

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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Asbestos and Silica Claims Priorities Act

Title __ of the [] Code is amended by adding Chapter __ to read as follows:

CHAPTER __. CLAIMS INVOLVING ASBESTOS OR SILICA EXPOSURE

SECTION 1. SHORT TITLE.

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

SECTION 2. FINDINGS AND PURPOSES.

(a) FINDINGS. - The legislature finds that-

- (1) Asbestos is a mineral that was widely used prior to the mid-1970's for insulation, fireproofing, and other purposes;
- (2) Many American workers were exposed to asbestos, especially during World War II;
- (3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as nonmalignant conditions, such as asbestosis, pleural plaques, and diffuse bilateral pleural thickening;
- (4) The United States Supreme Court has described asbestos litigation in this country as a "crisis";
- (5) Reports indicate that up to ninety percent of recent asbestos claims were filed by individuals with no demonstrable asbestos-related impairment. Lawyer-sponsored X-ray screenings of workers at occupational locations have been used to amass large numbers of unimpaired claimants;
- (6) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases; threatens the savings, retirement benefits, and jobs of current and retired employees; and adversely impacts affected communities;
- (7) Asbestos litigation has forced an estimated eighty-five employers into bankruptcy. The rate of asbestos-driven bankruptcies has accelerated in recent years. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior two decades;
- (8) Personal injury lawyers have responded to these bankruptcies by expanding their search for solvent defendants. The number of asbestos defendants now includes over 8,500 companies, including many small and medium size companies, in industries that cover eighty-five percent of the U.S. economy;
- (9) Efforts to address asbestos litigation may increase the number of silica-related filings;
- (10) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks;
- (11) Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago;
- (12) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies;
- (13) Silica screening processes have been found subject to substantial abuse and potential fraud in federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005));
- (14) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

condition;

(15) Sound public policy requires that the claims of persons with no present physical impairment caused by asbestos or silica exposure be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies;

(16) Trial consolidations, joinders, and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the court system, deny due process to plaintiffs and defendants, and further encourage the filing of cases by persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(b) PURPOSES.- The purposes of this Act are to-

(1) Give priority to current claimants who can demonstrate present physical impairment caused by asbestos or silica exposure based on reasonable, objective medical criteria;

(2) Toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) Enhance the ability of the courts to supervise and control asbestos and silica claims.

SECTION 3. DEFINITIONS.-

(a) As used in this Act, the term-

(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this Act.

(2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR 1910 at the time an asbestos claim is made.

(3) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation or ingestion of asbestos, including loss of consortium, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, the costs of medical monitoring or surveillance (to the extent such claims are recognized), or any claim made by or on behalf of any person exposed to asbestos or a representative, spouse, parent, child, or other relative of the exposed person. The term "asbestos claim" does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

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

(5) "Board-certified internist" means a qualified physician who is certified by the American Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required under this Act.

(6) "Board-certified occupational medicine specialist" means a qualified physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required under this Act.

(7) "Board-certified pathologist" means a qualified physician who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology, whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post-mortem specimens, and whose certification was current at the time of any slide or tissue examination and rendition of any report required under this Act.

(8) "Board-certified pulmonologist" means a qualified physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required under this Act.

(9) "Certified B-reader" means a person who has successfully passed the B-reader certification examination for X-ray interpretation sponsored by the National Institute for Occupational Safety and Health and whose certification was current at the time of any readings required under this Act.

(10) "Chest X-rays" means radiographic films taken the posterior-anterior view

and in accordance with all applicable state and federal standards.

(11) "Claimant" means any plaintiff asserting an asbestos or silica claim; if a claim is brought through or on behalf of an estate, the term includes the claimant's decedent; if a claim is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian.

(12) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) "Exposed person" means a person whose claimed exposure to respirable asbestos or respirable silica is the basis for an asbestos or silica claim.

(14) "FEV-1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

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

(16) "ILO scale" means the system for the classification of chest X-rays set forth in the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required under this Act.

(17) "Pathological evidence of asbestosis" means pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Vol. 106, No. 11, Appendix 3 (Oct. 8, 1982).

