed occupational and exposure history from
35 the exposed person or, if that person is deceased, from the

1 person most knowledgeable about the exposures that form the
2 basis of the action, including identification of all of the
3 exposed person's principal places of employment and exposures
4 to airborne contaminants and whether each place of employment
5 involved exposures to airborne contaminants, including asbestos
6 fibers or other disease-causing dusts or fumes, that may cause
7 pulmonary impairment and the nature, duration, and level of any
8 exposure.

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

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

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

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

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

1 lower limit of normal.

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

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

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

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

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

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

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

1 duration, and level of any exposure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 3. Until a court enters an order determining that the
29 exposed person has established prima facie evidence of
30 impairment, an asbestos action or silica action shall not be
31 subject to discovery, except discovery related to establishing
32 or challenging the prima facie evidence or by order of the
33 trial court upon motion of one of the parties and for good
34 cause shown.

35 4. a. A court may consolidate for trial any number and

1 type of asbestos actions or silica actions with the consent of
2 all the parties. In the absence of such consent, the court may
3 consolidate for trial only asbestos actions or silica actions
4 relating to the exposed person and members of that person's
5 household.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 1. *"Asbestos action"* means the same as defined in section
17 686A.2, but also includes any claim for damage or loss caused
18 by the installation, presence, or removal of asbestos.

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

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

33 4. *"Successor asbestos-related liability"* means any
34 liabilities, whether known or unknown, asserted or unasserted,
35 absolute or contingent, accrued or unaccrued, liquidated or

1 unliquidated, or due or to become due, which are related in
2 any way to an asbestos action and were assumed or incurred by
3 a corporation as a result of or in connection with a merger
4 or consolidation, or the plan of merger or consolidation
5 related to the merger or consolidation with or into another
6 corporation, or that are related in any way to an asbestos
7 action based on the exercise of control or the ownership of
8 stock of the corporation before the merger or consolidation.
9 *“Successor asbestos-related liability”* includes liabilities
10 that, after the time of the merger or consolidation for which
11 the fair market value of total gross assets is determined under
12 section 686C.4, were or are paid or otherwise discharged, or
13 committed to be paid or otherwise discharged, by or on behalf
14 of the corporation, or by a successor of the corporation, or by
15 or on behalf of a transferor, in connection with settlements,
16 judgments, or other discharges in this state or another
17 jurisdiction.

18 5. *“Transferor”* means a corporation from which successor
19 asbestos-related liabilities are or were assumed or incurred.

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

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

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

1 liability of a successor.

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

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

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

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

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

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

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

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

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

35 2. To the extent total gross assets include any liability

1 insurance that was issued to the transferor whose assets are
2 being valued for purposes of this section, the applicability,
3 terms, conditions, and limits of such insurance shall not be
4 affected by this chapter, nor shall this chapter otherwise
5 affect the rights and obligations of an insurer, transferor,
6 or successor under any insurance contract or any related
7 agreement, including, without limitation, preenactment
8 settlements resolving coverage-related disputes, and the rights
9 of an insurer to seek payment for applicable deductibles,
10 retrospective premiums, or self-insured retentions or to seek
11 contribution from a successor for uninsured or self-insured
12 periods or periods where insurance is uncollectible or
13 otherwise unavailable. Without limiting the foregoing, to the
14 extent total gross assets include any such liability insurance,
15 a settlement of a dispute concerning any such liability
16 insurance coverage entered into by a transferor or successor
17 with the insurers of the transferor before the effective date
18 of this Act shall be determinative of the total coverage of
19 such liability insurance to be included in the calculation of
20 the transferor's total gross assets.

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

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

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

33 3. The adjustment of the fair market value of total
34 gross assets shall continue as provided in subsection 1
35 until the date the adjusted value is first exceeded by the

1 cumulative amounts of successor asbestos-related liabilities
2 paid or committed to be paid by or on behalf of the successor
3 corporation or a predecessor or by or on behalf of a transferor
4 after the time of the merger or consolidation for which the
5 fair market value of total gross assets is determined.

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

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

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

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

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

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to disclosure of asbestos bankruptcy trust
26 claims in civil asbestos actions, asbestos and silica claims
27 prioritization, and successor corporation asbestos-related
28 liability, and includes applicability provisions.

29 ASBESTOS BANKRUPTCY TRUST CLAIMS. The bill enacts new
30 Code chapter 686A, which requires a plaintiff in an asbestos
31 action to disclose documents and information related to claims
32 against an asbestos trust to a defendant within the later of 30
33 days of filing an asbestos action or 30 days of the effective
34 date of the bill. If the plaintiff fails to comply with these
35 requirements, the court may dismiss the action.

1 The bill provides that a defendant may file a motion
2 requesting a stay of the proceedings on or before the later
3 of the 60th day before the date trial in the action is set to
4 commence or the 15th day after the defendant first obtains
5 information that could support additional trust claims by the
6 plaintiff. The motion shall identify the asbestos trust claims
7 the defendant believes the plaintiff can file and include
8 information supporting the asbestos trust claims.

9 The bill provides that trust claims materials and trust
10 governance documents are presumed to be relevant and authentic,
11 and are admissible in evidence in an asbestos action. A claim
12 of privilege does not apply to any trust claims materials or
13 trust governance documents. The bill provides that trust
14 claim materials that are sufficient to entitle a claim to
15 consideration for payment under the applicable trust governance
16 documents may be sufficient to support a jury finding that
17 the plaintiff may have been exposed to products for which the
18 trust was established to provide compensation and that, under
19 applicable law, such exposure may be a substantial contributing
20 factor in causing the plaintiff's injury that is at issue in
21 the asbestos action.

