

Asbestos Tort Reform

This Act establishes minimum medical requirements for filing certain asbestos claims. It specifies a plaintiff's burden of proof in tort actions involving exposure to asbestos and establishes premises liability in relation to asbestos claims. This draft Act also prescribes the requirements for shareholder liability for asbestos claims under the doctrine of piercing the corporate veil.

Submitted as:

Ohio

[Substitute House Bill 292](#)

Status: Enacted into law in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Asbestos
2 Claims.”

3
4 Section 2. [*Legislative Findings and Intent.*]

5 (A) The [General Assembly] makes the following statement of findings and intent:

6 (1) Asbestos claims have created an increased amount of litigation in state and
7 federal courts that the United States Supreme Court has characterized as “an elephant mass”
8 of cases.

9 (2) The current asbestos personal injury litigation system is unfair and
10 inefficient, imposing a severe burden on litigants and taxpayers alike. A recent RAND study
11 estimates that a total of fifty-four billion dollars have already been spent on asbestos
12 litigation and the costs continue to mount. Compensation for asbestos claims has risen
13 sharply since 1993. The typical claimant in an asbestos lawsuit now names sixty to seventy
14 defendants, compared with an average of twenty named defendants two decades ago. The
15 RAND Report also suggests that at best, only one-half of all claimants have come forward
16 and at worst, only one-fifth have filed claims to date. Estimates of the total cost of all claims
17 range from two hundred to two hundred sixty-five billion dollars. Tragically, plaintiffs are
18 receiving less than forty-three cents on every dollar awarded, and sixty-five per cent of the
19 compensation paid, thus far, has gone to claimants who are not sick.

20 (3) The extraordinary volume of nonmalignant asbestos cases continue to
21 strain federal and state courts.

22 (a) Today, it is estimated that there are more than two hundred
23 thousand active asbestos cases in courts nationwide. According to a recent RAND study,
24 over six hundred thousand people have filed asbestos claims for asbestos-related personal
25 injuries through the end of 2000.

26 (4) Nationally, asbestos personal injury litigation has already contributed to
27 the bankruptcy of more than seventy companies, including nearly all manufacturers of
28 asbestos textile and insulation products, and the ratio of asbestos-driven bankruptcies is
29 accelerating.

30 (a) As stated by Linda Woggon, Vice President of Governmental
31 Affairs of the Ohio Chamber of Commerce, a recent RAND study found that during the first
32 ten months of 2002, fifteen companies facing significant asbestos-related liabilities filed for
33 bankruptcy and more than sixty thousand jobs have been lost because of these bankruptcies.
34 The RAND study estimates that the eventual cost of asbestos litigation could reach as high as
35 four hundred twenty-three thousand jobs.

36 (b) Joseph Stiglitz, Nobel award-winning economist, in “The Impact
37 of Asbestos Liabilities on Workers in Bankrupt Firms,” calculated that bankruptcies caused
38 by asbestos have already resulted in the loss of up to sixty thousand jobs and that each
39 displaced worker in the bankrupt companies will lose, on average, an estimated twenty-five
40 thousand to fifty thousand dollars in wages over the worker’s career, and at least a quarter of
41 the accumulated pension benefits.

42 (5) The [General Assembly] recognizes that the vast majority of asbestos
43 claims [in this state] are filed by people who allege they have been exposed to asbestos and
44 who have some physical sign of exposure to asbestos, but who do not suffer from an
45 asbestos-related impairment. Eighty-nine per cent of asbestos claims come from people who
46 do not have cancer. Sixty-six to ninety per cent of these non-cancer claimants are not sick.
47 According to a Tillinghast-Towers Perrin study, ninety-four per cent of the fifty-two
48 thousand nine hundred asbestos claims filed in 2000 concerned claimants who are not sick.
49 As a result, the [General Assembly] recognizes that reasonable medical criteria are a
50 necessary response to the asbestos litigation crisis in this state. Medical criteria will expedite
51 the resolution of claims brought by those sick claimants and will ensure that resources are
52 available for those who are currently suffering from asbestos-related illnesses and for those
53 who may become sick in the future.

54 (6) The cost of compensating exposed individuals who are not sick
55 jeopardizes the ability of defendants to compensate people with cancer and other serious
56 asbestos-related diseases, now and in the future; threatens savings, retirement benefits, and
57 jobs of the state’s current and retired employees; adversely affects the communities in which
58 these defendants operate; and impairs this state’s economy.

59 (7) The public interest requires the deferring of claims of exposed individuals
60 who are not sick in order to preserve, now and for the future, defendants’ ability to
61 compensate people who develop cancer and other serious asbestos-related injuries and to
62 safeguard the jobs, benefits, and savings of the state’s employees and the well being of the
63 [state’s] economy.

64 (B) In enacting sections 3 through 10 of this Act, it is the intent of the [General
65 Assembly] to:

66 (1) give priority to those asbestos claimants who can demonstrate actual
67 physical harm or illness caused by exposure to asbestos;

68 (2) fully preserve the rights of claimants who were exposed to asbestos to
69 pursue compensation should those claimants become impaired in the future as a result of
70 such exposure;

71 (3) enhance the ability of the state’s judicial systems and federal judicial
72 systems to supervise and control litigation and asbestos-related bankruptcy proceedings; and

73 (4) conserve the scarce resources of the defendants to allow compensation of
74 cancer victims and others who are physically impaired by exposure to asbestos while
75 securing the right to similar compensation for those who may suffer physical impairment in
76 the future.