(18) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates-

(A) complicated silicosis with characteristic confluent silicotic lesions equal to or greater than one centimeter in the lung parenchyma and that there is no other more likely explanation for the presence of the fibrosis; or

(B) acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(19) "Predicted lower limit of normal" means the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(20) "Qualified physician" means a licensed, board-certified internist, occupational medicine specialist, pathologist or pulmonologist-

(A) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(B) who is treating or treated the exposed person and has or had a doctor-patient relationship with the exposed person at the time of the physical examination, or in the case of a board certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician;

(C) who receives or received payment for the diagnosis, examination, and treatment of the exposed person from that person or that person's health care plan, and such payment is not subject to reimbursement by or on behalf of anyone providing legal services to the claimant; and

(D) whose diagnosis, examination, testing, screening or treatment of the exposed person was not, directly or indirectly, premised upon and did not require the exposed person or claimant to retain the legal services of an attorney or law firm.

(21) "Radiological evidence of asbestosis" means an ILO quality 1 or 2 chest X-ray read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/1 or higher.

(22) "Radiological evidence of diffuse bilateral pleural thickening" means an ILO quality 1 or 2 chest X-ray read by a certified B-reader as showing, according to the ILO scale, diffuse bilateral pleural thickening graded b2 or higher including blunting of the costophrenic angle.

(23) "Radiological evidence of silicosis" means an ILO quality 1 or 2 chest X-ray read by a certified B-reader as showing, according to the ILO scale-

(A) bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields graded 1/1 or higher; or

(B) A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(C) acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(24) "Silica" means a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(25) "Silica Claim" means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including loss of consortium, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, the costs of medical monitoring or surveillance (to the extent such claims are recognized), or any claim made by or on behalf of any person exposed to silica, or a representative, spouse, parent, child, or other relative of the exposed person. The term "silica claim" does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(26) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis, or chronic silicosis caused by the inhalation of respirable silica.

(27) "Substantial contributing factor"- The term-

(A) in the context of an asbestos claim, means that-

(1) the claimant must identify the specific product or specific premises at issue; the location and duration of the alleged asbestos exposure; and the specific circumstances of such exposure;

(2) the exposure was more than incidental contact with the product and location, and took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(3) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(4) a qualified physician has determined with a reasonable degree of medical certainty that the exposed person's impairment would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that-

(1) the claimant must identify the specific product or specific premises at issue; the location and duration of such exposure; and the specific circumstances of such exposure;

(2) the exposure was more than incidental contact with the product and location, and took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(3) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(4) a qualified physician has determined with a reasonable degree of medical certainty that the exposed person's impairment would not have occurred but for the specific silica exposure.

(28) "Supporting test results" means copies of the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein) lung volume tests, reports of X-ray examinations, diagnostic imaging of the chest, pathology reports, and all other tests reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(29) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(30) "Veterans' benefits program" means a program for benefits in connection with military service administered by the Veterans' Administration under Title 38, United States Code.

(31) "Workers' compensation law"- The term-

(A) means a law respecting a program administered by a State or the United States to provide compensatory benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§

901 et seq.) and the Federal Employees' Compensation Act (chap. 81 of Title 5, United States Code); and

(C) does not include-

(i) the Act of April 22, 1908 commonly known as the Federal Employers' Liability Act (45 U.S.C. §§ 51 et seq.); or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative or any other person or entity against the employer of an exposed person arising out of or related to asbestos-related injury or silica-related injury.

SECTION 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) PRELIMINARY PROCEEDINGS.-

(1) QUALIFIED PHYSICIAN'S REPORT.- The claimant in any civil action alleging an asbestos or silica claim shall file together with the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the claimant meets the requirements of this Section. The written report shall be prepared by the diagnosing, qualified physician and shall not be prepared by a lawyer or person working for or on behalf of any lawyer or law firm.

(2) TIMING.- The claimant in any civil action alleging an asbestos or silica claim pending on the effective date of this Act shall file the written report and supporting test results described in paragraph (1) not later than 180 days after the effective date of this Act or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANT'S RIGHT TO CHALLENGE.- The defendant shall be afforded a reasonable opportunity to challenge the adequacy of the proffered prima facie evidence.

(4) DISMISSAL.- The claim shall be dismissed without prejudice upon a finding that the claimant has failed to make the required prima facie showing.

(b) NEW CLAIM REQUIRED INFORMATION.-

(1) IN GENERAL.- The claimant in any civil action alleging an asbestos or silica claim filed in this State on or after the effective date of this Act shall include a sworn information form containing all of the following-

(A) the name, address, date of birth, social security number, marital status, occupation, and employer of the claimant, the exposed person, and any person through which the claimant alleges exposure;

(B) the claimant's relationship to the exposed person or person through which the claimant alleges exposure;

(C) the specific location and manner of each alleged exposure, including for persons alleging exposure through another person, the specific premises at which such other person was exposed; the beginning and ending dates of each alleged exposure; and the identity of the manufacturer of the specific asbestos or silica product at issue;

(D) the identity of the defendant or defendants against whom the claimant asserts a claim;

(E) the specific asbestos-related or silica-related disease claimed to exist; and

(F) any supporting documentation relating to paragraphs (C) through (E).

