

Silicosis Claim or a Mixed Dust Disease Claim

This Act:

- Provides the minimum medical requirements that are required for a silicosis claim or a mixed dust disease claim based on a nonmalignant condition, based on lung cancer of an exposed person who is a smoker, or based on wrongful death of an exposed person;
- In a tort action in which a silicosis claim or a mixed dust disease claim is alleged, this Act requires the filing of a written report and supporting test results constituting prima-facie evidence of an exposed person's physical impairment that meets the minimum requirements for the particular claim;
- Provides procedures for the defendant in the case to challenge the adequacy of the plaintiff's prima-facie evidence and for the court to resolve the issue of whether the plaintiff has made a prima-facie showing and provides that a proceeding for a prima-facie showing is a provisional remedy that is subject to appeal under current law;
- Requires the court, upon a finding of a plaintiff's failure to make a prima-facie showing, to administratively dismiss the plaintiff's claim without prejudice and to maintain its jurisdiction over the case, and permits a plaintiff whose case has been administratively dismissed to reinstate the case;
- Provides that the procedures apply only to tort actions that allege a silicosis claim or a mixed dust disease claim and are filed on or after the provisions' effective date;
- Provides that the period of limitations with respect to a silicosis claim or a mixed dust disease claim based on a nonmalignant condition does not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, a physical impairment due to a nonmalignant condition;
- Generally provides that a premises owner is not liable for any injury to any individual resulting from silica or mixed dust exposure, subject to certain exceptions and presumptions;
- Specifies that the provisions regarding silica and mixed dust litigation and premises liability are not intended or interpreted to affect the rights of any party under bankruptcy proceedings or the ability to make a claim or demand against a trust established pursuant to a plan of reorganization under a Chapter 11 bankruptcy;
- Specifies that the provisions regarding silica and mixed dust litigation and premises liability do not affect the scope or operation of any workers' compensation law or veterans' benefit program;
- Specifies that the provisions regarding silica and mixed dust litigation do not require or permit the exhumation of bodies in making the prima-facie showing or rebutting the presumption set forth in the Act regarding the ten-year latency period;
- Codifies the elements of the common law cause of action for piercing the corporate veil and specifies the elements that have to be proven with respect to the liability of a shareholder in a silica claim or a mixed dust disease claim under the doctrine of piercing the corporate veil;
- Specifies that any such liability of the shareholder is exclusive and preempts any other obligation or liability imposed upon that shareholder for that obligation or liability under common law or otherwise;
- States that the Act's provisions regarding piercing the corporate veil are intended to codify the elements of the common law cause of action for piercing the corporate veil and to abrogate the common law cause of action and remedies relating to piercing the corporate veil in silica and mixed dust disease claims;

- Provides that the Act's provisions regarding piercing the corporate veil apply to all silica claims or mixed dust disease claims commenced on or after the provisions' effective date or commenced prior to and pending on that effective date;
- In tort actions alleging any injury or loss to person resulting from exposure to silica or mixed dust as a result of the defendant's tortious act, requires the plaintiff to prove that that particular defendant's conduct and the exposure to silica or mixed dust was a substantial factor in causing the injury or loss; and
- Specifically requests the state Supreme Court to adopt certain rules related to silica claims and mixed dust disease claims.

Submitted as:

Ohio

[Amended Substitute HB 342](#)

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 Establish Requirements for
2 Silicosis Claims or Mixed Dust Disease Claims."

3

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Section 2. [*Definitions.*]

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As used in this Act:

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(A) "AMA Guides to the Evaluation of Permanent Impairment" means the American
7 Medical Association's Guides to the Evaluation of Permanent Impairment (fifth edition 2000) as
8 may be modified by the American Medical Association.

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(B) "Board-Certified Internist" means a medical doctor who is currently certified by the
10 American Board of Internal Medicine.

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(C) "Board-Certified Occupational Medicine Specialist" means a medical doctor who is
12 currently certified by the American Board of Preventive Medicine in the specialty of
13 occupational medicine.

