

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               1st Session of the 54th Legislature (2013)

4       (1ST EXTRAORDINARY SESSION)

5       ENGROSSED SENATE

6       BILL NO. 14X

                              By: Bingman, Sykes, Jolley and  
                              Shortey of the Senate

7   and

8   Shannon and Stiles of the  
9   House

10           An Act relating to asbestos and silica claims;  
11           repealing 76 O.S. 2011, Sections 60, 61, 62, 63, 64,  
12           65, 66, 67, 68, 69, 70 and 71, which relate to the  
13           Asbestos and Silica Claims Priorities Act; creating  
14           the Asbestos and Silica Claims Priorities Act;  
15           providing short title; providing legislative  
16           findings; stating purposes; defining terms; providing  
17           elements of proof and proceedings for asbestos or  
18           silica claims; providing that certain evidence does  
19           not create a presumption; providing that certain  
20           evidence is inadmissible; providing for discovery;  
21           providing for consolidation of claims; authorizing  
22           the court to decline to exercise jurisdiction in  
23           certain circumstances; providing for venue; providing  
24           a statute of limitations; establishing two-disease  
          rule; clarifying applicability of act; providing for  
          codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1.           REPEALER           76 O.S. 2011, Sections 60, 61, 62,  
63, 64, 65, 66, 67, 68, 69, 70 and 71, are hereby repealed.

1       SECTION 2.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 90 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

4       This act shall be known and may be cited as the "Asbestos and  
5 Silica Claims Priorities Act".

6       SECTION 3.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section 91 of Title 76, unless there is  
8 created a duplication in numbering, reads as follows:

9       A.   FINDINGS.   The Legislature finds that:

10       1.   Asbestos is a mineral that was widely used prior to the  
11 1980s for insulation, fire-proofing, and other purposes;

12       2.   Millions of American workers and others were exposed to  
13 asbestos, especially during and after World War II, prior to the  
14 advent of regulation by the United States Occupational Safety and  
15 Health Administration in the early 1970s;

16       3.   Exposure to asbestos is associated with various types of  
17 cancer, including mesothelioma, as well as nonmalignant conditions  
18 such as asbestosis and diffuse pleural thickening;

19       4.   Diseases caused by asbestos exposure often have long latency  
20 periods;

21       5.   While the cases currently filed in Oklahoma are manageable  
22 by the courts and the litigants, it is proper for the Legislature to  
23 support and protect the courts of this state from the potential of  
24 massive litigation expense and the crowding of trial dockets;

1       6. Silica is a naturally occurring mineral and is the second  
2 most common constituent of the earth's crust. Crystalline silica in  
3 the form of quartz is present in sand, gravel, soil, and rocks;

4       7. Silica-related illnesses, including silicosis, can develop  
5 from the inhalation of respirable silica dust. Silicosis was widely  
6 recognized as an occupational disease many years ago;

7       8. Concerns about statutes of limitations may prompt unimpaired  
8 asbestos and silica claimants to bring lawsuits to protect their  
9 ability to recover for their potentially progressive occupational  
10 disease; and

11       9. Several states, including Texas, Georgia, Ohio, and Florida  
12 have enacted legislation setting medical criteria governing asbestos  
13 and silica cases and tolling statutes of limitations and requiring  
14 persons alleging nonmalignant disease claims to demonstrate physical  
15 impairment as a prerequisite to setting such cases for trial.

16       B. The purpose of this chapter is to:

17       1. Provide a procedural remedy allowing efficient judicial  
18 supervision and control of asbestos and silica litigation by giving  
19 priority for the purposes of trial and resolution to asbestos and  
20 silica claimants with demonstrable physical impairment caused by  
21 exposure to asbestos or silica; and

22       2. Preserve the legal rights of claimants who were exposed to  
23 asbestos or silica, but have no physical impairment from asbestos or  
24

1 silica exposure, until such time as the claimant can demonstrate  
2 physical impairment.

