

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 SENATE BILL 14x

By: Bingman and Sykes of the
Senate

4 and

5 Shannon of the House
6

7
8 AS INTRODUCED

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

18
19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. REPEALER 76 O.S. 2011, Sections 60, 61, 62,
21 63, 64, 65, 66, 67, 68, 69, 70 and 71, are hereby repealed.

22 SECTION 2. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 81 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

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

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 82 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 A. FINDINGS. The Legislature finds that:

7 1. Asbestos is a mineral that was widely used prior to the
8 1980s for insulation, fire-proofing, and other purposes;

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

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

16 4. Diseases caused by asbestos exposure often have long latency
17 periods;

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

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

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

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

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

13 B. The purpose of this chapter is to:

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

19 2. Preserve the legal rights of claimants who were exposed to
20 asbestos or silica, but have no physical impairment from asbestos or
21 silica exposure, until such time as the claimant can demonstrate
22 physical impairment.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 83 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 DEFINITIONS. As used in the Asbestos and Silica Claims
5 Priorities Act:

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

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

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

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

19 5. "Certified B-reader" means a person who has successfully
20 completed the x-ray interpretation course sponsored by the National
21 Institute for Occupational Safety and Health (NIOSH) and passed the
22 B-reader certification examination for x-ray interpretation and
23 whose NIOSH certification is current at the time of any readings
24 required by this chapter;

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

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

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

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

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

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

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

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

- 1 a. lungs and chest cavity (the pleural region),
- 2 b. abdominal cavity (the peritoneal region), or
- 3 c. heart (the pericardial region);

4 14. "Nonmalignant asbestos-related injury" means an asbestos-
5 related injury other than mesothelioma or other asbestos-related
6 malignancy;

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

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

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

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

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

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

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

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

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

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

- 20 a. the criteria incorporated in the American Medical
21 Association Guides to the Evaluation of Permanent
22 Impairment and reported in 20 C.F.R. Part 404, Subpart
23 P, Appendix 1, Part (A), Sections 3.00(E) and
24

1 (F) (2003), as amended from time to time by the
2 American Medical Association, and

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

10 24. "Radiological evidence" of asbestosis or pleural thickening
11 means a chest x-ray evaluated by a certified B-reader, a
12 radiologist, a physician board-certified in pulmonary medicine,
13 occupational medicine, internal medicine, oncology, or pathology
14 using the ILO System of classification. The chest x-ray shall be a
15 quality 1 x-ray according to that ILO System, although if the
16 certified B-reader, board-certified pulmonologist, or board-
17 certified radiologist confirms that a quality 2 x-ray film is of
18 sufficient quality to render an accurate reading under the ILO
19 System of classification and no quality 1 x-ray films are available,
20 then the necessary radiologic findings may be made with the quality
21 2 x-ray film which is the subject of the confirmation above. Also,
22 in a death case where no pathology is available, the necessary
23 radiologic findings may be made with a quality 2 x-ray film if a
24 quality 1 x-ray film is not available;

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

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

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

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

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

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

- 20 a. acute silicosis, which may occur after exposure to
21 very high levels of silica within a period of months
22 to five (5) years after the initial exposure,
23 b. accelerated silicosis, and
24 c. chronic silicosis.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 84 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 Pulmonary function testing required by this act must be
5 interpreted by a physician who is:

6 1. Licensed in this state or another state of the United
7 States; and

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

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 85 of Title 76, unless there is
13 created a duplication in numbering, reads as follows:

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

20 1. A report by a physician who is board-certified in pulmonary
21 medicine, occupational medicine, internal medicine, oncology, or
22 pathology at the time of issuing the relevant medical report
23 concluding:

24

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

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

- 23 a. the exposed person has been diagnosed with a
24 nonmalignant asbestos-related condition, and

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

6 (1) performed a physical examination of the exposed
7 person, or if the exposed person is deceased,
8 reviewed available records relating to the
9 exposed person's medical condition,

