

FIRST REGULAR SESSION

HOUSE BILL NO. 741

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BYRD .

Read 1st time March 9, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2024L.011

AN ACT

To amend chapter 537, RSMo, by adding thereto seven new sections relating to tort actions for asbestos claims.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto seven new sections, to be known as sections 537.900, 537.903, 537.906, 537.909, 537.912, 537.915, and 537.918, to read as follows:

537.900. As used in sections 537.900 to 537.918, the following terms mean:

- (1) "AMA guides to the evaluation of permanent impairment", the American Medical Association's Guides to the Evaluation of Permanent Impairment (fifth edition 2000) as may be modified by the American Medical Association;**
- (2) "Asbestos", chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered;**
- (3) "Asbestos claim", any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. Asbestos claim includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos;**
- (4) "Asbestosis", bilateral diffuse interstitial fibrosis of the lungs caused by**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **inhalation of asbestos fibers;**

17 (5) **"Board-certified internist", a physician who is currently certified by the**
18 **American Board of Internal Medicine;**

19 (6) **"Board-certified occupational medicine specialist", a physician who is currently**
20 **certified by the American Board of Preventive Medicine in the specialty of occupational**
21 **medicine;**

22 (7) **"Board-certified oncologist", a physician who is currently certified by the**
23 **American Board of Internal Medicine in the subspecialty of medical oncology;**

24 (8) **"Board-certified pathologist", a physician who is currently certified by the**
25 **American Board of Pathology;**

26 (9) **"Board-certified pulmonary specialist", a physician who is currently certified**
27 **by the American Board of Internal Medicine in the subspecialty of pulmonary medicine;**

28 (10) **"Certified B-reader", an individual qualified as a "final" or "B-reader" as**
29 **defined in 42 C.F.R. Section 37.51 (b), as amended;**

30 (11) **"Certified industrial hygienist", an industrial hygienist who has attained the**
31 **status of diplomate of the American Academy of Industrial Hygiene subject to compliance**
32 **with requirements established by the American Board of Industrial Hygiene;**

33 (12) **"Certified safety professional", a safety professional who has met and**
34 **continues to meet all requirements established by the Board of Certified Safety**
35 **Professionals (BCSP) and is authorized by the board to use the certified safety professional**
36 **title or the CSP designation;**

37 (13) **"Civil action", all suits or claims of a civil nature in a state or federal court,**
38 **whether cognizable as cases at law or in equity or admiralty. Civil action does not include**
39 **any of the following:**

40 (a) **A civil action relating to any workers' compensation law;**

41 (b) **A civil action alleging any claim or demand made against a trust established**
42 **under 11 U.S.C. Section 524(g);**

43 (c) **A civil action alleging any claim or demand made against a trust established**
44 **under a plan of reorganization confirmed under Chapter 11 of the United States**
45 **Bankruptcy Code;**

46 (14) **"Exposed person", any person whose exposure to asbestos or to asbestos-**
47 **containing products is the basis for an asbestos claim under section 537.903;**

48 (15) **"FEV1", forced expiratory volume in the first second, which is the maximal**
49 **volume of air expelled in one second during performance of simple spirometric tests;**

50 (16) **"FVC", forced vital capacity that is maximal volume of air expired with**
51 **maximum effort from a position of full inspiration;**

52 (17) **"ILO scale", the system for the classification of chest x-rays set forth in the**

53 **International Labour Office's Guidelines for the use of ILO international classification of**
54 **radiographs of pneumoconioses (2000), as amended;**

55 **(18) "Lung cancer", a malignant tumor in which the primary site of origin of the**
56 **cancer is inside the lungs, but that term does not include mesothelioma;**

57 **(19) "Mesothelioma", a malignant tumor with a primary site of origin in the pleura**
58 **or the peritoneum, which has been diagnosed by a board-certified pathologist using**
59 **standardized and accepted criteria of microscopic morphology and appropriate staining**
60 **techniques;**

61 **(20) "Nonmalignant condition", a condition that is caused or may be caused by**
62 **asbestos other than a diagnosed cancer;**