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 92 of Title 76, unless there is  
5 created a duplication in numbering, reads as follows:

6 DEFINITIONS. As used in the Asbestos and Silica Claims  
7 Priorities Act:

8 1. "Asbestos" means all minerals defined as "asbestos" in 29  
9 CFR 1910, as and if amended;

10 2. "Asbestos claim" means any claim for damages or other civil  
11 or equitable relief presented in a civil action, arising out of,  
12 based on, or related to the health effects of exposure to asbestos,  
13 including loss of consortium and any other derivative claim made by  
14 or on behalf of any exposed person or any representative, spouse,  
15 parent, child, or other relative of any exposed person;

16 3. "Asbestos-related injury" means personal injury or death  
17 allegedly caused, in whole or in part, by inhalation or ingestion of  
18 asbestos;

19 4. "Asbestosis" means bilateral interstitial fibrosis of the  
20 lungs caused by inhalation of asbestos fibers;

21 5. "Certified B-reader" means a person who has successfully  
22 completed the x-ray interpretation course sponsored by the National  
23 Institute for Occupational Safety and Health (NIOSH) and passed the  
24 B-reader certification examination for x-ray interpretation and

1 whose NIOSH certification is current at the time of any readings  
2 required by this chapter;

3 6. "Chest x-ray" means chest films that are taken in accordance  
4 with accepted medical standards in effect at the time the x-ray was  
5 taken;

6 7. "Claimant" means an exposed person and any person who is  
7 seeking recovery of damages for or arising from the injury or death  
8 of an exposed person;

9 8. "Defendant" means a person against whom a claim arising from  
10 an asbestos-related injury or a silica-related injury is made;

11 9. "Exposed person" means a person who is alleged to have  
12 suffered an asbestos-related injury or a silica-related injury;

13 10. "FEV1" means forced expiratory volume in the first second,  
14 which is the maximal volume of air expelled in one second during  
15 performance of simple spirometric tests;

16 11. "FVC" means forced vital capacity, which is the maximal  
17 volume of air expired with maximum effort from a position of full  
18 inspiration;

19 12. "ILO system of classification" means the radiological  
20 rating system of the International Labor Office in "Guidelines for  
21 the Use of ILO International Classification of Radiographs of  
22 Pneumoconioses", 2000 edition, as amended from time to time by the  
23 International Labor Office;

1        13. "Mesothelioma" means a rare form of cancer allegedly caused  
2 in some instances by exposure to asbestos in which the cancer  
3 invades cells in the membrane lining of the:

- 4            a.    lungs and chest cavity (the pleural region),
- 5            b.    abdominal cavity (the peritoneal region), or
- 6            c.    heart (the pericardial region);

7        14. "Nonmalignant asbestos-related injury" means an asbestos-  
8 related injury other than mesothelioma or other asbestos-related  
9 malignancy;

10       15. "Physician board-certified in internal medicine" means a  
11 physician who is certified by the American Board of Internal  
12 Medicine or corresponding board for doctors of osteopathy;

13       16. "Physician board-certified in occupational medicine" means  
14 a physician who is certified in the subspecialty of occupational  
15 medicine by the American Board of Preventive Medicine or  
16 corresponding board for doctors of osteopathy;

17       17. "Physician board-certified in oncology" means a physician  
18 who is certified in the subspecialty of medical oncology by the  
19 American Board of Internal Medicine or corresponding board for  
20 doctors of osteopathy;

21       18. "Physician board-certified in pathology" means a physician  
22 who holds primary certification in anatomic pathology or clinical  
23 pathology from the American Board of Pathology or corresponding  
24 board for doctors of osteopathy and whose professional practice:

- a. is principally in the field of pathology, and
- b. involves regular evaluation of pathology materials obtained from surgical or postmortem specimens;

19. "Physician board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or corresponding board for doctors of osteopathy;

20. "Physician board-certified in radiology" means a physician who is certified by the American Board of Radiology or corresponding board for doctors of osteopathy;

21. "Plethysmography" means the test for determining lung volume, also known as "body plethysmography", in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume change;

22. "Predicted lower limit of normal" for any test means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) (dated November 2000);

23. "Pulmonary function testing" means spirometry and lung volume testing performed in accordance with Section 5 of this act using equipment, methods of calibration, and techniques that materially comply with:

- a. the criteria incorporated in the American Medical Association Guides to the Evaluation of Permanent

1           Impairment and reported in 20 C.F.R. Part 404, Subpart  
2           P, Appendix 1, Part (A), Sections 3.00(E) and  
3           (F) (2003), as amended from time to time by the  
4           American Medical Association, and

- 5           b.   the interpretative standards in the Official Statement  
6               of the American Thoracic Society entitled "Lung  
7               Function Testing: Selection of Reference Values and  
8               Interpretative Strategies", as published in 144  
9               American Review of Respiratory Disease 1202-1218  
10              (1991), as amended from time to time by the American  
11              Thoracic Society;

