

SECOND REGULAR SESSION

HOUSE BILL NO. 2365

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time March 6, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5471L.01I

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to the asbestos and silica claims priorities act.

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

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

537.900. Sections 537.900 to 537.915 shall be known and may be cited as the "Asbestos and Silica Claims Priorities Act".

537.903. 1. As used in sections 537.900 to 537.915, the following terms shall mean:
(1) "AMA Guides to the Evaluation of Permanent Impairment", 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 sections 537.900 to 537.915;

(2) "Asbestos", 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", 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

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.

13 alleged health effects associated with the inhalation or ingestion of asbestos, including loss
14 of consortium, personal injury or death, mental or emotional injury, risk or fear of disease
15 or other injury, the costs of medical monitoring or surveillance (to the extent such claims
16 are recognized), or any claim made by or on behalf of any person exposed to asbestos or
17 a representative, spouse, parent, child, or other relative of the exposed person, the term
18 "asbestos claim" does not include a claim for compensatory benefits pursuant to a
19 workers' compensation law or a veterans' benefits program;

20 (4) "Asbestosis", bilateral diffuse interstitial fibrosis of the lungs caused by
21 inhalation of asbestos;

22 (5) "Board-certified internist", a qualified physician who is certified by the
23 American Board of Internal Medicine and whose certification was current at the time of
24 the performance of any examination and rendition of any report required under sections
25 537.900 to 537.915;

26 (6) "Board-certified occupational medicine specialist", a qualified physician who
27 is certified in the subspecialty of occupational medicine by the American Board of
28 Preventive Medicine and whose certification was current at the time of the performance
29 of any examination and rendition of any report required under sections 537.900 to 537.915;

30 (7) "Board-certified pathologist", a qualified physician who holds primary
31 certification in anatomic pathology or combined anatomic or clinical pathology from the
32 American Board of Pathology, whose professional practice is principally in the field of
33 pathology and involves regular evaluation of pathology materials obtained from surgical
34 or post-mortem specimens, and whose certification was current at the time of any slide or
35 tissue examination and rendition of any report required under sections 537.900 to 537.915;

36 (8) "Board-certified pulmonologist", a qualified physician who is certified in the
37 subspecialty of pulmonary medicine by the American Board of Internal Medicine and
38 whose certification was current at the time of the performance of any examination and
39 rendition of any report required under sections 537.900 to 537.915;

40 (9) "Certified B-reader", a person who has successfully passed the B-reader
41 certification examination for X-ray interpretation sponsored by the National Institute for
42 Occupational Safety and Health and whose certification was current at the time of any
43 readings required under sections 537.900 to 537.915;

44 (10) "Chest X-rays", radiographic films taken of the posterior-anterior view and
45 in accordance with all applicable state and federal standards;

46 (11) "Claimant", any plaintiff asserting an asbestos or silica claim; if a claim is
47 brought through or on behalf of an estate, the term includes the claimant's decedent; if a

48 claim is brought through or on behalf of a minor or incompetent, the term includes the
49 claimant's parent or guardian;

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

53 (13) "Exposed person", a person whose claimed exposure to respirable asbestos or
54 respirable silica is the basis for an asbestos or silica claim;

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

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

59 (16) "ILO scale", the system for the classification of chest X-rays set forth in the
60 International Labor Office's Guidelines for the Use of ILO International Classification of
61 Radiographs of Pneumoconioses in effect at the time of the performance of any
62 examination or test on the exposed person required under sections 537.900 to 537.915;

63 (17) "Pathological evidence of asbestosis", pathological asbestosis graded 1(B) or
64 higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of
65 the Archives of Pathological and Laboratory Medicine. Vol. 106, No. 11. Appendix 3 (Oct.
66 8, 1982);

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

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

73 (b) Acute silicosis with characteristic pulmonary edema, interstitial inflammation,
74 and the accumulation within the alveoli of proteinaceous fluid rich in surfactant;

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

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

82 (a) Who has personally conducted a physical examination of the exposed person,
83 or in the case of a board-certified pathologist, has examined tissue samples or pathological