63 **(21) "Pathological evidence of asbestosis", a statement by a board-certified**
64 **pathologist that more than one representative section of lung tissue uninvolved with any**
65 **other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring**
66 **in the presence of characteristic asbestos bodies and that there is no other more likely**
67 **explanation for the presence of the fibrosis;**

68 **(22) "Physical impairment", a nonmalignant condition that meets the minimum**
69 **requirements specified in subsection 2 of section 537.903, lung cancer of an exposed person**
70 **who is a smoker that meets the minimum requirements specified in subsection 3 of section**
71 **537.903, or a condition of a deceased exposed person that meets the minimum requirements**
72 **specified in subsection 4 of section 537.903;**

73 **(23) "Plethysmography", a test for determining lung volume, also known as body**
74 **plethysmography, in which the subject of the test is enclosed in a chamber that is equipped**
75 **to measure pressure, flow, or volume changes;**

76 **(24) "Predicted lower limit of normal", the fifth percentile of healthy populations**
77 **based on age, height, and gender, as referenced in the AMA guides to the evaluation of**
78 **permanent impairment;**

79 **(25) "Premises owner", a person who owns, in whole or in part, leases, rents,**
80 **maintains, or controls privately owned lands, ways, or waters, or any buildings and**
81 **structures on those lands, ways, or waters, and all privately owned and state-owned lands,**
82 **ways, or waters leased to a private person, firm, or organization, including any buildings**
83 **and structures on those lands, ways, or waters;**

84 **(26) "Competent medical authority", a physician who is providing a diagnosis for**
85 **purposes of constituting prima facie evidence of an exposed person's physical impairment**
86 **that meets the requirements specified in section 537.903 and who meets the following**
87 **requirements:**

88 **(a) The physician is a board-certified internist, pulmonary specialist, oncologist,**
89 **pathologist, or occupational medicine specialist;**

90 **(b) The physician is actually treating or has treated the exposed person and has or**
91 **had a doctor-patient relationship with the person;**

92 (c) As the basis for the diagnosis, the physician has not relied, in whole or in part,
93 on any of the following:

94 a. The reports or opinions of any physician, clinic, laboratory, or testing company
95 that performed an examination, test, or screening of the claimant's medical condition in
96 violation of any law, regulation, licensing requirement, or medical code of practice of the
97 state in which such examination, test, or screening was conducted;

98 b. The reports or opinions of any physician, clinic, laboratory, or testing company
99 that performed an examination, test, or screening of the claimant's medical condition that
100 was conducted without clearly establishing a doctor-patient relationship with the claimant
101 or medical personnel involved in the examination, test, or screening process;

102 c. The reports or opinions of any physician, clinic, laboratory, or testing company
103 that performed an examination, test, or screening of the claimant's medical condition that
104 required the claimant to agree to retain the legal services of the law firm sponsoring the
105 examination, test, or screening;

106 (d) The physician spends not more than twenty-five percent of the physician's
107 professional practice time in providing consulting or expert services in connection with
108 actual or potential tort actions, and the physician's medical group, professional
109 corporation, clinic, or other affiliated group earns not more than twenty percent of its
110 revenues from providing such services;

111 (27) "Radiological evidence of asbestosis", a chest x-ray showing small, irregular
112 opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale;

113 (28) "Radiological evidence of diffuse pleural thickening", a chest x-ray showing
114 bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO scale
115 and blunting of at least one costophrenic angle;

116 (29) "Regular basis", on a frequent or recurring basis;

117 (30) "Smoker", a person who has smoked the equivalent of one-pack year, as
118 specified in the written report of a competent medical authority under sections 537.903 and
119 537.906, during the last fifteen years;

120 (31) "Spirometry", the measurement of volume of air inhaled or exhaled by the
121 lung;

122 (32) "Substantial contributing factor", both of the following:

123 (a) Exposure to asbestos is the predominate cause of the physical impairment
124 alleged in the asbestos claim;

125 (b) A competent medical authority has determined with a reasonable degree of
126 medical certainty that without the asbestos exposures the physical impairment of the
127 exposed person would not have occurred;

128 (33) "Substantial occupational exposure to asbestos", employment for a cumulative
129 period of at least five years in an industry and an occupation in which, for a substantial
130 portion of a normal work year for that occupation, the exposed person did any of the