12           24.   "Radiological evidence" of asbestosis or pleural thickening  
13   means a chest x-ray evaluated by a certified B-reader, a  
14   radiologist, a physician board-certified in pulmonary medicine,  
15   occupational medicine, internal medicine, oncology, or pathology  
16   using the ILO System of classification. The chest x-ray shall be a  
17   quality 1 x-ray according to that ILO System, although if the  
18   certified B-reader, board-certified pulmonologist, or board-  
19   certified radiologist confirms that a quality 2 x-ray film is of  
20   sufficient quality to render an accurate reading under the ILO  
21   System of classification and no quality 1 x-ray films are available,  
22   then the necessary radiologic findings may be made with the quality  
23   2 x-ray film which is the subject of the confirmation above. Also,  
24   in a death case where no pathology is available, the necessary



1 radiologic findings may be made with a quality 2 x-ray film if a  
2 quality 1 x-ray film is not available;

3 25. "Report" means a report required by Sections 6 or 7 of this  
4 act;

5 26. "Respirable" with respect to silica, means particles that  
6 are less than ten (10) microns in diameter;

7 27. "Serve" means to serve notice on a party in compliance with  
8 the Oklahoma Rules of Civil Procedure;

9 28. "Silica" means a naturally occurring, respirable form of  
10 crystalline silicon dioxide, including quartz, cristobalite, and  
11 tridymite;

12 29. "Silica claim" means any claim for damages or other civil  
13 or equitable relief presented in a civil action, arising out of,  
14 based on, or related to the health effects of exposure to silica,  
15 including loss of consortium and any other derivative claim made by  
16 or on behalf of any exposed person or any representative, spouse,  
17 parent, child, or other relative of any exposed person;

18 30. "Silica-related injury" means personal injury or death  
19 allegedly caused, in whole or in part, by inhalation of silica; and

20 31. "Silicosis" means fibrosis of the lungs caused by  
21 inhalation of silica, including:

22 a. acute silicosis, which may occur after exposure to  
23 very high levels of silica within a period of months  
24 to five (5) years after the initial exposure,

1           b.    accelerated silicosis, and

2           c.    chronic silicosis.

3           SECTION 5.       NEW LAW       A new section of law to be codified  
4 in the Oklahoma Statutes as Section 93 of Title 76, unless there is  
5 created a duplication in numbering, reads as follows:

6           Pulmonary function testing required by this act must be  
7 interpreted by a physician who is:

8           1.   Licensed in this state or another state of the United  
9 States; and

10          2.   Board-certified in pulmonary medicine, occupational  
11 medicine, internal medicine, oncology, or pathology at the time of  
12 issuing the relevant medical report.

13          SECTION 6.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section 94 of Title 76, unless there is  
15 created a duplication in numbering, reads as follows:

16          A.   No person shall have an asbestos claim placed on any active  
17 trial roster in this state, or brought to trial in this state, or  
18 conduct discovery in an asbestos claim in this state, in the absence  
19 of a prima facie showing of asbestos-related malignancy or  
20 impairment as shown by service on each defendant of the information  
21 listed in either paragraph 1 or 2 of this subsection:

22          1.   A report by a physician who is board-certified in pulmonary  
23 medicine, occupational medicine, internal medicine, oncology, or  
24

1 pathology at the time of issuing the relevant medical report  
2 concluding:

- 3 a. the exposed person has been diagnosed with  
4 mesothelioma or other asbestos-related malignancy,
- 5 b. to a reasonable degree of medical certainty, exposure  
6 to asbestos was a proximate cause of the diagnosed  
7 mesothelioma or other asbestos-related malignancy,  
8 accompanied by a conclusion that the exposed person's  
9 medical findings were not more probably the result of  
10 other causes revealed by the exposed person's  
11 employment and medical history. A conclusion that the  
12 exposed person's physical impairment or impairments  
13 are "consistent with" or "compatible with"  
14 mesothelioma or other asbestos-related malignancy does  
15 not meet the requirements of this section, and
- 16 c. for malignant asbestos-related conditions other than  
17 mesothelioma, that the exposed person has an  
18 underlying nonmalignant asbestos-related condition and  
19 that at least fifteen (15) years have elapsed between  
20 the date of first exposure to asbestos and the date of  
21 diagnosis of the malignancy; or