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(D) "Board-Certified Oncologist" means a medical doctor who is currently certified by
15 the American Board of Internal Medicine in the subspecialty of medical oncology.

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(E) "Board-Certified Pathologist" means a medical doctor who is currently certified by
17 the American Board of Pathology.

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(F) "Board-Certified Pulmonary Specialist" means a medical doctor who is currently
19 certified by the American Board of Internal Medicine in the subspecialty of pulmonary medicine.

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(G) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as
21 defined in 42 C.F.R. section 37.51(b), as amended.

22

(H) "Civil action" means all suits or claims of a civil nature in a state or federal court,
23 whether cognizable as cases at law or in equity or admiralty. "Civil action" does not include any
24 of the following:

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(1) A civil action relating to any workers' compensation law;

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

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

31 (I) "Competent medical authority" means a medical doctor who is providing a diagnosis
32 for purposes of constituting prima-facie evidence of an exposed person's physical impairment
33 that meets the requirements specified in sections 3 or 4 of this Act, whichever is applicable, and
34 who meets the following requirements:

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

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

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

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

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

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

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

58 (J) "Exposed person" means either of the following, whichever is applicable:

59 (1) A person whose exposure to silica is the basis for a silicosis claim under
60 section 3 of this Act;

61 (2) A person whose exposure to mixed dust is the basis for a mixed dust disease
62 claim under section 4 of this Act.

63 (K) "ILO scale" means the system for the classification of chest x-rays set forth in the
64 International Labour Office's guidelines for the use of ILO International Classification of
65 Radiographs of Pneumoconioses (2000), as amended.

66 (L) "Lung cancer" means a malignant tumor in which the primary site of origin of the
67 cancer is inside the lungs.

68 (M) "Mixed dust" means a mixture of dusts composed of silica and one or more other
69 fibrogenic dusts capable of inducing pulmonary fibrosis if inhaled in sufficient quantity.

70 (N) "Mixed dust disease claim" means any claim for damages, losses, indemnification,
71 contribution, or other relief arising out of, based on, or in any way related to inhalation of,
72 exposure to, or contact with mixed dust. "Mixed dust disease claim" includes a claim made by or
73 on behalf of any person who has been exposed to mixed dust, or any representative, spouse,
74 parent, child, or other relative of that person, for injury, including mental or emotional injury,
75 death, or loss to person, risk of disease or other injury, costs of medical monitoring or
76 surveillance, or any other effects on the person's health that are caused by the person's exposure
77 to mixed dust.

78 (O) "Mixed dust pneumoconiosis" means the interstitial lung disease caused by the
79 pulmonary response to inhaled mixed dusts.

80 (P) "Nonmalignant condition" means a condition, other than a diagnosed cancer, that is
81 caused or may be caused by either of the following, whichever is applicable:

- 82 (1) Silica;
- 83 (2) Mixed dust;

84 (Q) "Pathological evidence of mixed dust pneumoconiosis" means a statement by a
85 board-certified pathologist that more than one representative section of lung tissue uninvolved
86 with any other disease process demonstrates a pattern of peribronchiolar and parenchymal
87 stellate (star-shaped) nodular scarring and that there is no other more likely explanation for the
88 presence of the fibrosis.

89 (R) "Pathological evidence of silicosis" means a statement by a board-certified
90 pathologist that more than one representative section of lung tissue uninvolved with any other
91 disease process demonstrates a pattern of round silica nodules and birefringent crystals or other
92 demonstration of crystal structures consistent with silica (well-organized concentric whorls of
93 collagen surrounded by inflammatory cells) in the lung parenchyma and that there is no other
94 more likely explanation for the presence of the fibrosis.

95 (S) "Physical impairment" means any of the following, whichever is applicable:

96 (1) A nonmalignant condition that meets the minimum requirements of section 3
97 of this Act or lung cancer of an exposed person who is a smoker that meets the minimum
98 requirements of section 3 of this Act;

99 (2) A nonmalignant condition that meets the minimum requirements of section 4
100 of this Act or lung cancer of an exposed person who is a smoker that meets the minimum
101 requirements of section 4 of this Act.