131 following:

132 (a) Handled raw asbestos fibers;

133 (b) Fabricated asbestos-containing products so that the person was exposed to raw
134 asbestos fibers in the fabrication process;

135 (c) Altered, repaired, or otherwise worked with an asbestos-containing product in
136 a manner that exposed the person on a regular basis to asbestos fibers;

137 (d) Worked in close proximity to other workers engaged in any of the activities
138 described in paragraph (a), (b), or (c) of this subdivision in a manner that exposed the
139 person on a regular basis to asbestos fibers;

140 (34) "Timed gas dilution", a method for measuring total lung capacity in which the
141 subject breathes into a spirometer containing a known concentration of an inert and
142 insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the
143 lung is then compared to the concentration of that type of gas in the spirometer;

144 (35) "Tort action", a civil action for damages for injury, death, or loss to person.
145 Tort action includes a product liability claim that is subject to sections 537.760 to 537.765.
146 Tort action does not include a civil action for damages for a breach of contract or another
147 agreement between persons;

148 (36) "Total lung capacity", the volume of air contained in the lungs at the end of
149 a maximal inspiration;

150 (37) "Veterans' benefit program", any program for benefits in connection with
151 military service administered by the veterans' administration under Title 38 of the United
152 States Code;

153 (38) "Workers' compensation law", chapter 287, RSMo.

537.903. 1. For purposes of sections 537.903 to 537.912, "bodily injury caused by
2 exposure to asbestos" means physical impairment of the exposed person, to which the
3 person's exposure to asbestos is a substantial contributing factor.

4 2. No person shall bring or maintain a tort action alleging an asbestos claim based
5 on a nonmalignant condition in the absence of a prima facie showing, in the manner
6 described in subsection 1 of section 537.906, that the exposed person has a physical
7 impairment, that the physical impairment is a result of a medical condition, and that the
8 person's exposure to asbestos is a substantial contributing factor to the medical condition.
9 That prima facie showing shall include all of the following minimum requirements:

10 (1) Evidence verifying that a competent medical authority has taken a detailed
11 occupational and exposure history of the exposed person from the exposed person or, if
12 that person is deceased, from the person who is most knowledgeable about the exposures
13 that form the basis of the asbestos claim for a nonmalignant condition, including all of the
14 following:

15 (a) All of the exposed person's principal places of employment and exposures to
16 airborne contaminants;

17 (b) Whether each principal place of employment involved exposures to airborne
18 contaminants, including, but not limited to, asbestos fibers or other disease causing dusts,
19 that can cause pulmonary impairment and, if that type of exposure is involved, the general
20 nature, duration, and general level of the exposure;

21 (2) Evidence verifying that a competent medical authority has taken a detailed
22 medical and smoking history of the exposed person, including a thorough review of the
23 exposed person's past and present medical problems and the most probable causes of those
24 medical problems;

25 (3) A diagnosis by a competent medical authority, based on a medical examination
26 and pulmonary function testing of the exposed person, that all of the following apply to the
27 exposed person:

28 (a) The exposed person has a permanent respiratory impairment rating of at least
29 class 2 as defined by and evaluated under the AMA guides to the evaluation of permanent
30 impairment;

31 (b) Either of the following:

32 a. The exposed person has asbestosis or diffuse pleural thickening, based at a
33 minimum on radiological or pathological evidence of asbestosis or radiological evidence
34 of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in this
35 subparagraph, rather than solely chronic obstructive pulmonary disease, is a substantial
36 contributing factor to the exposed person's physical impairment, based at a minimum on
37 a determination that the exposed person has any of the following:

38 (i) A forced vital capacity below the predicted lower limit of normal and a ratio of
39 FEV 1 to FVC that is equal to or greater than the predicted lower limit of normal;

40 (ii) A total lung capacity, by plethysmography or timed gas dilution, below the
41 predicted lower limit of normal;

42 (iii) A chest x-ray showing small, irregular opacities (s, t) graded by a certified B-
43 reader at least 2/1 on the ILO scale;

44 b. If the exposed person has a chest x-ray showing small, irregular opacities (s, t)
45 graded by a certified B-reader as only a 1/0 on the ILO scale, then in order to establish that
46 the exposed person has asbestosis, rather than solely chronic obstructive pulmonary
47 disease, that is a substantial contributing factor to the exposed person's physical
48 impairment the plaintiff must establish that the exposed person has both of the following:

49 (i) A forced vital capacity below the predicted lower limit of normal and a ratio of
50 FEV 1 to FVC that is equal to or greater than the predicted lower limit of normal;

51 (ii) A total lung capacity, by plethysmography or timed gas dilution, below the
52 predicted lower limit of normal.