22 2. A report by a physician who is board-certified in pulmonary  
23 medicine, internal medicine, occupational medicine, or pathology  
24 that:

- 1           a.    the exposed person has been diagnosed with a  
2                nonmalignant asbestos-related condition, and
- 3           b.    confirms that a physician actually treating or who  
4                treated the exposed person, or who has or who had a  
5                doctor-patient relationship with the exposed person or  
6                a medical professional employed by and under the  
7                direct supervision and control of such physician:
- 8                (1) performed a physical examination of the exposed  
9                person, or if the exposed person is deceased,  
10              reviewed available records relating to the  
11              exposed person's medical condition,
- 12              (2) took an occupational and exposure history from  
13              the exposed person or from a person knowledgeable  
14              about the alleged exposure or exposures that form  
15              the basis of the action, and
- 16              (3) took a medical and smoking history that includes  
17              a review of the exposed person's significant past  
18              and present medical problems relevant to the  
19              exposed person's impairment or disease,
- 20           c.    sets out sufficient details of the exposed person's  
21                occupational, exposure, medical, and smoking history  
22                to form the basis for a medical diagnosis of an  
23                asbestos-related condition and confirms that at least  
24                fifteen (15) years have elapsed between the exposed

1 person's first exposure to asbestos and the date of  
2 diagnosis,

3 d. confirms that the exposed person has a pathological  
4 diagnosis of asbestosis graded 1(B) or higher under  
5 the criteria published in "Asbestos-Associated  
6 Diseases", 106 Archives of Pathology and Laboratory  
7 Medicine 11, Appendix 3 (October 8, 1982), as amended  
8 from time to time, or

9 e. confirms that the exposed person's chest x-ray shows  
10 bilateral small irregular opacities (s, t, or u) with  
11 a profusion grading of 2/2 or higher on the ILO system  
12 of classification, or

13 f. confirms that the exposed person has radiological  
14 evidence of asbestosis and/or pleural thickening  
15 showing:

16 (1) bilateral small irregular opacities (s, t, or u)  
17 with a profusion grading of 1/1 or higher, or

18 (2) bilateral diffuse pleural thickening graded  
19 extent b2 or higher, including blunting of the  
20 costophrenic angle, and

21 g. (1) confirms that in cases described in subparagraph  
22 d or f of this paragraph, the exposed person has  
23 or had physical impairment rated at least Class 2  
24 pursuant to the AMA Guides to the Evaluation of

Permanent Impairment (5th Edition) (dated  
November 2000) demonstrating:

- (a) forced vital capacity below the lower limit  
of normal and FEV1/FVC ratio (using actual  
values) at or above the lower limit of  
normal, or
- (b) total lung capacity, by plethysmography or  
timed gas dilution, below the lower limit of  
normal, or
- (c) if the claimant's medical condition or  
process prevents the pulmonary function test  
from being performed or makes the results of  
such test an unreliable indicator of  
physical impairment, a board-certified  
physician in pulmonary medicine,  
occupational medicine, internal medicine,  
oncology, or pathology, independent from the  
physician providing the report required  
herein, must provide a report which states  
to a reasonable degree of medical certainty  
that the claimant has a nonmalignant  
asbestos-related condition causing physical  
impairment equivalent to subdivision (a) or  
(b) of this division and states the reasons

1                   why the pulmonary function test would be an  
2                   unreliable indicator of physical impairment.

3           (2) Alternatively and not to be used in conjunction  
4           with subdivision (c) of division (1) of this  
5           subparagraph, if an exposed person's medical  
6           conditions or processes prevent a physician from  
7           being able to diagnose or evaluate that exposed  
8           person sufficiently to make a determination as to  
9           whether that exposed person meets the  
10          requirements of subparagraph f of this paragraph,  
11          the claimant may serve on each defendant a report  
12          by a physician who is board-certified in  
13          pulmonary medicine, occupational medicine,  
14          internal medicine, oncology, or pathology at the  
15          time the report was made that:

16          (a) verifies that the physician has or had a  
17              doctor-patient relationship with the exposed  
18              person, and

19          (b) verifies that the exposed person has  
20              asbestos-related pulmonary impairment as  
21              demonstrated by pulmonary function testing  
22              showing:

23              (i) forced vital capacity below the lower  
24              limit of normal and total lung

1 capacity, by plethysmography, below the  
2 lower limit of normal, or

3 (ii) forced vital capacity below the lower  
4 limit of normal and FEV1/FVC ratio  
5 (using actual values) at or above the  
6 lower limit of normal, and

7 (c) verifies that the exposed person has a chest  
8 x-ray and computed tomography scan or high-  
9 resolution computed tomography scan read by  
10 the physician or a physician who is board-  
11 certified in pulmonary medicine,  
12 occupational medicine, internal medicine,  
13 oncology, pathology, or radiology showing  
14 either bilateral pleural disease or  
15 bilateral parenchymal disease diagnosed and  
16 reported as being a consequence of asbestos  
17 exposure,

18 h. confirms that the physician has concluded that the  
19 exposed person's medical findings and impairment were  
20 not more probably the result of causes other than  
21 asbestos exposure as revealed by the exposed person's  
22 occupational, exposure, medical, and smoking history,  
23 and  
24



1           i.    is accompanied by the relevant radiologist's reports,  
2                pulmonary function tests, including printouts of all  
3                data, flow volume loops, and other information to the  
4                extent such has been performed demonstrating  
5                compliance with the equipment, quality,  
6                interpretation, and reporting standards set out in the  
7                Asbestos and Silica Claims Priorities Act, lung volume  
8                tests, diagnostic imaging of the chest, pathology  
9                reports, or other testing reviewed by the physician in  
10              reaching the physician's conclusions. Upon request,  
11              the relevant computed tomography scans and/or chest x-  
12              rays will be made available for review.

13        B.    The detailed occupational and exposure history required  
14    herein must describe:

15           1.   The exposed person's principal employments where it was  
16    likely there was exposure to airborne contaminants (including  
17    asbestos, silica, and other disease-causing dusts, mists, fumes, and  
18    airborne contaminants) that can cause pulmonary injury; and

19           2.   Identification of the general nature, duration, and  
20    frequency of the exposed person's exposure to airborne contaminants,  
21    including asbestos and other dusts that can cause pulmonary injury.

22        C.    All evidence and reports used in presenting the prima facie  
23    showing required in this section, including pulmonary function  
24    testing and diffusing studies, if any:

1        1. Must comply with the technical recommendations for  
2 examinations, testing procedures, quality assurance, quality  
3 controls, and equipment in the AMA's Guidelines to the Evaluation of  
4 Permanent Impairment and the most current version of the Official  
5 Statements of the American Thoracic Society regarding lung function  
6 testing. Testing performed in a hospital or other medical facility  
7 that is fully licensed and accredited by all appropriate regulatory  
8 bodies in the state in which the facility is located is presumed to  
9 meet the requirements of this act. This presumption may be rebutted  
10 by evidence demonstrating that the accreditation or licensing of the  
11 hospital or other medical facility has lapsed, or providing specific  
12 facts demonstrating that the technical recommendations for  
13 examinations, testing procedures, quality assurance, quality  
14 control, and equipment have not been followed;

15        2. Must not be obtained through testing or examinations that  
16 violate any applicable law, regulation, licensing requirement, or  
17 medical code of practice;

18        3. Must not be obtained under the condition that the exposed  
19 person retains legal services in exchange for the examination,  
20 testing, or screening;

21        4. Shall not result in any presumption at trial that the  
22 exposed person is impaired by an asbestos or silica-related  
23 condition; and  
24

1        5. Shall not be conclusive as to the liability of any  
2 defendant.

3        D. The conclusion that a prima facie showing has been made is  
4 not admissible at trial.

5        SECTION 7.        NEW LAW        A new section of law to be codified  
6 in the Oklahoma Statutes as Section 95 of Title 76, unless there is  
7 created a duplication in numbering, reads as follows:

8        A. No person shall have a silica claim placed on any active  
9 trial roster in this state, or brought to trial in this state, or  
10 conduct discovery in a silica claim in this state, in the absence of  
11 a prima facie showing of impairment as shown by service on each  
12 defendant of a report by a physician who is board-certified in  
13 pulmonary medicine, internal medicine, oncology, pathology, or  
14 occupational medicine at the time of issuing the relevant medical  
15 report.