77 (C) The [General Assembly] hereby requests the [state Supreme Court] to adopt rules
78 to specify procedures for venue and consolidation of asbestos claims brought pursuant to this
79 Act.

80 (D) With respect to procedures for venue in regard to asbestos claims, the [General
81 Assembly] hereby requests the [state Supreme Court] to adopt a rule that requires that an
82 asbestos claim meet specific nexus requirements, including the requirement that the plaintiff
83 be domiciled in [this state] or that [insert state] is the state in which the plaintiff's exposure to
84 asbestos is a substantial contributing factor.

85 (E) With respect to procedures for consolidation of asbestos claims, the [General
86 Assembly] hereby requests the [state Supreme Court] to adopt a rule that permits
87 consolidation of asbestos claims only with the consent of all parties, and in absence of that
88 consent, permits a court to consolidate for trial only those asbestos claims that relate to the
89 same exposed person and members of the exposed person's household.

90 (F) It is the intent of the [General Assembly] in enacting section 9 of this Act to
91 establish specific factors to be considered when determining whether a particular plaintiff's
92 exposure to a particular defendant's asbestos was a substantial factor in causing the
93 plaintiff's injury or loss. The consideration of these factors involving the plaintiff's proximity
94 to the asbestos exposure, frequency of the exposure, or regularity of the exposure in tort
95 actions involving exposure to asbestos is consistent with the factors listed by the court in
96 *Lohrmann v. Pittsburgh Corning Cor.* (4th Cir. 1986), 782 F.2d 1156. The [General
97 Assembly] by its enactment of those factors intends to clarify and define for judges and juries
98 that evidence which is relevant to the common law requirement that plaintiff must prove
99 proximate causation. The [General Assembly] also recognizes that the courts [of this state]
100 generally followed the rationale of the *Lohrmann* decision in determining whether plaintiff
101 had submitted any evidence that a particular defendant's product was a substantial cause of
102 the plaintiff's injury in tort actions involving exposure to certain hazardous or toxic
103 substances, and that the *Lohrmann* factors were of great assistance to the trial courts in the
104 consideration of summary judgment motions and to juries when deciding issues of proximate
105 causation. The [General Assembly] further recognizes that a large number of states have
106 adopted this standard. It has also held hearings where medical evidence has been submitted
107 indicating such a standard is medically appropriate and is scientifically sound public policy.
108 The *Lohrmann* standard provides litigants, juries, and the courts of [this state] an objective
109 and easily applied standard for determining whether a plaintiff has submitted evidence
110 sufficient to sustain plaintiff's burden of proof as to proximate causation. Where specific
111 evidence of frequency of exposure, proximity and length of exposure to a particular
112 defendant's asbestos is lacking, summary judgment is appropriate in tort actions involving
113 asbestos because such a plaintiff lacks any evidence of an essential element necessary to
114 prevail. To submit a legal concept such as a "substantial factor" to a jury in these complex
115 cases without such scientifically valid defining factors would be to invite speculation on the
116 part of juries, something that the [General Assembly] has determined not to be in the best
117 interests of [this state] and its courts.

118 (G) The [General Assembly] hereby requests the [state Supreme Court] to collect data
119 regarding the number of awards made pursuant to [insert citation] to parties to civil actions in
120 the courts of common pleas who were adversely affected by frivolous conduct as defined in
121 [insert citation] or by the bringing of a civil action for which there was not a reasonable good
122 faith basis.

123
124 Section 3. [Definitions.] As used in sections 3 through 9 of this Act:

125 (A) “AMA Guides to the Evaluation of Permanent Impairment” means the American
126 Medical Association’s Guides to the Evaluation of Permanent Impairment (fifth edition
127 2000) as may be modified by the American Medical Association.

128 (B) “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos,
129 anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been
130 chemically treated or altered.

131 (C) “Asbestos claim” means any claim for damages, losses, indemnification,
132 contribution, or other relief arising out of, based on, or in any way related to asbestos.
133 “Asbestos claim” includes a claim made by or on behalf of any person who has been exposed
134 to asbestos, or any representative, spouse, parent, child, or other relative of that person, for
135 injury, including mental or emotional injury, death, or loss to person, risk of disease or other
136 injury, costs of medical monitoring or surveillance, or any other effects on the person’s
137 health that are caused by the person’s exposure to asbestos.

138 (D) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by
139 inhalation of asbestos fibers.

140 (E) “Board-certified internist” means a medical doctor who is currently certified by
141 the American Board of Internal Medicine.

142 (F) “Board-certified occupational medicine specialist” means a medical doctor who
143 is currently certified by the American Board of Preventive Medicine in the specialty of
144 occupational medicine.

145 (G) “Board-certified oncologist” means a medical doctor who is currently certified by
146 the American Board of Internal Medicine in the subspecialty of medical oncology.

147 (H) “Board-certified pathologist” means a medical doctor who is currently certified
148 by the American Board of Pathology.

149 (I) “Board-certified pulmonary specialist” means a medical doctor who is currently
150 certified by the American Board of Internal Medicine in the subspecialty of pulmonary
151 medicine.

152 (J) “Certified B-reader” means an individual qualified as a “final” or “B-reader” as
153 defined in 42 C.F.R. section 37.51(b), as amended.

154 (K) “Certified industrial hygienist” means an industrial hygienist who has attained the
155 status of Diplomate of The American Academy of Industrial Hygiene subject to compliance
156 with requirements established by the American Board of Industrial Hygiene.