53 3. (1) No person shall bring or maintain a tort action alleging an asbestos claim
54 based upon lung cancer of an exposed person who is a smoker, in the absence of a prima
55 facie showing, in the manner described in subsection 1 of section 537.906, that the exposed

56 person has a physical impairment, that the physical impairment is a result of a medical
57 condition, and that the person's exposure to asbestos is a substantial contributing factor
58 to the medical condition. Such prima facie showing shall include all of the following
59 minimum requirements:

60 (a) A diagnosis by a competent medical authority that the exposed person has
61 primary lung cancer and that exposure to asbestos is a substantial contributing factor to
62 that cancer;

63 (b) Evidence that is sufficient to demonstrate that at least ten years have elapsed
64 from the date of the exposed person's first exposure to asbestos until the date of diagnosis
65 of the exposed person's primary lung cancer. The ten-year latency period described in this
66 paragraph is a rebuttable presumption, and the plaintiff has the burden of proof to rebut
67 the presumption;

68 (c) Either of the following:

69 a. Evidence of the exposed person's substantial occupational exposure to asbestos;

70 b. Evidence of the exposed person's exposure to asbestos at least equal to twenty-
71 five fiber per cc years as determined to a reasonable degree of scientific probability by a
72 scientifically valid retrospective exposure reconstruction conducted by a certified industrial
73 hygienist or certified safety professional based upon all reasonably available quantitative
74 air monitoring data and all other reasonably available information about the exposed
75 person's occupational history and history of exposure to asbestos;

76 (2) If a plaintiff files a tort action that alleges an asbestos claim based upon lung
77 cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to
78 asbestos was the result of living with another person who, if the tort action had been filed
79 by the other person, would have met the requirements specified in paragraph (c) of
80 subdivision (1) of this subsection, and alleges that the plaintiff lived with the other person
81 for the period of time specified in subdivision (33) of section 537.900, the plaintiff is
82 considered as having satisfied the requirements specified in paragraph (c) of subdivision
83 (1) of this subsection.

84 4. (1) No person shall bring or maintain a tort action alleging an asbestos claim
85 that is based upon a wrongful death, as described in section 537.080, of an exposed person
86 in the absence of a prima facie showing, in the manner described in subsection 1 of section
87 537.906, that the death of the exposed person was the result of a physical impairment, that
88 the death and physical impairment were a result of a medical condition, and that the
89 deceased person's exposure to asbestos was a substantial contributing factor to the medical
90 condition. Such prima facie showing shall include all of the following minimum
91 requirements:

92 (a) A diagnosis by a competent medical authority that exposure to asbestos was a
93 substantial contributing factor to the death of the exposed person;

94 (b) Evidence that is sufficient to demonstrate that at least ten years have elapsed

95 from the date of the deceased exposed person's first exposure to asbestos until the date of
96 diagnosis or death of the deceased exposed person. The ten-year latency period described
97 in this paragraph is a rebuttable presumption, and the plaintiff has the burden of proof
98 to rebut the presumption;

99 (c) Either of the following:

100 a. Evidence of the deceased exposed person's substantial occupational exposure to
101 asbestos;

102 b. Evidence of the deceased exposed person's exposure to asbestos at least equal to
103 twenty-five fiber per cc years as determined to a reasonable degree of scientific probability
104 by a scientifically valid retrospective exposure reconstruction conducted by a certified
105 industrial hygienist or certified safety professional based upon all reasonably available
106 quantitative air monitoring data and all other reasonably available information about the
107 deceased exposed person's occupational history and history of exposure to asbestos.