16        B. In a case alleging silicosis, the medical report must be  
17 issued by a physician who is board-certified in pulmonary medicine,  
18 internal medicine, occupational medicine, or pathology that:

19        1. The exposed person has been diagnosed with a silica-related  
20 condition; and

21        2. Confirms that a physician actually treating or who treated  
22 the exposed person, or who has or who had a doctor-patient  
23 relationship with the exposed person or a medical professional  
24

1 employed by and under the direct supervision and control of such  
2 physician:

- 3           a. performed a physical examination of the exposed  
4           person, or if the exposed person is deceased, reviewed  
5           available records relating to the exposed person's  
6           medical condition,
- 7           b. took a detailed occupational and exposure history from  
8           the exposed person or, if the exposed person is  
9           deceased, from a person knowledgeable about the  
10          alleged exposure or exposures that form the basis of  
11          the action, and
- 12          c. took a detailed medical and smoking history that  
13          includes a thorough review of the exposed person's  
14          significant past and present medical problems and the  
15          most probable cause of any such problem that is  
16          relevant to the exposed person's impairment or  
17          disease.

18          C. The medical report must set out the details of the exposed  
19          person's occupational, exposure, medical, and smoking history, and  
20          set forth that there has been a sufficient latency period for the  
21          applicable type of silicosis.

22          D. The medical report must confirm, on the basis of medical  
23          examination, chest x-ray and pulmonary function testing, that the  
24          exposed person has permanent respiratory impairment:

1 1. Rated at least Class 2 pursuant to the AMA Guides to the  
2 Evaluation of Permanent Impairment; and

3 2. Accompanied by:

- 4 a. a chest x-ray that is an ILO quality 1 film, except  
5 that in the case of a deceased exposed individual  
6 where no pathology is available, the film can be ILO  
7 quality 2, showing bilateral nodular opacities (p, q,  
8 or r) occurring primarily in the upper lung fields,  
9 graded 1/1 or higher under the ILO system of  
10 classification, or  
11 b. a chest x-ray that is an ILO quality 1 film, except  
12 that in the case of a deceased exposed individual  
13 where no pathology is available, the film can be ILO  
14 quality 2, showing large opacities (A, B, or C) in  
15 addition to the small opacities referred to in the  
16 preceding section, or  
17 c. a chest x-ray that is an ILO quality 1 film showing  
18 acute silicosis as described in Occupational Lung  
19 Diseases, Third Edition, as amended from time to time,  
20 or  
21 d. pathological demonstration of classic silicotic  
22 nodules exceeding one (1) centimeter in diameter as  
23 published in 112 Archive of Pathology and Laboratory  
24

Medicine 7 (July 1988), as amended from time to time,  
or

e. pathological demonstration of acute silicosis.

E. For all other silica-related claims, other than silicosis,  
the medical report must:

1. Be issued by a physician who is board-certified in pulmonary  
medicine, internal medicine, occupational medicine, or pathology  
that:

a. the exposed person has been diagnosed with a silica-  
related condition, and

b. confirms that a physician actually treating or who  
treated the exposed person, or who has or who had a  
doctor-patient relationship with the exposed person or  
a medical professional employed by and under the  
direct supervision and control of such physician:

(1) stating a diagnosis of silica-related lung cancer  
based on a sufficient latency period which is not  
less than fifteen (15) years and a statement that  
to a reasonable degree of medical certainty  
exposure to silica was a proximate cause of the  
exposed person's physical impairment, accompanied  
by a conclusion that the exposed person's silica-  
related lung cancer was not more probably the  
result of causes other than exposure to silica

revealed by the exposed person's occupational,  
exposure, medical, and smoking history, or  
(2) stating a diagnosis of silicosis complicated by  
documented tuberculosis, or  
(3) stating a diagnosis of any other silica-related  
disease, accompanied by a diagnosis of silicosis  
as defined herein, based on a sufficient latency  
period and a statement that to a reasonable  
degree of medical certainty exposure to silica  
was a proximate cause of the exposed person's  
physical impairment, accompanied by a conclusion  
that the exposed person's silica-related disease  
was not more probably the result of causes other  
than exposure to silica revealed by the exposed  
person's occupational, exposure, medical, and  
smoking history; and

2. Be accompanied by:

- a. a chest x-ray that is an ILO quality 1 film, except  
that in the case of a deceased exposed individual  
where no pathology is available, the film can be ILO  
quality 2, showing bilateral nodular opacities (p, q,  
or r) occurring primarily in the upper lung fields,  
graded 1/1 or higher under the ILO system of  
classification,