84 slides of the exposed person, or if the exposed person is deceased, based upon a detailed
85 review of the medical records and existing tissue samples and pathological slides of the
86 deceased person;

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

91 (c) Who receives or received payment for the diagnosis, examination, and treatment
92 of the exposed person from the exposed person or the exposed person's health care plan,
93 and such payment is not subject to reimbursement by or on behalf of anyone providing
94 legal service to the claimant; and

95 (d) Whose diagnosis, examination, testing, screening, or treatment of the exposed
96 person was not, directly or indirectly, premised upon and did not require the exposed
97 person or claimant to retain the legal services of an attorney or law firm;

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

101 (22) "Radiological evidence of diffuse bilateral pleural thickening", an ILO quality
102 1 or 2 chest X-ray read by a certified B-reader as showing, according to the ILO scale,
103 diffuse bilateral pleural thickening graded b2 or higher including blunting of the
104 costophrenic angle;

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

107 (a) Bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the
108 upper lung fields graded 1/1 or higher; or

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

111 (c) Acute silicosis with characteristic pulmonary edema, interstitial inflammation,
112 and the accumulation within the alveoli of proteinaceous fluid rich in surfactant;

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

115 (25) "Silica claim", any claim for damages, losses, indemnification, contribution,
116 or other relief of whatever nature arising out of, based on, or in any way related to the
117 alleged health effects associated with the inhalation of silica, including loss of consortium,
118 personal injury or death, mental or emotional injury, risk or fear of disease or other
119 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", simple silicosis, acute silicosis, accelerated silicosis, or chronic silicosis caused by the inhalation of respirable silica;

(27) "Supporting test results", 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;

(28) "Total lung capacity", the volume of gas contained in the lungs at the end of a maximal inspiration;

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

(30) "Workers' compensation law":

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

(c) Does not include:

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

b. 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.

537.906. 1. The claimant in any civil action alleging an asbestos or silica claim filed in this state on or after the effective date of sections 537.900 to 537.915 shall file together with the complaint or other initial pleading a narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting

5 prima facie evidence that the claimant meets the requirements of this section. The written
6 report shall be prepared by the diagnosing qualified physician and shall not be prepared
7 by a lawyer or person working for or on behalf of any lawyer or law firm. The defendant
8 shall be afforded a reasonable opportunity to challenge the adequacy of the proffered
9 prima facie evidence. The claim shall be dismissed without prejudice upon a finding that
10 the claimant has failed to make the required prima facie showing.

11 2. The claimant in any civil action alleging an asbestos or silica claim filed in this
12 state on or after the effective date of sections 537.900 to 537.915 shall include a sworn
13 information form containing all of the following:

14 (1) The name, address, date of birth, Social Security number, marital status,
15 occupation, and employer of the claimant, the exposed person, and any person through
16 which the claimant alleges exposure;

17 (2) The claimant's relationship to the exposed person or person through which the
18 claimant alleges exposure;

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

23 (4) The identity of the defendant or defendants against whom the claimant asserts
24 a claim;

25 (5) The specific asbestos-related or silica-related disease claimed to exist;

26 (6) Information as to any lawsuits filed or claims made by or on behalf of the
27 claimant and exposed person, including any claims made against bankruptcy trusts, and
28 information as to the case caption, docket number, identification of the court or
29 bankruptcy trust in which the claim is or was pending, and a description of the status of
30 the case or claim; and

31 (7) Any supporting documentation relating to subdivisions (3) to (6) of this
32 subsection.

33 3. All asbestos claims and silica claims along with sworn information forms must
34 be individually filed. No claims on behalf of a group or class of persons shall be permitted.

35 4. No person shall bring or maintain an asbestos claim related to an alleged
36 nonmalignant asbestos-related condition in the absence of prima facie evidence that the
37 exposed person has a physical impairment for which asbestos exposure was a substantial
38 factor. The prima facie showing shall be made as to each defendant and include a detailed
39 narrative medical report and diagnosis signed by a qualified physician that includes all of
40 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 fifteen 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 subdivision.

5. 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 factor. The prima facie showing shall be made as to each defendant and include a narrative medical report and diagnosis signed 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 fifteen years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis;

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

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

84 6. No prima facie showing is required to bring or maintain an asbestos claim
85 related to alleged mesothelioma.