108 (2) If a person files a tort action that alleges an asbestos claim based on a wrongful
109 death, as described in section 537.080, of an exposed person, alleges that the death of the
110 exposed person was the result of living with another person who, if the tort action had been
111 filed by the other person, would have met the requirements specified in paragraph (c) of
112 subdivision (1) of this subsection, and alleges that the exposed person lived with the other
113 person for the period of time specified in subdivision (33) of section 537.900 in order to
114 qualify as a substantial occupational exposure to asbestos, the exposed person is considered
115 as having satisfied the requirements specified in paragraph (c) of subdivision (1) of this
116 subsection.

117 (3) No court shall require or permit the exhumation of a decedent for the purpose
118 of obtaining evidence to make, or to oppose, a prima facie showing required under
119 subdivision (1) or (2) of this subsection regarding a tort action of the type described in
120 subdivision (1) or (2) of this subsection.

121 5. No prima facie showing is required in a tort action alleging an asbestos claim
122 based upon mesothelioma.

123 6. Evidence relating to physical impairment under this section, including
124 pulmonary function testing and diffusing studies, shall comply with the technical
125 recommendations for examinations, testing procedures, quality assurance, quality control,
126 and equipment incorporated in the AMA guides to the evaluation of permanent
127 impairment and reported as set forth in 20 C.F.R. Part. 404, Subpart. P, App. 1, Part A,
128 Section 3.00 E. and F., and the interpretive standards set forth in the official statement of
129 the American Thoracic Society entitled "Lung Function Testing: Selection of Reference
130 Values and Interpretive Strategies" as published in American Review of Respiratory
131 Disease, 1991:144:1202-1218.

132 7. All of the following apply to the court's decision on the prima facie showing that
133 meets the requirements of subsection 2, 3 or 4 of this section:

- 134 (1) The court's decision does not result in any presumption at trial that the exposed
135 person has a physical impairment that is caused by an asbestos-related condition;
136 (2) The court's decision is not conclusive as to the liability of any defendant in the
137 case;
138 (3) The court's findings and decisions are not admissible at trial;
139 (4) If the trier of fact is a jury, the court shall not instruct the jury with respect to
140 the court's decision on the prima facie showing, and neither counsel for any party nor a
141 witness shall inform the jury or potential jurors of that showing.

537.906. 1. (1) The plaintiff in any tort action who alleges an asbestos claim shall
2 file, within thirty days after filing the complaint or other initial pleading, a written report
3 and supporting test results constituting prima facie evidence of the exposed person's
4 physical impairment that meets the minimum requirements specified in subsection 2, 3 or
5 4 of section 537.903, whichever is applicable. The defendant in the case shall be afforded
6 a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the
7 proffered prima facie evidence of the physical impairment for failure to comply with the
8 minimum requirements specified in subsection 2, 3, or 4 of section 537.903. The defendant
9 has one hundred twenty days from the date the specified type of prima facie evidence is
10 proffered to challenge the adequacy of that prima facie evidence. If the defendant makes
11 that challenge and uses a physician to do so, the physician shall meet the requirements
12 specified in paragraphs (a), (c), and (d) of subdivision (26) of section 537.900.

13 (2) With respect to any asbestos claim that is pending on August 28, 2005, the
14 plaintiff shall file the written report and supporting test results described in subdivision
15 (1) of this subsection within one hundred twenty days following August 28, 2005. Upon
16 motion and for good cause shown, the court may extend the one hundred twenty-day
17 period described in this subdivision.

18 (3) (a) For any cause of action that arises before August 28, 2005, the provisions
19 set forth in subsections 2, 3, and 4 of section 537.903 are to be applied unless the court that
20 has jurisdiction over the case finds both of the following:

21 a. A substantive right of a party to the case has been impaired;

22 b. That impairment is otherwise in violation of Article I, Section 13 of the Missouri
23 Constitution.

24 (b) If a finding under paragraph (a) of this subdivision is made by the court that
25 has jurisdiction over the case, then the court shall determine whether the plaintiff has
26 failed to provide sufficient evidence to support the plaintiff's cause of action or the right
27 to relief under the law that is in effect prior to August 28, 2005.