- 1           b. chest x-ray that is an ILO quality 1 film, except that  
2           in the case of a deceased exposed individual where no  
3           pathology is available, the film can be ILO quality 2,  
4           showing large opacities (A, B, or C) in addition to  
5           the small opacities referred to in subparagraph a of  
6           this paragraph,
- 7           c. chest x-ray that is an ILO quality 1 film showing  
8           acute silicosis as described in Occupational Lung  
9           Diseases, Third Edition, as amended from time to time,
- 10          d. pathological demonstration of classic silicotic  
11          nodules exceeding one (1) centimeter in diameter as  
12          published in 112 Archive of Pathology and Laboratory  
13          Medicine 7 (July 1988), as amended from time to time,  
14          or
- 15          e. pathological demonstration of acute silicosis.

16          F. All evidence and reports used in presenting the prima facie  
17          showing required in this section, including pulmonary function  
18          testing and diffusing studies, if any:

19          1. Must comply with the technical recommendations for  
20          examinations, testing procedures, quality assurance, quality  
21          controls, and equipment in the AMA's Guidelines to the Evaluation of  
22          Permanent Impairment and the most current version of the Official  
23          Statements of the American Thoracic Society regarding lung function  
24          testing, including general considerations for lung function testing,



1 standardization of spirometry, standardization of the measurement of  
2 lung volumes, standardization of the single breath determination of  
3 carbon monoxide uptake in the lung, and interpretive strategies of  
4 lung testing in effect at the time of the performance of any  
5 examination or test on the exposed person required by this act.

6 Testing performed in a hospital or other medical facility that is  
7 fully licensed and accredited by all appropriate regulatory bodies  
8 in the state in which the facility is located, is presumed to meet  
9 the requirements of this subsection. This presumption may be  
10 rebutted by evidence demonstrating that the accreditation or  
11 licensing of the hospital or other medical facility has lapsed, or  
12 providing specific facts demonstrating that the technical

13 recommendations for examinations, testing procedures, quality  
14 assurance, quality control, and equipment have not been followed;

15 2. Must not be obtained through testing or examinations that  
16 violate any applicable law, regulation, licensing requirement, or  
17 medical code of practice;

18 3. Must not be obtained under the condition that the exposed  
19 person retains legal services in exchange for the examination, test,  
20 or screening;

21 4. Shall not result in any presumption at trial that the  
22 exposed person is impaired by an asbestos- or silica-related  
23 condition; and  
24

1        5. Shall not be conclusive as to the liability of any  
2 defendant.

3        G. The conclusion that a prima facie showing has been made is  
4 not admissible at trial.

5        SECTION 8.        NEW LAW        A new section of law to be codified  
6 in the Oklahoma Statutes as Section 96 of Title 76, unless there is  
7 created a duplication in numbering, reads as follows:

8        A. In order to have an asbestos or silica claim placed on any  
9 active trial docket in this state, or brought to trial in this  
10 state, or conduct discovery in an asbestos or silica claim in this  
11 state, an individual must provide prima facie evidence of impairment  
12 by serving on each defendant who answers or otherwise appears, a  
13 report prescribed by this act.

14        B. In an action pending on the effective date of this act, the  
15 case shall not be allowed to be called for or proceed to trial until  
16 ninety (90) days after a report has been served on each defendant.

17        C. This act shall not be interpreted to create, alter, or  
18 eliminate a legal cause of action for any asbestos- and/or silica-  
19 related claimant who has been diagnosed with any asbestos- and/or  
20 silica-related disease. The act sets the procedure by which the  
21 courts in this state shall manage trial settings for all asbestos-  
22 and/or silica-related claims.