102 (T) "Premises owner" means a person who owns, in whole or in part, leases, rents,
103 maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on
104 those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters
105 leased to a private person, firm, or organization, including any buildings and structures on those
106 lands, ways, or waters.

107 (U) "Radiological evidence of mixed dust pneumoconiosis" means a chest x-ray showing
108 bilateral rounded or irregular opacities in the upper lung fields graded by a certified B-reader as
109 at least 1/1 on the ILO scale.

110 (V) "Radiological evidence of silicosis" means a chest x-ray showing bilateral small
111 rounded opacities (p, q, or r) in the upper lung fields graded by a certified B-reader as at least 1/1
112 on the ILO scale.

113 (W) "Regular basis" means on a frequent or recurring basis.

114 (X) "Silica" means a respirable crystalline form of silicon dioxide, including, but not
115 limited to, alpha quartz, cristobalite, and trydymite.

116 (Y) "Silicosis claim" means any claim for damages, losses, indemnification,
117 contribution, or other relief arising out of, based on, or in any way related to inhalation of,
118 exposure to, or contact with silica. "Silicosis claim" includes a claim made by or on behalf of any
119 person who has been exposed to silica, or any representative, spouse, parent, child, or other
120 relative of that person, for injury, including mental or emotional injury, death, or loss to person,
121 risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects
122 on the person's health that are caused by the person's exposure to silica.

123 (Z) "Silicosis" means an interstitial lung disease caused by the pulmonary response to
124 inhaled silica.

125 (AA) "Smoker" means a person who has smoked the equivalent of one-pack year, as
126 specified in the written report of a competent medical authority pursuant to section 3 of this Act
127 during the last [fifteen years].

128 (BB) "Substantial contributing factor" means both of the following:

129 (1) Exposure to silica or mixed dust is the predominate cause of the physical
130 impairment alleged in the silicosis claim or mixed dust disease claim, whichever is applicable.

131 (2) A competent medical authority has determined with a reasonable degree of
132 medical certainty that without the silica or mixed dust exposures the physical impairment of the
133 exposed person would not have occurred.

134 (CC) "Substantial occupational exposure to silica" means employment for a cumulative
135 period of at least five years in an industry and an occupation in which, for a substantial portion of
136 a normal work year for that occupation, the exposed person did any of the following:

137 (1) Handled silica;

138 (2) Fabricated silica-containing products so that the person was exposed to silica
139 in the fabrication process;

140 (3) Altered, repaired, or otherwise worked with a silica-containing product in a
141 manner that exposed the person on a regular basis to silica;

142 (4) Worked in close proximity to other workers engaged in any of the activities
143 described in division (CC) (1), (2), or (3) of this section in a manner that exposed the person on a
144 regular basis to silica.

145 (DD) "Substantial occupational exposure to mixed dust" means employment for a
146 cumulative period of at least [five years] in an industry and an occupation in which, for a
147 substantial portion of a normal work year for that occupation, the exposed person did any of the
148 following:

149 (1) Handled mixed dust;

150 (2) Fabricated mixed dust-containing products so that the person was exposed to
151 mixed dust in the fabrication process;

152 (3) Altered, repaired, or otherwise worked with a mixed dust-containing product
153 in a manner that exposed the person on a regular basis to mixed dust;

154 (4) Worked in close proximity to other workers engaged in any of the activities
155 described in division (DD) (1), (2), or (3) of this section in a manner that exposed the person on a
156 regular basis to mixed dust.

157 (EE) "Tort action" means a civil action for damages for injury, death, or loss to person.
158 "Tort action" includes a product liability claim that is subject to [insert citation]. "Tort action"
159 does not include a civil action for damages for a breach of contract or another agreement
160 between persons.

161 (FF) "Veterans' benefit program" means any program for benefits in connection with
162 military service administered by the veterans' administration under Title 38 of the United States
163 Code.