28 (c) If the court that has jurisdiction of the case finds that the plaintiff has failed to
29 provide sufficient evidence to support the plaintiff's cause of action or right to relief under
30 paragraph (b) of this subdivision, the court shall dismiss the plaintiff's claim without
31 prejudice. The court shall maintain its jurisdiction over any case that is dismissed under

32 **this paragraph. Any plaintiff whose case has been dismissed under this paragraph may**
33 **move to reinstate the plaintiff's case if the plaintiff provides sufficient evidence to support**
34 **the plaintiff's cause of action or the right to relief under the law that was in effect when the**
35 **plaintiff's cause of action arose.**

36 **2. If the defendant in an action challenges the adequacy of the prima facie evidence**
37 **of the exposed person's physical impairment as provided in subdivision (1) of subsection**
38 **1 of this section, the court shall determine from all of the evidence submitted whether the**
39 **proffered prima facie evidence meets the minimum requirements specified in subsection**
40 **2, 3, or 4 of section 537.903. The court shall resolve the issue of whether the plaintiff has**
41 **made the prima facie showing required by subsection 2, 3, or 4 of section 537.903 by**
42 **applying the standard for resolving a motion for summary judgment.**

43 **3. The court shall dismiss the plaintiff's claim without prejudice upon a finding of**
44 **failure to make the prima facie showing required by subsection 2, 3, or 4 of section 537.903.**
45 **The court shall maintain its jurisdiction over any case that is dismissed under this**
46 **subsection. Any plaintiff whose case has been dismissed under this subsection may move**
47 **to reinstate the plaintiff's case if the plaintiff makes a prima facie showing that meets the**
48 **minimum requirements specified in subsection 2, 3, or 4 of section 537.903.**

537.909. 1. Notwithstanding any other provision of law to the contrary, with
2 **respect to any asbestos claim based upon a nonmalignant condition that is not barred as**
3 **of August 28, 2005, the statute of limitations shall not begin to run until the exposed person**
4 **has a cause of action for bodily injury. An asbestos claim based upon a nonmalignant**
5 **condition that is filed before the cause of action for bodily injury arises is preserved for**
6 **purposes of the statute of limitations.**

7 **2. An asbestos claim that arises out of a nonmalignant condition shall be a distinct**
8 **cause of action from an asbestos claim relating to the same exposed person that arises out**
9 **of asbestos-related cancer. No damages shall be awarded for fear or risk of cancer in any**
10 **tort action asserting only an asbestos claim for a nonmalignant condition.**

11 **3. No settlement of an asbestos claim for a nonmalignant condition that is**
12 **concluded after August 28, 2005, shall require, as a condition of settlement, the release of**
13 **any future claim for asbestos-related cancer.**

537.912. 1. Nothing in sections 537.903 to 537.912 is intended to do or shall be
2 **interpreted to do either of the following:**

3 **(1) Affect the rights of any party in bankruptcy proceedings;**

4 **(2) Affect the ability of any person who is able to make a showing that the person**
5 **satisfies the claim criteria for compensable claims or demands under a trust established**
6 **under a plan of reorganization under Chapter 11 of the United States Bankruptcy Code,**
7 **11 U.S.C. Chapter 11, to make a claim or demand against that trust.**

8 **2. Sections 537.900 to 537.912 shall not affect the scope or operation of any**
9 **workers' compensation law or veterans' benefit program or the exclusive remedy of**

10 subrogation under the provisions of that law or program and shall not authorize any
11 lawsuit that is barred by any provision of any workers' compensation law.

12 **3. Except as provided in subsection 4 of section 537.903 and in other provisions that**
13 **relate to the application of subsection 4 of section 537.903 and the procedures and criteria**
14 **it contains, nothing in sections 537.903 to 537.912 is intended or shall be interpreted to**
15 **affect any wrongful death claim, as described in section 537.080.**

537.915. 1. If a plaintiff in a tort action alleges any injury or loss to person
2 **resulting from exposure to asbestos as a result of the tortious act of one or more**
3 **defendants, in order to maintain a cause of action against any of those defendants based**
4 **on that injury or loss, the plaintiff shall prove that the conduct of that particular defendant**
5 **was a substantial factor in causing the injury or loss on which the cause of action is based.**