(2) INDIVIDUAL REQUIREMENTS.- All asbestos claims and silica claims along with sworn information forms must be individually filed. No claims on behalf of a group or class of persons shall be permitted.

(c) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.-No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos-related condition in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following-

(1) evidence verifying that the diagnosing, qualified physician has taken a detailed occupational, exposure, medical, and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable regarding such history;

(2) evidence sufficient to demonstrate that at least 15 years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis;

(3) a determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed

person (or, if the exposed person is deceased, based upon the person's medical records) that the claimant has (or deceased person had) a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment;

(4) evidence verifying that the exposed person has asbestosis or diffuse bilateral pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening;

(5) evidence verifying that the exposed person has asbestos-related impairment, rather than chronic obstructive pulmonary disease, as demonstrated by pulmonary function testing showing that, at a minimum, the exposed person has-

(A) forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(B) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(6) verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure. A conclusion by the physician which states that the impairment is consistent with or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this paragraph.

(d) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OTHER THAN MESOTHELIOMA.- No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which exposure to asbestos was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following-

(1) evidence verifying that the diagnosing, qualified physician has taken a detailed occupational, exposure, medical, and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable regarding such history;

(2) evidence sufficient to demonstrate that at least 15 years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis;

(3) evidence verifying that the exposed person has asbestosis, based at a minimum on radiological or pathological evidence of asbestosis; and

(4) verification that the diagnosing, qualified physician has concluded that the claimant's cancer was not more probably the result of causes other than asbestos exposure. A conclusion by the physician which states that the cancer is consistent with or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this paragraph.

(e) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA.- No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma, and a report signed under oath by a qualified physician certifying that exposure to asbestos was a substantial contributing factor to the diagnosed mesothelioma and the mesothelioma was not more probably the result of causes other than asbestos exposure.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICOSIS CLAIMS.- No person shall bring or maintain a silica claim related to alleged silicosis in the absence of a prima facie showing of physical impairment as a result of a medical condition for which exposure to silica was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following-

(1) evidence verifying that the diagnosing, qualified physician has taken a detailed occupational, exposure, medical, and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable regarding such history;

(2) evidence verifying that the exposed person has silicosis, based at a minimum on radiological or pathological evidence of silicosis;

(3) evidence verifying there has been a sufficient latency period for the applicable type of silicosis;

(4) a determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person (or, if the exposed person is deceased, based upon the person's medical records) that the claimant has (or deceased person had) a permanent

respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment; and

(5) verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure. A conclusion by the physician which states that the impairment is consistent with or compatible with silica exposure or silica-related disease does not meet the requirements of this paragraph.

(g) **PRIMA FACIE EVIDENCE OF SILICA-RELATED CANCER.**-No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to silica was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following-

(1) evidence verifying that the diagnosing, qualified physician has taken a detailed occupational, exposure, medical, and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable regarding such history;

(2) evidence verifying that the exposed person has silicosis, based at a minimum on radiological or pathological evidence of silicosis;

(3) evidence sufficient to demonstrate that at least 15 years have elapsed between the exposed person's first exposure to silica and the date of diagnosis; and

(4) verification that the diagnosing, qualified physician has concluded that the claimant's cancer was not more probably the result of causes other than silica exposure. A conclusion by the physician which states that the cancer is consistent with or compatible with silica exposure or silica-related disease does not meet the requirements of this paragraph.

(h) **PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR OTHER SILICA-RELATED CLAIMS.**- No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than silicosis or silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition for which exposure to silica was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following-

(1) evidence verifying that the diagnosing, qualified physician has taken a detailed occupational, exposure, medical, and smoking history from the exposed person or, if that person is deceased, from a person who is knowledgeable regarding such history;

(2) evidence verifying that the exposed person is physically impaired as a result of a silica-related disease;

(3) evidence verifying there has been a sufficient latency period for the applicable type of alleged silica-related disease; and

(4) verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure. A conclusion by the physician which states that the impairment is consistent with or compatible with silica exposure or silica-related disease does not meet the requirements of this paragraph.