10 (2) took an occupational and exposure history from
11 the exposed person or from a person knowledgeable
12 about the alleged exposure or exposures that form
13 the basis of the action, and

14 (3) took a medical and smoking history that includes
15 a review of the exposed person's significant past
16 and present medical problems relevant to the
17 exposed person's impairment or disease,

18 c. sets out sufficient details of the exposed person's
19 occupational, exposure, medical, and smoking history
20 to form the basis for a medical diagnosis of an
21 asbestos-related condition and confirms that at least
22 fifteen (15) years have elapsed between the exposed
23 person's first exposure to asbestos and the date of
24 diagnosis,

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

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

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

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

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

19 g. (1) confirms that in cases described in subparagraph
20 d or f of this paragraph, the exposed person has
21 or had physical impairment rated at least Class 2
22 pursuant to the AMA Guides to the Evaluation of
23 Permanent Impairment (5th Edition) (dated
24 November 2000) demonstrating:

- 1 (a) forced vital capacity below the lower limit
2 of normal and FEV1/FVC ratio (using actual
3 values) at or above the lower limit of
4 normal, or
- 5 (b) total lung capacity, by plethysmography or
6 timed gas dilution, below the lower limit of
7 normal, or
- 8 (c) if the claimant's medical condition or
9 process prevents the pulmonary function test
10 from being performed or makes the results of
11 such test an unreliable indicator of
12 physical impairment, a board-certified
13 physician in pulmonary medicine,
14 occupational medicine, internal medicine,
15 oncology, or pathology, independent from the
16 physician providing the report required
17 herein, must provide a report which states
18 to a reasonable degree of medical certainty
19 that the claimant has a nonmalignant
20 asbestos-related condition causing physical
21 impairment equivalent to subdivision (a) or
22 (b) of this division and states the reasons
23 why the pulmonary function test would be an
24 unreliable indicator of physical impairment.

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

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

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

21 (i) forced vital capacity below the lower
22 limit of normal and total lung
23 capacity, by plethysmography, below the
24 lower limit of normal, or

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

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

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

22 i. is accompanied by the relevant radiologist's reports,
23 pulmonary function tests, including printouts of all
24 data, flow volume loops, and other information to the

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

10 B. The detailed occupational and exposure history required
11 herein must describe:

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

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

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

22 1. Must comply with the technical recommendations for
23 examinations, testing procedures, quality assurance, quality
24 controls, and equipment in the AMA's Guidelines to the Evaluation of

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

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

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

18 4. Shall not result in any presumption at trial that the
19 exposed person is impaired by an asbestos or silica-related
20 condition; and

21 5. Shall not be conclusive as to the liability of any
22 defendant.

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

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 86 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

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

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

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

17 2. Confirms that a physician actually treating or who treated
18 the exposed person, or who has or who had a doctor-patient
19 relationship with the exposed person or a medical professional
20 employed by and under the direct supervision and control of such
21 physician:

22 a. performed a physical examination of the exposed
23 person, or if the exposed person is deceased, reviewed
24

1 available records relating to the exposed person's
2 medical condition,

3 b. took a detailed occupational and exposure history from
4 the exposed person or, if the exposed person is
5 deceased, from a person knowledgeable about the
6 alleged exposure or exposures that form the basis of
7 the action, and

8 c. took a detailed medical and smoking history that
9 includes a thorough review of the exposed person's
10 significant past and present medical problems and the
11 most probable cause of any such problem that is
12 relevant to the exposed person's impairment or
13 disease.