6 **2. A plaintiff in a tort action who alleges any injury or loss to person resulting from**
7 **exposure to asbestos has the burden of proving that the plaintiff was exposed to asbestos**
8 **that was manufactured, supplied, installed, or used by the defendant in the action and that**
9 **the plaintiff's exposure to the defendant's asbestos was a substantial factor in causing the**
10 **plaintiff's injury or loss. In determining whether exposure to a particular defendant's**
11 **asbestos was a substantial factor in causing the plaintiff's injury or loss, the trier of fact**
12 **in the action shall consider, without limitation, all of the following:**

13 **(1) The manner in which the plaintiff was exposed to the defendant's asbestos;**

14 **(2) The proximity of the defendant's asbestos to the plaintiff when the exposure to**
15 **the defendant's asbestos occurred;**

16 **(3) The frequency and length of the plaintiff's exposure to the defendant's asbestos;**

17 **(4) Any factors that mitigated or enhanced the plaintiff's exposure to asbestos.**

18 **3. This section applies only to tort actions that allege any injury or loss to person**
19 **resulting from exposure to asbestos and that are brought on or after August 28, 2005.**

537.918. 1. A holder has no obligation to, and has no liability to, the covered entity
2 **or to any person with respect to any obligation or liability of the covered entity in an**
3 **asbestos claim under the doctrine of piercing the corporate veil unless the person seeking**
4 **to pierce the corporate veil demonstrates all of the following:**

5 **(1) The holder exerted such control over the covered entity that the covered entity**
6 **had no separate mind, will, or existence of its own;**

7 **(2) The holder caused the covered entity to be used for the purpose of perpetrating,**
8 **and the covered entity perpetrated, an actual fraud on the person seeking to pierce the**
9 **corporate veil primarily for the direct pecuniary benefit of the holder;**

10 **(3) The person seeking to pierce the corporate veil sustained an injury or unjust**
11 **loss as a direct result of the control described in subdivision (1) of this subsection and the**
12 **fraud described in subdivision (2) of this subsection.**

13 **2. A court shall not find that the holder exerted such control over the covered entity**
14 **that the covered entity did not have a separate mind, will, or existence of its own or to have**

15 caused the covered entity to be used for the purpose of perpetrating a fraud solely as a
16 result of any of the following actions, events, or relationships:

17 (1) The holder is an affiliate of the covered entity and provides legal, accounting,
18 treasury, cash management, human resources, administrative, or other similar services to
19 the covered entity, leases assets to the covered entity, or makes its employees available to
20 the covered entity;

21 (2) The holder loans funds to the covered entity or guarantees the obligations of the
22 covered entity;

23 (3) The officers and directors of the holder are also officers and directors of the
24 covered entity;

25 (4) The covered entity makes payments of dividends or other distributions to the
26 holder or repays loans owed to the holder;

27 (5) In the case of a covered entity that is a limited liability company, the holder or
28 its employees or agents serve as the manager of the covered entity.

29 3. The person seeking to pierce the corporate veil has the burden of proof on each
30 and every element of the person's claim and shall prove each element by a preponderance
31 of the evidence.

32 4. Any liability of the holder described in subsection 1 of this section for an
33 obligation or liability that is limited by subsection 1 of this section is exclusive and
34 preempts any other obligation or liability imposed upon that holder for that obligation or
35 liability under common law or otherwise.

36 5. This section is intended to codify the elements of the common law cause of action
37 for piercing the corporate veil and to abrogate the common law cause of action and
38 remedies relating to piercing the corporate veil in asbestos claims. Nothing in this section
39 shall be construed as creating a right or cause of action that did not exist under the
40 common law as it existed on August 28, 2005.

41 6. This section applies to all asbestos claims commenced on or after August 28,
42 2005, or commenced prior to and pending on August 28, 2005.

43 7. This section applies to all actions asserting the doctrine of piercing the corporate
44 veil brought against a holder if any of the following apply:

45 (1) The holder is an individual and resides in this state;

46 (2) The holder is a corporation organized under the laws of this state;

47 (3) The holder is a corporation with its principal place of business in this state;

48 (4) The holder is a foreign corporation that is authorized to conduct or has
49 conducted business in this state;

50 (5) The holder is a foreign corporation whose parent corporation is authorized to
51 conduct business in this state;

52 (6) The person seeking to pierce the corporate veil is a resident of this state.