157 (L) “Certified safety professional” means a safety professional who has met and
158 continues to meet all requirements established by the [Board of Certified Safety
159 Professionals] and is authorized by that board to use the certified safety professional title or
160 the [CSP] designation.

161 (M) “Civil action” means all suits or claims of a civil nature in a state or federal court,
162 whether cognizable as cases at law or in equity or admiralty. “Civil action” does not include
163 any of the following:

164 (1) A civil action relating to any Workers’ Compensation law;

165 (2) A civil action alleging any claim or demand made against a trust
166 established pursuant to 11 U.S.C. section 524(g);

167 (3) A civil action alleging any claim or demand made against a trust
168 established pursuant to a plan of reorganization confirmed under Chapter 11 of the United
169 States Bankruptcy Code, 11 U.S.C. Chapter 11.

170 (N) “Exposed person” means any person whose exposure to asbestos or to asbestos-
171 containing products is the basis for an asbestos claim under section 4 of this Act.

172 (O) “FEV1” means forced expiratory volume in the first second, which is the
173 maximal volume of air expelled in one second during performance of simple spirometric
174 tests.

175 (P) “FVC” means forced vital capacity that is maximal volume of air expired with
176 maximum effort from a position of full inspiration.

177 (Q) “ILO scale” means the system for the classification of chest x-rays set forth in the
178 International Labour Office’s Guidelines for the use of ILO International Classification of
179 Radiographs of Pneumoconioses (2000), as amended.

180 (R) “Lung cancer” means a malignant tumor in which the primary site of origin of the
181 cancer is inside the lungs, but that term does not include mesothelioma.

182 (S) “Mesothelioma” means a malignant tumor with a primary site of origin in the
183 pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using
184 standardized and accepted criteria of microscopic morphology and appropriate staining
185 techniques.

186 (T) “Nonmalignant condition” means a condition that is caused or may be caused by
187 asbestos other than a diagnosed cancer.

188 (U) “Pathological evidence of asbestosis” means a statement by a board-certified
189 pathologist that more than one representative section of lung tissue uninvolved with any
190 other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in
191 the presence of characteristic asbestos bodies and that there is no other more likely
192 explanation for the presence of the fibrosis.

193 (V) “Physical impairment” means a nonmalignant condition that meets the minimum
194 requirements specified in division (B) of Section 4 of this Act, lung cancer of an exposed
195 person who is a smoker that meets the minimum requirements specified in division (C) of
196 Section 4 of this Act, or a condition of a deceased exposed person that meets the minimum
197 requirements specified in division (D) of section 4 of this Act.

198 (W) “Plethysmography” means a test for determining lung volume, also known as
199 “body plethysmography,” in which the subject of the test is enclosed in a chamber that is
200 equipped to measure pressure, flow, or volume changes.

201 (X) “Predicted lower limit of normal” means the fifth percentile of healthy
202 populations based on age, height, and gender, as referenced in the AMA guides to the
203 evaluation of permanent impairment.

204 (Y) “Premises owner” means a person who owns, in whole or in part, leases, rents,
205 maintains, or controls privately owned lands, ways, or waters, or any buildings and structures
206 on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or
207 waters leased to a private person, firm, or organization, including any buildings and
208 structures on those lands, ways, or waters.

209 (Z) “Competent medical authority” means a medical doctor who is providing a
210 diagnosis for purposes of constituting prima-facie evidence of an exposed person’s physical
211 impairment that meets the requirements specified in Section 4 of this Act and who meets the
212 following requirements:

213 (1) The medical doctor is a board-certified internist, pulmonary specialist,
214 oncologist, pathologist, or occupational medicine specialist.

215 (2) The medical doctor is actually treating or has treated the exposed person
216 and has or had a doctor-patient relationship with the person.

217 (3) As the basis for the diagnosis, the medical doctor has not relied, in whole
218 or in part, on any of the following:

219 (a) The reports or opinions of any doctor, clinic, laboratory, or testing
220 company that performed an examination, test, or screening of the claimant's medical
221 condition in violation of any law, regulation, licensing requirement, or medical code of
222 practice of the state in which that examination, test, or screening was conducted;

223 (b) The reports or opinions of any doctor, clinic, laboratory, or testing
224 company that performed an examination, test, or screening of the claimant's medical
225 condition that was conducted without clearly establishing a doctor-patient relationship with
226 the claimant or medical personnel involved in the examination, test, or screening process;

227 (c) The reports or opinions of any doctor, clinic, laboratory, or testing
228 company that performed an examination, test, or screening of the claimant's medical
229 condition that required the claimant to agree to retain the legal services of the law firm
230 sponsoring the examination, test, or screening.

231 (4) The medical doctor spends not more than [twenty-five percent] of the
232 medical doctor's professional practice time in providing consulting or expert services in
233 connection with actual or potential tort actions, and the medical doctor's medical group,
234 professional corporation, clinic, or other affiliated group earns not more than [twenty
235 percent] of its revenues from providing those services.

236 (AA) "Radiological evidence of asbestosis" means a chest x-ray showing small,
237 irregular opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale.

238 (BB) "Radiological evidence of diffuse pleural thickening" means a chest x-ray
239 showing bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO
240 scale and blunting of at least one costophrenic angle.

241 (CC) "Regular basis" means on a frequent or recurring basis.

242 (DD) "Smoker" means a person who has smoked the equivalent of one-pack year, as
243 specified in the written report of a competent medical authority Sections 4 and 5 of this Act
244 during the last [fifteen years].