164 (GG) "Workers' compensation law" means [insert citation].
165

166 Section 3. [*Physical Impairment as Contributing Factor to a Silicosis Claim in Any Tort*
167 *Action.*]

168 (A) Physical impairment of the exposed person, to which the person's exposure to silica is
169 a substantial contributing factor, shall be an essential element of a silicosis claim in any tort
170 action.

171 (B) No person shall bring or maintain a tort action alleging a silicosis claim based on a
172 nonmalignant condition in the absence of a prima-facie showing, in the manner described in
173 [insert citation], that the exposed person has a physical impairment, that the physical impairment
174 is a result of a medical condition, and that the person's exposure to silica is a substantial
175 contributing factor to the medical condition. That prima-facie showing shall include all of the
176 following minimum requirements:

177 (1) Evidence verifying that a competent medical authority has taken a detailed

178 occupational and exposure history of the exposed person from the exposed person or, if that
 179 person is deceased, from the person who is most knowledgeable about the exposures that form
 180 the basis of the silicosis claim for a nonmalignant condition, including all of the following:

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

183 (b) Whether each principal place of employment involved exposures to
 184 airborne contaminants, including, but not limited to, silica or other disease causing dusts, that can
 185 cause pulmonary impairment and, if that type of exposure is involved, the general nature,
 186 duration, and general level of exposure.

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

191 (3) A diagnosis by a competent medical authority, based on a medical
 192 examination and pulmonary function testing of the exposed person, that both of the following
 193 apply to the exposed person:

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

197 (b) The exposed person has silicosis based at a minimum on radiological
 198 or pathological evidence of silicosis.

199 (C) No person shall bring or maintain a tort action alleging that silica caused that person
 200 to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-
 201 facie showing, in the manner described in section 5 of this Act, that the exposed person has a
 202 physical impairment, that the physical impairment is a result of a medical condition, and that the
 203 person's exposure to silica is a substantial contributing factor to the medical condition. That
 204 prima-facie showing shall include all of the following minimum requirements:

205 (1) A diagnosis by a competent medical authority that the exposed person has
 206 primary lung cancer and that exposure to silica is a substantial contributing factor to that cancer;

207 (2) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed
 208 from the date of the exposed person's first exposure to silica until the date of diagnosis of the
 209 exposed person's primary lung cancer. The [ten-year] latency period described in this division is
 210 a rebuttable presumption and the plaintiff has the burden of proof to rebut the presumption.

211 (3) Both of the following:

212 (a) Radiological or pathological evidence of silicosis;

213 (b) Evidence of the exposed person's substantial occupational exposure to
 214 silica.

215 (D) (1) No person shall bring or maintain a tort action alleging a silicosis claim based
 216 on wrongful death, as described in [insert citation], of an exposed person, in the absence of a
 217 prima-facie showing, in the manner described in [insert citation], that the death of the exposed
 218 person was the result of a physical impairment, that the death and physical impairment were the
 219 result of a medical condition, and that the person's exposure to silica was a substantial
 220 contributing factor to the medical condition. That prima-facie showing shall include all of the
 221 following minimum requirements:

222 (a) A diagnosis by a competent medical authority that exposure to silica
 223 was a substantial contributing factor to the death of the exposed person;

224 (b) Evidence that is sufficient to demonstrate that at least [ten years] have
 225 elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis
 226 under division (D)(1)(a) of this section or death of the exposed person. The [ten-year] latency

227 period described in this division is a rebuttable presumption, and the plaintiff has the burden of
 228 proof to rebut the presumption.

229 (c) Both of the following:

230 (i) Radiological or pathological evidence of silicosis;

231 (ii) Evidence of the exposed person's substantial occupational
 232 exposure to silica.

233 (2) If a person files a tort action that alleges a silicosis claim based on wrongful
 234 death, as described in [insert citation], of an exposed person and further alleges in the action that
 235 the death of the exposed person was the result of living with another person who, if the tort
 236 action had been filed by the other person, would have met the requirements specified in division
 237 (D)(1)(c) of this section and that the exposed person lived with the other person for the period of
 238 time specified in section 2 of this Act, the exposed person is considered as having satisfied the
 239 requirements specified in division (D)(1)(c) of this section.