53 8. As used in this section, unless the context otherwise requires, the following terms

54 **mean:**

55 (1) "Affiliate", a person that directly, or indirectly through one or more
56 intermediaries, controls, is controlled by, is under common control with, or acts in concert
57 with a specified person;

58 (2) "Asbestos", the same meaning as such term is defined in section 537.900;

59 (3) "Asbestos claim", any claim, wherever or whenever made, for damages, losses,
60 indemnification, contribution, or other relief arising out of, based on, or in any way related
61 to asbestos. Asbestos claim includes any of the following:

62 (a) A claim made by or on behalf of any person who has been exposed to asbestos,
63 or any representative, spouse, parent, child, or other relative of that person, for injury,
64 including mental or emotional injury, death, or loss to person, risk of disease or other
65 injury, costs of medical monitoring or surveillance, or any other effects on the person's
66 health that are caused by the person's exposure to asbestos;

67 (b) A claim for damage or loss to property that is caused by the installation,
68 presence, or removal of asbestos;

69 (4) "Beneficial owner", of shares is a person who, with respect to particular shares,
70 meets any of the following conditions:

71 (a) The person directly or indirectly, alone or with others, including affiliates or
72 associates of such person, beneficially owns the shares;

73 (b) The person directly or indirectly, alone or with others, including affiliates or
74 associates of such person, has the right, whether exercisable immediately or only after the
75 passage of time, conditionally, unconditionally, or otherwise, to acquire the shares under
76 a written or unwritten agreement, arrangement, or understanding, or upon the exercise
77 of conversion rights, exchange rights, warrants, calls, options, or otherwise;

78 (c) The person directly or indirectly, alone or with others, including affiliates or
79 associates of such person, has the right to vote or direct the voting of the shares under a
80 written or unwritten agreement, arrangement, or understanding;

81 (d) The person has a written or unwritten agreement, arrangement, or
82 understanding with another person who is directly or indirectly a beneficial owner, or
83 whose affiliates or associates are direct or indirect beneficial owners, of the shares, if the
84 agreement, arrangement, or understanding is for the purpose of the first person's or the
85 other person's acquiring, holding, disposing of, voting, or directing the voting of the shares
86 to or for the benefit of the first person. A bank, broker, nominee, trustee, or other person
87 who acquires shares for the benefit of others in the ordinary course of business in good
88 faith shall, however, be deemed to be the beneficial owner only of shares in respect of
89 which such person, without further instruction from others, holds voting power;

90 (5) "Corporation", a corporation for profit, including the following:

91 (a) A domestic corporation that is organized under the laws of this state;

92 (b) A foreign corporation that is organized under laws other than the laws of this

93 state and that has had a certificate of authority to transact business in this state or has
94 done business in this state;

95 (6) "Covered entity", a corporation, limited liability company, limited partnership,
96 or any other entity organized under the laws of any jurisdiction, domestic or foreign, in
97 which the shareholders, owners, or members are generally not responsible for the debts
98 and obligations of the entity. Nothing in this section limits or otherwise affects the
99 liabilities imposed on a general partner of a limited partnership;

100 (7) "Holder", a person who is the holder or beneficial owner of, or subscriber to,
101 shares or any other ownership interest of a covered entity, a member of a covered entity,
102 or an affiliate of any person who is the holder or beneficial owner of, or subscriber to,
103 shares or any other ownership interest of a covered entity;

104 (8) "Piercing the corporate veil", any and all common law doctrines by which a
105 holder may be liable for an obligation or liability of a covered entity on the basis that the
106 holder controlled the covered entity, the holder is or was the alter ego of the covered entity,
107 or the covered entity has been used for the purpose of actual or constructive fraud or as
108 a sham to perpetrate a fraud or any other common law doctrine by which the covered
109 entity is disregarded for purposes of imposing liability on a holder for the debts or
110 obligations of that covered entity;

111 (9) "Person", includes, without limitation, a natural person, corporation, whether
112 nonprofit or for profit, partnership, limited liability company, unincorporated society or
113 association, and two or more persons having a joint or common interest.