22 If a plaintiff proceeds to trial in an asbestos action before
23 an asbestos trust claim is resolved, there is a rebuttable
24 presumption that the plaintiff is entitled to, and will
25 receive, the compensation specified in the trust governance
26 document applicable to the plaintiff's claim at the time of
27 trial.

28 In any asbestos action in which damages are awarded and
29 setoffs are permitted, a defendant is entitled to a setoff or
30 credit in the amount the plaintiff has been awarded from an
31 asbestos trust.

32 The bill provides that if the plaintiff or a person on
33 the plaintiff's behalf files an asbestos trust claim after
34 the plaintiff obtains a judgment in an asbestos action,
35 and that asbestos trust was in existence at the time the

1 plaintiff obtained the judgment, the trial court, on motion
2 by a defendant or judgment debtor seeking sanctions or other
3 relief, has jurisdiction to reopen the judgment and adjust
4 the judgment by the amount of any subsequent asbestos trust
5 payments obtained by the plaintiff and order any other relief
6 to the parties that the court considers just and proper.

7 The bill applies to all asbestos actions filed on or after
8 the effective date of the bill, and to all pending asbestos
9 actions in which trial has not commenced as of the effective
10 date of the bill unless the court finds that the application
11 of a provision of the bill would unconstitutionally affect a
12 vested right. In that case, the provision does not apply and
13 the court shall apply prior law.

14 ASBESTOS AND SILICA CLAIMS PRIORITIZATION. The bill enacts
15 new Code chapter 686B, which provides that a plaintiff in an
16 asbestos action involving a nonmalignant condition or a silica
17 action involving silicosis shall file with the complaint or
18 other initial pleading a detailed narrative medical report
19 and diagnosis, signed under oath by a qualified physician and
20 accompanied by supporting test results, which constitute prima
21 facie evidence that the exposed person meets the requirements
22 of the bill. The report must not be prepared by an attorney.
23 For an asbestos or silica action pending as of the effective
24 date of the bill, the detailed narrative medical report and
25 supporting test results and sworn information shall be provided
26 to all parties not later than 90 days after the effective date
27 of the bill or not later than 90 days before trial, whichever
28 is earlier. The court shall dismiss the asbestos or silica
29 action without prejudice on finding that the plaintiff has
30 failed to make the prima facie showing required by the bill or
31 failed to comply with the requirements of the bill. The bill
32 provides that asbestos and silica actions must be individually
33 filed and may not be filed on behalf of a group or class of
34 plaintiffs.

35 The bill provides that an asbestos action involving a

1 nonmalignant condition or a silica action involving silicosis
2 shall not be brought or maintained in the absence of prima
3 facie evidence that the exposed person has a physical
4 impairment for which exposure to asbestos or silica was a
5 substantial contributing factor. The prima facie showing shall
6 be made as to each defendant and include a detailed narrative
7 medical report and diagnosis signed under oath by a qualified
8 physician that includes certain specified information. The
9 bill requires the qualified physician signing the detailed
10 narrative medical report to conclude that exposure to asbestos
11 or silica was a substantial contributing factor to the exposed
12 person's physical impairment and not more probably the result
13 of other causes. An opinion that the medical findings and
14 impairment are consistent with or compatible with exposure to
15 asbestos or silica does not satisfy the requirements of the
16 bill.

17 The bill provides that evidence relating to the prima
18 facie showings required under the bill shall not create any
19 presumption that the exposed person has an asbestos-related
20 or silica-related injury or impairment, and shall not be
21 conclusive as to the liability of any defendant. Until a
22 court enters an order determining that the exposed person has
23 established prima facie evidence of impairment, no asbestos or
24 silica action shall be subject to discovery, except discovery
25 related to establishing or challenging the prima facie evidence
26 or by order of the trial court upon motion of one of the parties
27 and for good cause shown.

28 An asbestos or silica action arising out of a nonmalignant
29 condition shall be a distinct cause of action from an action
30 for an asbestos-related or silica-related cancer.

31 The bill applies to all asbestos and silica actions
32 filed on or after the effective date of the bill, and to all
33 pending asbestos and silica actions in which trial has not
34 commenced as of the effective date of the bill unless the court
35 finds that the application of a provision in the bill would

1 unconstitutionally affect a vested right. In that case, the
2 provision does not apply and the court shall apply prior law.

3 SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY. The
4 bill enacts new Code chapter 686C, which limits liability
5 related to asbestos actions which were assumed or incurred by a
6 corporation as the result of a merger or consolidation. The
7 bill provides that the cumulative successor asbestos-related
8 liabilities of a successor corporation are limited to the
9 fair market value of the total gross assets of the transferor
10 determined as of the time of the merger or consolidation.

11 The fair market value of the total gross assets may be
12 determined by any method reasonable under the circumstances,
13 including by reference to the going concern value of the assets
14 or to the purchase price attributable to or paid for the assets
15 in an arms-length transaction, or, in the absence of other
16 readily available information from which the fair market value
17 can be determined, by reference to the value of the assets
18 recorded on a balance sheet.

19 The bill provides that the fair market value of total gross
20 assets shall increase annually at a rate equal to the sum of
21 the prime rate plus 1 percent.

22 The bill is to be liberally construed with regard to
23 successor corporations.

24 The bill applies to all asbestos and silica actions
25 filed on or after the effective date of the bill, and to all
26 pending asbestos and silica actions in which trial has not
27 commenced as of the effective date of the bill unless the court
28 finds that the application of a provision in the bill would
29 unconstitutionally affect a vested right. In that case, the
30 provision does not apply and the court shall apply prior law.