245 (EE) "Spirometry" means the measurement of volume of air inhaled or exhaled by the
246 lung.

247 (FF) "Substantial contributing factor" means both of the following:

248 (1) Exposure to asbestos is the predominate cause of the physical impairment
249 alleged in the asbestos claim.

250 (2) A competent medical authority has determined with a reasonable degree of
251 medical certainty that without the asbestos exposures the physical impairment of the exposed
252 person would not have occurred.

253 (GG) "Substantial occupational exposure to asbestos" means employment for a
254 cumulative period of at least five years in an industry and an occupation in which, for a
255 substantial portion of a normal work year for that occupation, the exposed person did any of
256 the following:

257 (1) Handled raw asbestos fibers;

258 (2) Fabricated asbestos-containing products so that the person was exposed to
259 raw asbestos fibers in the fabrication process;

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

262 (4) Worked in close proximity to other workers engaged in any of the
263 activities described in division (GG)(1), (2), or (3) of this section in a manner that exposed
264 the person on a regular basis to asbestos fibers.

265 (HH) "Timed gas dilution" means a method for measuring total lung capacity in
266 which the subject breathes into a spirometer containing a known concentration of an inert and

267 insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the
268 lung is then compared to the concentration of that type of gas in the spirometer.

269 (II) “Tort action” means a civil action for damages for injury, death, or loss to person.
270 “Tort action” includes a product liability claim that is subject to [insert citation]. “Tort
271 action” does not include a civil action for damages for a breach of contract or another
272 agreement between people.

273 (JJ) “Total lung capacity” means the volume of air contained in the lungs at the end of
274 a maximal inspiration.

275 (KK) “Veterans’ benefit program” means any program for benefits in connection with
276 military service administered by the veterans’ administration under title 38 of the United
277 States Code.

278 (LL) “Workers’ compensation law” means [insert citation].

279

280 Section 4. [*Prohibitions to Bringing or Maintaining a Tort Action Alleging an*
281 *Asbestos Claim.*]

282 (A) For purposes of [insert citation], “bodily injury caused by exposure to asbestos”
283 means physical impairment of the exposed person, to which the person’s exposure to
284 asbestos is a substantial contributing factor.

285 (B) No person shall bring or maintain a tort action alleging an asbestos claim based
286 on a nonmalignant condition in the absence of a prima-facie showing, in the manner
287 described in division (A) of section 5 of this Act, that the exposed person has a physical
288 impairment, that the physical impairment is a result of a medical condition, and that the
289 person’s exposure to asbestos is a substantial contributing factor to the medical condition.
290 That prima-facie showing shall include all of the following minimum requirements:

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

296 (a) All of the exposed person’s principal places of employment and
297 exposures to airborne contaminants;

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

302 (2) Evidence verifying that a competent medical authority has taken a
303 detailed medical and smoking history of the exposed person, including a thorough review of
304 the exposed person’s past and present medical problems and the most probable causes of
305 those medical problems;

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

309 (a) The exposed person has a permanent respiratory impairment rating
310 of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation
311 of permanent impairment.

312 (b) Either of the following:

313 (i) The exposed person has asbestosis or diffuse pleural
314 thickening, based at a minimum on radiological or pathological evidence of asbestosis or

315 radiological evidence of diffuse pleural thickening. The asbestosis or diffuse pleural
316 thickening described in this division, rather than solely chronic obstructive pulmonary
317 disease, is a substantial contributing factor to the exposed person's physical impairment,
318 based at a minimum on a determination that the exposed person has any of the following:

319 (I) A forced vital capacity below the predicted lower
320 limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted
321 lower limit of normal;

322 (II) A total lung capacity, by plethysmography or timed
323 gas dilution, below the predicted lower limit of normal;

324 (III) A chest x-ray showing small, irregular opacities
325 (s,t) graded by a certified B-reader at least 2/1 on the ILO scale.

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

332 (I) A forced vital capacity below the predicted lower
333 limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted
334 lower limit of normal;

335 (II) A total lung capacity, by plethysmography or timed
336 gas dilution, below the predicted lower limit of normal.

337 (C) (1) No person shall bring or maintain a tort action alleging an asbestos claim
338 based upon lung cancer of an exposed person who is a smoker, in the absence of a prima-
339 facie showing, in the manner described in division (A) of section 5 of this Act, that the
340 exposed person has a physical impairment, that the physical impairment is a result of a
341 medical condition, and that the person's exposure to asbestos is a substantial contributing
342 factor to the medical condition. That prima-facie showing shall include all of the following
343 minimum requirements:

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

347 (b) Evidence that is sufficient to demonstrate that at least [ten years]
348 have elapsed from the date of the exposed person's first exposure to asbestos until the date of
349 diagnosis of the exposed person's primary lung cancer. The [ten-year] latency period
350 described in this division is a rebuttable presumption, and the plaintiff has the burden of
351 proof to rebut the presumption.

352 (c) Either of the following:

353 (i) Evidence of the exposed person's substantial occupational
354 exposure to asbestos;

355 (ii) Evidence of the exposed person's exposure to asbestos at
356 least equal to 25 fiber per cc years as determined to a reasonable degree of scientific
357 probability by a scientifically valid retrospective exposure reconstruction conducted by a
358 certified industrial hygienist or certified safety professional based upon all reasonably
359 available quantitative air monitoring data and all other reasonably available information
360 about the exposed person's occupational history and history of exposure to asbestos.