(i) **COMPLIANCE WITH TECHNICAL STANDARDS.**- Evidence relating to physical impairment under this Act, including pulmonary function testing and diffusing studies, shall-

(1) comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this Act;

(2) not be obtained and may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this State; and

(3) not be obtained under the condition that the claimant retains the legal services of the attorney or law firm sponsoring the examination, test, or screening.

SECTION 5. PROCEDURES.

(a) **NO PRESUMPTION AT TRIAL.**- Evidence relating to the prima facie showings required under this Act shall not create any presumption that the claimant has an asbestos or silica-related injury or impairment, and shall not be conclusive

as to the liability of any defendant.

(b) **ADMISSIBILITY OF EVIDENCE.**- No evidence shall be offered at trial, and the jury shall not be informed of-

(1) the grant or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act, or

(2) the provisions of this Act with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) **DISCOVERY.**- Until such time as the trial court enters an order determining that the claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) **CONSOLIDATION.**-

(1) A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos claims or silica claims relating to the exposed person and members of his or her household.

(2) No class action or any other form of mass aggregation claim filing relating to more than one exposed person, except claims relating to the exposed person and members of his or her household, shall be permitted for asbestos or silica claims.

(3) The provisions of this section do not preclude consolidation of cases by court order for pretrial or discovery purposes.

(e) **FORUM NON CONVENIENS.**-

(1) As to any asbestos or silica claim filed on or after the date of enactment of this Act, or that is pending on the date of enactment of this Act but that has not commenced trial or any new trial or retrial following motion, appeal, or otherwise with the presentation of evidence to the trier of fact prior to the date of enactment of this Act, if the court in which the asbestos or silica claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside this State, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court shall consider whether-

(A) an alternate forum exists in which the claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(E) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(2) A trial court may not abate or dismiss a claim under this paragraph until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States of the United States in which the claim was not barred by limitations at the time the claim was filed in this State as necessary to effect a tolling of the limitations periods in those States beginning on the date the action originally was filed and ending on the date the claim is dismissed or an abatement period of one year ends. The court may not abate or dismiss a claim under this paragraph until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff in another State of the United States, the claimant may elect that the claimant and the defendant may rely on responses to discovery already provided under the rules of civil procedure of this State, plus any additional discovery that may be conducted under the rules of civil procedure in another State, or use responses to discovery already provided and conduct additional discovery as permitted under the rules of civil procedure in the other State.

(f) **VENUE.**-

(1) An asbestos or silica claim filed after the effective date of this Act may be filed in this State only in the county where-

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit, or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(2) With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences with the presentation of evidence to the trier of fact on or after the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with subsection (1) shall be transferred within 90 days of the date of enactment of this Act to the court of general civil jurisdiction in the county in which either-

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed, or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

SECTION 6. STATUTE OF LIMITATIONS; TWO-DISEASE RULE.

(a) STATUTE OF LIMITATIONS.-

(1) With respect to an asbestos or silica claim not barred by limitations in this State as of this Act's effective date, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date-

(A) the exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) the exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) the date of death of the exposed person having an asbestos-related or silica-related impairment.

(2) Nothing in this Section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable state law as of the date this Act is enacted.

(3) Nothing in this Section shall be construed so as to adversely affect, impair, limit, modify or nullify any settlement or other agreements with respect to an asbestos or silica claim entered into prior to the date of enactment of this Act.

(b) **TWO-DISEASE RULE.-** An asbestos or silica claim arising out of a nonmalignant condition shall be a distinct cause of action from a claim for an asbestos-related or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SECTION 7. EFFECTIVE DATE.

This Act shall take effect on its date of enactment. The Act applies to all asbestos or silica claims filed on or after the effective date. This Act also applies to any pending asbestos or silica claims in which trial has not commenced as of the effective date.

SECTION 8. SEVERABILITY.

The provisions of this Act are severable. If any portion of this Act is declared unconstitutional or the application of any part of this Act to any person or circumstance is held invalid, the remaining portions of the Act and their applicability to any person or circumstance shall remain valid and enforceable.

*As ammended at the States and Nation Policy Summit, December 9, 2006.
Originally passed and approved 2003.*



Center for Media and Democracy's quick summary

This bill increases the burden on a person bringing a lawsuit alleging an asbestos-related injury, requiring that they provide specific evidence and detailed, narrative medical reports (see also Asbestos Claims Transparency Act).