86 7. No person shall bring or maintain a silica claim related to alleged silicosis in the
87 absence of a prima facie showing of physical impairment as a result of a medical condition
88 for which exposure to silica was a substantial factor. The prima facie showing shall be
89 made as to each defendant and include a detailed narrative medical report and diagnosis
90 signed by a qualified physician that includes all of the following:

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

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

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

98 (4) A determination by the diagnosing, qualified physician, on the basis of a
99 personal medical examination and pulmonary function testing of the exposed person (or,
100 if the exposed person is deceased, based upon the person's medical records) that the
101 claimant has (or deceased person had) a permanent respiratory impairment rating of at
102 least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation
103 of Permanent Impairment; and

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

109 8. No person shall bring or maintain a silica claim related to an alleged silica-
110 related cancer in the absence of a prima facie showing of a primary cancer for which
111 exposure to silica was a substantial factor. The prima facie showing shall be made as to

each defendant and include a narrative medical report and diagnosis signed 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 fifteen 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 subdivision.

9. 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 factor. The prima facie showing shall be made as to each defendant and include a narrative medical report and diagnosis signed by a qualified physician that includes all of the following:

(1) Evidence verifying that the diagnosing, qualified physician has taken an 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 subdivision.

10. Evidence relating to physical impairment under sections 537.900 to 537.915, 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

148 Impairment and all standards set forth in the Official Statements of the American Thoracic
149 Society which are in effect on the date of any examination or pulmonary function testing
150 of the exposed person required by sections 537.900 to 537.915;

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

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

537.909. 1. Evidence relating to the prima facie showings required under sections
2 537.900 to 537.915 shall not create any presumption that the claimant has an asbestos or
3 silica-related injury or impairment, and shall not be conclusive as to the liability of any
4 defendant.

5 2. No evidence shall be offered at trial, and the jury shall not be informed of:

6 (1) The grant or denial of a motion to dismiss an asbestos or silica claim under the
7 provisions of sections 537.900 to 537.915; or

8 (2) The provisions of sections 537.900 to 537.915 with respect to what constitutes
9 a prima facie showing of asbestos or silica-related impairment.

10 3. Until such time as the trial court enters an order determining that the claimant
11 has established prima facie evidence of impairment, no asbestos or silica claim shall be
12 subject to discovery, except discovery related to establishing or challenging the prima facie
13 evidence or by order of the trial court upon motion of one of the parties and for good cause
14 shown.

15 4. (1) A court may consolidate for trial any number and type of asbestos or silica
16 claims with the consent of all the parties. In the absence of such consent, the court may
17 consolidate for trial only asbestos claims or silica claims relating to the exposed person and
18 members of his or her household.

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

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

537.912. 1. (1) As of the effective date of sections 537.900 to 537.915, a claimant's
2 cause of action shall not accrue, nor shall the running of limitations commence, prior to the
3 earlier of the date:

4 (a) The exposed person received a medical diagnosis of an asbestos-related
5 impairment or silica-related impairment;

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

9 (c) The date of death of the exposed person having an asbestos-related or silica-
10 related impairment.

11 (2) Nothing in this section shall be construed to revive or extend limitations with
12 respect to any claim for asbestos-related impairment or silica-related impairment that was
13 otherwise time-barred as a matter of applicable state law as of the date sections 537.900 to
14 537.915 is enacted.

15 (3) Nothing in this section shall be construed so as to adversely affect, impair, limit,
16 modify or nullify any settlement or other agreements with respect to an asbestos or silica
17 claim entered into prior to the date of enactment of sections 537.900 to 537.915.

18 2. An asbestos or silica claim arising out of a nonmalignant condition shall be a
19 distinct cause of action from a claim for an asbestos-related or silica-related cancer. Where
20 otherwise permitted under state law, no damages shall be awarded for fear or increased
21 risk of future disease in any civil action asserting an asbestos or silica claim.

 537.915. Sections 537.900 to 537.915 shall take effect on its date of enactment and
2 shall apply to all asbestos or silica claims filed on or after the effective date.

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