361 (2) If a plaintiff files a tort action that alleges an asbestos claim based upon
362 lung cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to
363 asbestos was the result of living with another person who, if the tort action had been filed by

364 the other person, would have met the requirements specified in division (C)(1)(c) of this
365 section, and alleges that the plaintiff lived with the other person for the period of time
366 specified in division (GG) of section 3 of this Act, the plaintiff is considered as having
367 satisfied the requirements specified in division (C)(1)(c) of this section.

368 (D) (1) No person shall bring or maintain a tort action alleging an asbestos claim
369 that is based upon a wrongful death, as described in [insert citation] of an exposed person in
370 the absence of a prima-facie showing, in the manner described in division (A) of section 5 of
371 this Act, that the death of the exposed person was the result of a physical impairment, that the
372 death and physical impairment were a result of a medical condition, and that the deceased
373 person's exposure to asbestos was a substantial contributing factor to the medical condition.
374 That prima-facie showing shall include all of the following minimum requirements:

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

377 (b) Evidence that is sufficient to demonstrate that at least [ten years]
378 have elapsed from the date of the deceased exposed person's first exposure to asbestos until
379 the date of diagnosis or death of the deceased exposed person. The [ten-year] latency period
380 described in this division is a rebuttable presumption, and the plaintiff has the burden of
381 proof to rebut the presumption.

382 (c) Either of the following:

383 (i) Evidence of the deceased exposed person's substantial
384 occupational exposure to asbestos;

385 (ii) Evidence of the deceased exposed person's exposure to
386 asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of
387 scientific probability by a scientifically valid retrospective exposure reconstruction
388 conducted by a certified industrial hygienist or certified safety professional based upon all
389 reasonably available quantitative air monitoring data and all other reasonably available
390 information about the deceased exposed person's occupational history and history of
391 exposure to asbestos.

392 (2) If a person files a tort action that alleges an asbestos claim based on a
393 wrongful death, as described in [insert citation], of an exposed person, alleges that the death
394 of the exposed person was the result of living with another person who, if the tort action had
395 been filed by the other person, would have met the requirements specified in division
396 (D)(1)(c) of this section, and alleges that the exposed person lived with the other person for
397 the period of time specified in division (GG) of section 3 of this Act in order to qualify as a
398 substantial occupational exposure to asbestos, the exposed person is considered as having
399 satisfied the requirements specified in division (D)(1)(c) of this section.

400 (3) No court shall require or permit the exhumation of a decedent for the
401 purpose of obtaining evidence to make, or to oppose, a prima-facie showing required under
402 division (D)(1) or (2) of this section regarding a tort action of the type described in that
403 division.

404 (E) No prima-facie showing is required in a tort action alleging an asbestos claim
405 based upon mesothelioma.

406 (F) Evidence relating to physical impairment under this section, including pulmonary
407 function testing and diffusing studies, shall comply with the technical recommendations for
408 examinations, testing procedures, quality assurance, quality control, and equipment
409 incorporated in the AMA guides to the evaluation of permanent impairment and reported as
410 set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the
411 interpretive standards set forth in the official statement of the American Thoracic Society

412 entitled “Lung Function Testing: Selection of Reference Values and Interpretive Strategies”
413 as published in *American Review of Respiratory Disease*, 1991:144:1202-1218.

414 (G) All of the following apply to the court’s decision on the prima-facie showing that
415 meets the requirements of division (B), (C), or (D) of this section:

416 (1) The court’s decision does not result in any presumption at trial that the
417 exposed person has a physical impairment that is caused by asbestos-related condition.

418 (2) The court’s decision is not conclusive as to the liability of any defendant in
419 the case.

420 (3) The court’s findings and decisions are not admissible at trial.

421 (4) If the trier of fact is a jury, the court shall not instruct the jury with respect
422 to the court’s decision on the prima-facie showing, and neither counsel for any party nor a
423 witness shall inform the jury or potential jurors of that showing.

424
425 Section 5. [*Prima-facie Evidence for Alleging an Asbestos Claim in any Tort Action.*]

426 (A) (1) The plaintiff in any tort action who alleges an asbestos claim shall file,
427 within [thirty days] after filing the complaint or other initial pleading, a written report and
428 supporting test results constituting prima-facie evidence of the exposed person’s physical
429 impairment that meets the minimum requirements specified in division (B), (C), or (D) of
430 section 4 of this Act, whichever is applicable. The defendant in the case shall be afforded a
431 reasonable opportunity, upon the defendant’s motion, to challenge the adequacy of the
432 proffered prima-facie evidence of the physical impairment for failure to comply with the
433 minimum requirements specified in division (B), (C), or (D) of section 4 of this Act. The
434 defendant has [one hundred twenty days] from the date the specified type of prima-facie
435 evidence is proffered to challenge the adequacy of that prima-facie evidence. If the defendant
436 makes that challenge and uses a physician to do so, the physician must meet the requirements
437 specified in divisions (Z)(1), (3), and (4) of section 3 of this Act.

438 (2) With respect to any asbestos claim that is pending on the effective date of
439 this section, the plaintiff shall file the written report and supporting test results described in
440 division (A)(1) of this section within [one hundred twenty days] following the effective date
441 of this section. Upon motion and for good cause shown, the court may extend the [one
442 hundred twenty-day] period described in this division.