1       SECTION 9.       NEW LAW       A new section of law to be codified

2 in the Oklahoma Statutes as Section 97 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

4       A. In any action covered by the provisions of this act, a  
5 claimant shall file together with the complaint or other initial  
6 pleading a written report and supporting test results constituting  
7 the prima facie showing required pursuant to this act. In an action  
8 where the claimant either fails to provide such prima facie evidence  
9 or provides inadequate prima facie evidence, the defendant may,  
10 without waiving any defenses otherwise available to him, file within  
11 the time allotted for his Answer, a Notice of Appearance rather than  
12 an Answer to the Complaint. The claimant shall, within ninety (90)  
13 days of receipt of such Answer or Notice of Appearance, provide such  
14 prima facie evidence as is called for by the provisions of this act.  
15 The defendant in any case shall then be afforded a reasonable  
16 opportunity to challenge the adequacy of the proffered prima facie  
17 evidence of asbestos-related or silica-related impairment as  
18 referenced in this section and subsection A of Section 8 of this  
19 act. Upon a finding of failure to make the required prima facie  
20 showing, the claimant's action shall not be placed on any trial  
21 docket nor be the subject of any discovery other than discovery on  
22 the issue of prima facie evidence of impairment. Upon the finding  
23 of the required prima facie showing, no defendant shall be allowed

1 to challenge such prima facie showing absent a showing of  
2 misrepresentation, fraud, and/or good cause.

3 B. In any action covered by the provisions of this act in which  
4 the exposed person has received a diagnosis of mesothelioma which  
5 meets the requirements of paragraph 1 of subsection A of Section 6  
6 of this act, the claimant may petition the court requesting that a  
7 trial date be set on an expedited basis. The court may, in its  
8 discretion, provide for an expedited trial setting, if the claimant  
9 demonstrates good cause for such an expedited trial setting and the  
10 defendant(s) is/are not prejudiced by such an expedited trial  
11 setting. In no event shall a trial date be set less than one  
12 hundred twenty (120) days from the date of an order granting such a  
13 motion and in no event shall a case be called for trial unless six  
14 (6) months have passed between the date of the initial filing of the  
15 case and the date of trial.

16 SECTION 10. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 98 of Title 76, unless there is  
18 created a duplication in numbering, reads as follows:

19 Nothing in this act is intended to, and nothing in this act  
20 shall be interpreted to:

- 21 1. Affect the rights of any party in bankruptcy proceedings; or
- 22 2. Affect the ability of any person who is able to make a
- 23 showing that the person satisfies the claim criteria for compensable
- 24 claims or demands under a trust established under a plan of

1 reorganization under Chapter 11 of the United States Bankruptcy  
2 Code, 11 U.S.C. Chapter 11, to make a claim or demand against that  
3 trust.

4 SECTION 11. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 99 of Title 76, unless there is  
6 created a duplication in numbering, reads as follows:

7 An entity that offers a health benefit plan or an annuity or  
8 life insurance policy or contract, issued for delivery, or renewed  
9 on or after the effective date of this act, may not use the fact  
10 that a person has met the procedural requirements of this act to  
11 reject, deny, limit, cancel, refuse to renew, increase the premiums  
12 for, or otherwise adversely affect the person's eligibility for or  
13 coverage under the policy or contract.

14 SECTION 12. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 100 of Title 76, unless there is  
16 created a duplication in numbering, reads as follows:

17 A. Notwithstanding any other provision of law, with respect to  
18 any asbestos or silica claim not barred as of the effective date of  
19 this act, the limitations period shall not begin to run until the  
20 exposed person or claimant discovers, or through the exercise of  
21 reasonable diligence should have discovered, that the exposed person  
22 or claimant is physically impaired as set forth in this chapter by  
23 an asbestos- or silica-related condition.

24

1       B. An asbestos or silica claim arising out of a nonmalignant  
2 condition shall be a distinct cause of action from an asbestos or  
3 silica claim relating to the same exposed person arising out of  
4 asbestos- or silica-related cancer, and resolution of an asbestos or  
5 silica claim arising out of a nonmalignant condition shall not  
6 affect the ability of the same exposed person to bring a separate  
7 asbestos or silica claim arising out of an asbestos- or silica-  
8 related cancer, that otherwise meets all the requirements of  
9 Sections 6 or 7 of this act.

10       SECTION 13.       NEW LAW       A new section of law to be codified  
11 in the Oklahoma Statutes as Section 101 of Title 76, unless there is  
12 created a duplication in numbering, reads as follows:

13       EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act  
14 shall apply to all asbestos or silica claims filed on or after the  
15 effective date of this act. The Asbestos and Silica Claims  
16 Priorities Act shall also apply to any pending asbestos or silica  
17 claims in which trial has not commenced by the effective date of  
18 this act, except that any provisions of these sections which would  
19 be unconstitutional if applied retroactively shall be applied  
20 prospectively.

21       SECTION 14. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby  
23  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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4 DIRECT TO CALENDAR.

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