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

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

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

23 2. Accompanied by:
24

- 1 a. a chest x-ray that is an ILO quality 1 film, except
2 that in the case of a deceased exposed individual
3 where no pathology is available, the film can be ILO
4 quality 2, showing bilateral nodular opacities (p, q,
5 or r) occurring primarily in the upper lung fields,
6 graded 1/1 or higher under the ILO system of
7 classification, or
- 8 b. a chest x-ray that is an ILO quality 1 film, except
9 that in the case of a deceased exposed individual
10 where no pathology is available, the film can be ILO
11 quality 2, showing large opacities (A, B, or C) in
12 addition to the small opacities referred to in the
13 preceding section, or
- 14 c. a chest x-ray that is an ILO quality 1 film showing
15 acute silicosis as described in Occupational Lung
16 Diseases, Third Edition, as amended from time to time,
17 or
- 18 d. pathological demonstration of classic silicotic
19 nodules exceeding one (1) centimeter in diameter as
20 published in 112 Archive of Pathology and Laboratory
21 Medicine 7 (July 1988), as amended from time to time,
22 or
- 23 e. pathological demonstration of acute silicosis.
24

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

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

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

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

13 (1) stating a diagnosis of silica-related lung cancer
14 based on a sufficient latency period which is not
15 less than fifteen (15) years and a statement that
16 to a reasonable degree of medical certainty
17 exposure to silica was a proximate cause of the
18 exposed person's physical impairment, accompanied
19 by a conclusion that the exposed person's silica-
20 related lung cancer was not more probably the
21 result of causes other than exposure to silica
22 revealed by the exposed person's occupational,
23 exposure, medical, and smoking history, or
24

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

15 2. Be accompanied by:

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

1 pathology is available, the film can be ILO quality 2,
2 showing large opacities (A, B, or C) in addition to
3 the small opacities referred to in subparagraph a of
4 this paragraph,

5 c. chest x-ray that is an ILO quality 1 film showing
6 acute silicosis as described in Occupational Lung
7 Diseases, Third Edition, as amended from time to time,

8 d. pathological demonstration of classic silicotic
9 nodules exceeding one (1) centimeter in diameter as
10 published in 112 Archive of Pathology and Laboratory
11 Medicine 7 (July 1988), as amended from time to time,
12 or

13 e. pathological demonstration of acute silicosis.

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

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

1 carbon monoxide uptake in the lung, and interpretive strategies of
2 lung testing in effect at the time of the performance of any
3 examination or test on the exposed person required by this act.
4 Testing performed in a hospital or other medical facility that is
5 fully licensed and accredited by all appropriate regulatory bodies
6 in the state in which the facility is located, is presumed to meet
7 the requirements of this subsection. This presumption may be
8 rebutted by evidence demonstrating that the accreditation or
9 licensing of the hospital or other medical facility has lapsed, or
10 providing specific facts demonstrating that the technical
11 recommendations for examinations, testing procedures, quality
12 assurance, quality control, and equipment have not been followed;

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

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

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

22 5. Shall not be conclusive as to the liability of any
23 defendant.

24

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

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 87 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

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

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

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

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 88 of Title 76, unless there is
23 created a duplication in numbering, reads as follows:

24

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

23 B. In any action covered by the provisions of this act in which
24 the exposed person has received a diagnosis of mesothelioma which

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

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 89 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

15 Nothing in this act is intended to, and nothing in this act
16 shall be interpreted to:

- 17 1. Affect the rights of any party in bankruptcy proceedings; or
- 18 2. Affect the ability of any person who is able to make a
19 showing that the person satisfies the claim criteria for compensable
20 claims or demands under a trust established under a plan of
21 reorganization under Chapter 11 of the United States Bankruptcy
22 Code, 11 U.S.C. Chapter 11, to make a claim or demand against that
23 trust.

24

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

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 91 of Title 76, unless there is
13 created a duplication in numbering, reads as follows:

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

21 B. An asbestos or silica claim arising out of a nonmalignant
22 condition shall be a distinct cause of action from an asbestos or
23 silica claim relating to the same exposed person arising out of
24 asbestos- or silica-related cancer, and resolution of an asbestos or

1 silica claim arising out of a nonmalignant condition shall not
2 affect the ability of the same exposed person to bring a separate
3 asbestos or silica claim arising out of an asbestos- or silica-
4 related cancer, that otherwise meets all the requirements of
5 Sections 6 or 7 of this act.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 92 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

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

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

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