443 (3) (a) For any cause of action that arises before the effective date of this
444 section, the provisions set forth in divisions (B), (C), and (D) of section 4 of this Act are to be
445 applied unless the court that has jurisdiction over the case finds both of the following:

446 (i) A substantive right of a party to the case has been impaired.

447 (ii) That impairment is otherwise in violation of [insert
448 citation].

449 (b) If a finding under division (A)(3)(a) of this section is made by the
450 court that has jurisdiction over the case, then the court shall determine whether the plaintiff
451 has failed to provide sufficient evidence to support the plaintiff’s cause of action or the right
452 to relief under the law that is in effect prior to the effective date of this section.

453 (c) If the court that has jurisdiction of the case finds that the plaintiff
454 has failed to provide sufficient evidence to support the plaintiff’s cause of action or right to
455 relief under division (A)(3)(b) of this section, the court shall administratively dismiss the
456 plaintiff’s claim without prejudice. The court shall maintain its jurisdiction over any case that
457 is administratively dismissed under this division. Any plaintiff whose case has been
458 administratively dismissed under this division may move to reinstate the plaintiff’s case if
459 the plaintiff provides sufficient evidence to support the plaintiff’s cause of action or the right
460 to relief under the law that was in effect when the plaintiff’s cause of action arose.

461 (B) If the defendant in an action challenges the adequacy of the prima-facie evidence
462 of the exposed person's physical impairment as provided in division (A)(1) of this section,
463 the court shall determine from all of the evidence submitted whether the proffered prima-
464 facie evidence meets the minimum requirements specified in division (B), (C), or (D) of
465 section 4 of this Act. The court shall resolve the issue of whether the plaintiff has made the
466 prima-facie showing required by division (B), (C), or (D) of section 4 of this Act by applying
467 the standard for resolving a motion for summary judgment.

468 (C) The court shall administratively dismiss the plaintiff's claim without prejudice
469 upon a finding of failure to make the prima-facie showing required by division (B), (C), or
470 (D) of section 4 of this Act. The court shall maintain its jurisdiction over any case that is
471 administratively dismissed under this division. Any plaintiff whose case has been
472 administratively dismissed under this division may move to reinstate the plaintiff's case if the
473 plaintiff makes a prima-facie showing that meets the minimum requirements specified in
474 division (B), (C), or (D) of section 4 of this Act.

475
476 Section 6. [*Period of Limitations, Nonmalignant Condition and Future Claims for*
477 *Asbestos-related Cancer.*]

478 (A) Notwithstanding any other provision of [state law], with respect to any asbestos
479 claim based upon a nonmalignant condition that is not barred as of the effective date of this
480 section, the period of limitations shall not begin to run until the exposed person has a cause
481 of action for bodily injury pursuant to [insert citation]. An asbestos claim based upon a
482 nonmalignant condition that is filed before the cause of action for bodily injury pursuant to
483 that section arises is preserved for purposes of the period of limitations.

484 (B) An asbestos claim that arises out of a nonmalignant condition shall be a distinct
485 cause of action from an asbestos claim relating to the same exposed person that arises out of
486 asbestos-related cancer. No damages shall be awarded for fear or risk of cancer in any tort
487 action asserting only an asbestos claim for a nonmalignant condition.

488 (C) No settlement of an asbestos claim for a nonmalignant condition that is concluded
489 after the effective date of this section shall require, as a condition of settlement, the release of
490 any future claim for asbestos-related cancer.

491
492 Section 7. [*Tort Actions for Asbestos Claims Brought Against a Premises Owner.*]

493 (A) The following apply to all tort actions for asbestos claims brought against a
494 premises owner to recover damages or other relief for exposure to asbestos on the premises
495 owner's property:

496 (1) A premises owner is not liable for any injury to any individual resulting
497 from asbestos exposure unless that individual's alleged exposure occurred while the
498 individual was at the premises owner's property.

499 (2) If exposure to asbestos is alleged to have occurred before [January 1,
500 1972], it is presumed that a premises owner knew that this state had adopted safe levels of
501 exposure for asbestos and that products containing asbestos were used on its property only at
502 levels below those safe levels of exposure. To rebut this presumption, the plaintiff must
503 prove by a preponderance of the evidence that the premises owner knew or should have
504 known that the levels of asbestos in the immediate breathing zone of the plaintiff regularly
505 exceeded the threshold limit values adopted by this state and that the premises owner allowed
506 that condition to persist.

507 (3) (a) A premises owner is presumed to be not liable for any injury to any
508 invitee who was engaged to work with, install, or remove asbestos products on the premises

509 owner's property if the invitee's employer held itself out as qualified to perform the work. To
510 rebut this presumption, the plaintiff must prove by a preponderance of the evidence that at
511 the time of the exposure to asbestos that is alleged the premises owner had actual knowledge
512 of the potential dangers of the asbestos products at the time of the alleged exposure that was
513 superior to the knowledge of both the invitee and the invitee's employer.

514 (b) A premises owner that hired a contractor before [January 1, 1972],
515 to perform the type of work at the premises owner's property that the contractor was
516 qualified to perform cannot be liable for any injury to any individual resulting from asbestos
517 exposure caused by any of the contractor's employees or agents on the premises owner's
518 property unless the premises owner directed the activity that resulted in the injury or gave or
519 denied permission for the critical acts that led to the individual's injury.

520 (c) If exposure to asbestos is alleged to have occurred on or after
521 [January 1, 1972], a premises owner is not liable for any injury to any individual resulting
522 from that exposure caused by a contractor's employee or agent on the premises owner's
523 property unless the plaintiff establishes the premises owner's intentional violation of an
524 established safety standard that was in effect at the time of the exposure and that the alleged
525 violation was in the plaintiff's breathing zone and was the proximate cause of the plaintiff's
526 medical condition.

527 (B) As used in this section:

528 (1) "Threshold limit values" means that, for the years 1946 through 1971, the
529 concentration of asbestos in a worker's breathing zone did not exceed the following
530 maximum allowable exposure limits for the eight-hour time-weighted average airborne
531 concentration:

532 (a) Asbestos: five million particles per cubic foot;

533 (b) Cadmium: 0.10 milligrams per cubic meter;

534 (c) Chromic acid and chromates (calculated as chromic oxide): 0.10
535 milligrams per cubic meter;

536 (d) Lead: 0.15 milligrams per cubic meter;

537 (e) Manganese: 6.0 milligrams per cubic meter;

538 (f) Mercury: 0.10 milligrams per cubic meter;

539 (g) Zinc oxide: 15.0 milligrams per cubic meter;

540 (h) Chlorinated diphenyls: 1.0 milligram per cubic meter;

541 (i) Chlorinated naphthalenes (trichloronaphthalene): 5.0 milligrams per
542 cubic meter;

543 (j) Chlorinated naphthalenes (pentachloronaphthalene): 0.50 milligrams
544 per cubic meter.

545 (2) "Established safety standard" means that, for the years after 1971, the
546 concentration of asbestos in the breathing zone of a worker does not exceed the maximum
547 allowable exposure limits for the eight-hour time-weighted average airborne concentration as
548 promulgated by the Occupational Safety and Health Administration (OSHA) in effect at the
549 time of the alleged exposure.

550 (3) "Employee" means an individual who performs labor or provides
551 construction services pursuant to a construction contract as defined in [insert citation], or a
552 remodeling or repair contract, whether written or oral, if at least ten of the following criteria
553 apply:

554 (a) The individual is required to comply with instructions from the
555 other contracting party regarding the manner or method of performing services.

556 (b) The individual is required by the other contracting party to have
557 particular training.

- 558 (c) The individual's services are integrated into the regular
559 functioning of the other contracting party.
- 560 (d) The individual is required to perform the work personally.
- 561 (e) The individual is hired, supervised, or paid by the other contracting
562 party.
- 563 (f) A continuing relationship exists between the individual and the
564 other contracting party that contemplates continuing or recurring work even if the work is not
565 full time.
- 566 (g) The individual's hours of work are established by the other
567 contracting party.
- 568 (h) The individual is required to devote full time to the business of the
569 other contracting party.
- 570 (i) The person is required to perform the work on the premises of the
571 other contracting party.
- 572 (j) The individual is required to follow the order of work set by the
573 other contracting party.
- 574 (k) The individual is required to make oral or written reports of
575 progress to the other contracting party.
- 576 (l) The individual is paid for services on a regular basis, including
577 hourly, weekly, or monthly.
- 578 (m) The individual's expenses are paid for by the other contracting
579 party.
- 580 (n) The individual's tools and materials are furnished by the other
581 contracting party.
- 582 (o) The individual is provided with the facilities used to perform
583 services.
- 584 (p) The individual does not realize a profit or suffer a loss as a result
585 of the services provided.
- 586 (q) The individual is not performing services for a number of
587 employers at the same time.
- 588 (r) The individual does not make the same services available to the
589 general public.
- 590 (s) The other contracting party has a right to discharge the individual.
- 591 (t) The individual has the right to end the relationship with the other
592 contracting party without incurring liability pursuant to an employment contract or
593 agreement.

594
595 Section 8. [*Bankruptcy Proceedings, Workers Compensation, Veterans' Benefits, and*
596 *Wrongful Death Claims*].

597 (A) Nothing in sections 4 to 8 of this Act is intended to do, and nothing in any of
598 those sections shall be interpreted to do, either of the following:

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

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

604 (B) Sections 3 to 8 of this Act shall not affect the scope or operation of any workers'
605 compensation law or veterans' benefit program or the exclusive remedy of subrogation under

606 the provisions of that law or program and shall not authorize any lawsuit that is barred by any
607 provision of any workers' compensation law.

608 (C) Except as provided in division (D) of section 4 of this Act and in other provisions
609 that relate to the application of that division and the procedures and criteria it contains,
610 nothing in sections 4, 5, 6, and 8 of this Act, is intended, and nothing in any of those sections
611 shall be interpreted, to affect any wrongful death claim, as described in [insert citation].
612

613 Section 9. [*Burden of Proof for any Injury or Loss from Exposure to Asbestos as a*
614 *Result of a Tortious Act.*]

615 (A) If a plaintiff in a tort action alleges any injury or loss to person resulting from
616 exposure to asbestos as a result of the tortious act of one or more defendants, in order to
617 maintain a cause of action against any of those defendants based on that injury or loss, the
618 plaintiff must prove that the conduct of that particular defendant was a substantial factor in
619 causing the injury or loss on which the cause of action is based.

620 (B) A plaintiff in a tort action who alleges any injury or loss to person resulting from
621 exposure to asbestos has the burden of proving that the plaintiff was exposed to asbestos that
622 was manufactured, supplied, installed, or used by the defendant in the action and that the
623 plaintiff's exposure to the defendant's asbestos was a substantial factor in causing the
624 plaintiff's injury or loss. In determining whether exposure to a particular defendant's
625 asbestos was a substantial factor in causing the plaintiff's injury or loss, the trier of fact in the
626 action shall consider, without limitation, all of the following:

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

628 (2) The proximity of the defendant's asbestos to the plaintiff when the
629 exposure to the defendant's asbestos occurred;

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

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

633 (C) This section applies only to tort actions that allege any injury or loss to person
634 resulting from exposure to asbestos and that are brought on or after the effective date of this
635 section.
636

637 Section 10. [*Liability to a Covered Entity in An Asbestos Claim Under the Doctrine of*
638 *Piercing the Corporate Veil.*]

639 (A) A holder has no obligation to, and has no liability to, the covered entity or to any
640 person with respect to any obligation or liability of the covered entity in an asbestos claim
641 under the doctrine of piercing the corporate veil unless the person seeking to pierce the
642 corporate veil demonstrates all of the following:

643 (1) The holder exerted such control over the covered entity that the covered
644 entity had no separate mind, will, or existence of its own.

645 (2) The holder caused the covered entity to be used for the purpose of
646 perpetrating, and the covered entity perpetrated, an actual fraud on the person seeking to
647 pierce the corporate veil primarily for the direct pecuniary benefit of the holder.

648 (3) The person seeking to pierce the corporate veil sustained an injury or
649 unjust loss as a direct result of the control described in division (A)(1) of this section and the
650 fraud described in division (A)(2) of this section.

651 (B) A court shall not find that the holder exerted such control over the covered entity
652 that the covered entity did not have a separate mind, will, or existence of its own or to have
653 caused the covered entity to be used for the purpose of perpetrating a fraud solely as a result
654 of any of the following actions, events, or relationships:

655 (1) The holder is an affiliate of the covered entity and provides legal,
656 accounting, treasury, cash management, human resources, administrative, or other similar
657 services to the covered entity, leases assets to the covered entity, or makes its employees
658 available to the covered entity.

659 (2) The holder loans funds to the covered entity or guarantees the obligations
660 of the covered entity.

661 (3) The officers and directors of the holder are also officers and directors of
662 the covered entity.

663 (4) The covered entity makes payments of dividends or other distributions to
664 the holder or repays loans owed to the holder.

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

667 (C) The person seeking to pierce the corporate veil has the burden of proof on each
668 and every element of the person's claim and must prove each element by a preponderance of
669 the evidence.

670 (D) Any liability of the holder described in division (A) of this section for an
671 obligation or liability that is limited by that division is exclusive and preempts any other
672 obligation or liability imposed upon that holder for that obligation or liability under common
673 law or otherwise.

674 (E) This section is intended to codify the elements of the common law cause of
675 action for piercing the corporate veil and to abrogate the common law cause of action and
676 remedies relating to piercing the corporate veil in asbestos claims. Nothing in this section
677 shall be construed as creating a right or cause of action that did not exist under the common
678 law as it existed on the effective date of this section.

679 (F) This section applies to all asbestos claims commenced on or after the effective
680 date of this section or commenced prior to and pending on the effective date of this section.

681 (G) This section applies to all actions asserting the doctrine of piercing the corporate
682 veil brought against a holder if any of the following apply:

683 (1) The holder is an individual and resides in this state.

684 (2) The holder is a corporation organized under the laws of this state.

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

686 (4) The holder is a foreign corporation that is authorized to conduct or has
687 conducted business in this state.

688 (5) The holder is a foreign corporation whose parent corporation is authorized
689 to conduct business in this state.

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

691 (H) As used in this section, unless the context otherwise requires:

692 (1) "Affiliate" and "beneficial owner" have the same meanings as in [insert
693 citation].

694 (2) "Asbestos" has the same meaning as in section 3 of this Act.

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

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

703 (b) A claim for damage or loss to property that is caused by the
704 installation, presence, or removal of asbestos.

705 (4) “Corporation” means a corporation for profit, including the following:

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

708 (b) A foreign corporation that is organized under laws other than the
709 laws of this state and that has had a certificate of authority to transact business in this state or
710 has done business in this state.

711 (5) “Covered entity” means a corporation, limited liability company, limited
712 partnership, or any other entity organized under the laws of any jurisdiction, domestic or
713 foreign, in which the shareholders, owners, or members are generally not responsible for the
714 debts and obligations of the entity. Nothing in this section limits or otherwise affects the
715 liabilities imposed on a general partner of a limited partnership.

716 (6) “Holder” means a person who is the holder or beneficial owner of, or
717 subscriber to, shares or any other ownership interest of a covered entity, a member of a
718 covered entity, or an affiliate of any person who is the holder or beneficial owner of, or
719 subscriber to, shares or any other ownership interest of a covered entity.

720 (7) “Piercing the corporate veil” means any and all common law doctrines by
721 which a holder may be liable for an obligation or liability of a covered entity on the basis that
722 the holder controlled the covered entity, the holder is or was the alter ego of the covered
723 entity, or the covered entity has been used for the purpose of actual or constructive fraud or
724 as a sham to perpetrate a fraud or any other common law doctrine by which the covered
725 entity is disregarded for purposes of imposing liability on a holder for the debts or
726 obligations of that covered entity.

727 (8) “Person” has the same meaning as in [insert citation].

728

729 Section 11. [*Severability.*] [Insert severability clause.]

730

731 Section 12. [*Repealer.*] [Insert repealer clause.]

732

733 Section 13. [*Effective Date.*] [Insert effective date.]