240 (E) Evidence relating to physical impairment under this section, including pulmonary
 241 function testing and diffusing studies, shall comply with the technical recommendations for
 242 examinations, testing procedures, quality assurance, quality control, and equipment incorporated
 243 in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20
 244 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set
 245 forth in the official statement of the American Thoracic Society entitled "Lung Function Testing:
 246 Selection Of Reference Values And Interpretive Strategies" as published in *American Review of*
 247 *Respiratory Disease*, 1991:144:1202-1218.

248 (F) All of the following apply to the court's decision on the prima-facie showing that
 249 meets the requirements of division (B), (C), or (D) of this section:

250 (1) The court's decision does not result in any presumption at trial that the
 251 exposed person has a physical impairment that is caused by a silica-related condition.

252 (2) The court's decision is not conclusive as to the liability of any defendant in the
 253 case.

254 (3) The court's findings and decision are not admissible at trial.

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

258

259 Section 4. [*Physical Impairment as Contributing Factor to a Mixed Dust Disease Claim*
 260 *in any Tort Action.*]

261 (A) Physical impairment of the exposed person, to which the person's exposure to mixed
 262 dust is a substantial contributing factor, shall be an essential element of a mixed dust disease
 263 claim in any tort action.

264 (B) No person shall bring or maintain a tort action alleging a mixed dust disease claim
 265 based on a nonmalignant condition in the absence of a prima-facie showing, in the manner
 266 described in section 5 of this Act, that the exposed person has a physical impairment, that the
 267 physical impairment is a result of a medical condition, and that the person's exposure to mixed
 268 dust is a substantial contributing factor to the medical condition. That prima-facie showing shall
 269 include all of the following minimum requirements:

270 (1) Evidence verifying that a competent medical authority has taken a detailed
 271 occupational and exposure history of the exposed person from the exposed person or, if that
 272 person is deceased, from the person who is most knowledgeable about the exposures that form
 273 the basis of the mixed dust disease claim for a nonmalignant condition, including all of the
 274 following:

275 (a) All of the exposed person's principal places of employment and

276 exposures to airborne contaminants;

277 (b) Whether each principal place of employment involved exposures to
278 airborne contaminants, including, but not limited to, mixed dust, that can cause pulmonary
279 impairment and, if that type of exposure is involved, the general nature, duration, and general
280 level of the exposure.

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

285 (3) A diagnosis by a competent medical authority, based on a medical
286 examination and pulmonary function testing of the exposed person, that both of the following
287 apply to the exposed person:

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

291 (b) The exposed person has mixed dust pneumoconiosis, based at a
292 minimum on radiological or pathological evidence of mixed dust pneumoconiosis.

293 (C) No person shall bring or maintain a tort action alleging that mixed dust caused that
294 person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a
295 prima-facie showing, in the manner described in division (A) of section 5 of this Act, that the
296 exposed person has a physical impairment, that the physical impairment is a result of a medical
297 condition, and that the person's exposure to mixed dust is a substantial contributing factor to the
298 medical condition. That prima-facie showing shall include all of the following minimum
299 requirements:

300 (1) A diagnosis by a competent medical authority that the exposed person has
301 primary lung cancer and that exposure to mixed dust is a substantial contributing factor to that
302 cancer;

303 (2) Evidence that is sufficient to demonstrate that at least [ten years] have elapsed
304 from the date of the exposed person's first exposure to mixed dust until the date of diagnosis of
305 the exposed person's primary lung cancer. The [ten-year] latency period described in this
306 division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the
307 presumption.

308 (3) Both of the following:

309 (a) Radiological or pathological evidence of mixed dust pneumoconiosis;

310 (b) Evidence of the exposed person's substantial occupational exposure to
311 mixed dust.

312 (D) (1) No person shall bring or maintain a tort action alleging a mixed dust disease
313 claim based on wrongful death, as described in [insert citation], of an exposed person, in the
314 absence of a prima-facie showing, in the manner described in section 5 of this Act, that the death
315 of the exposed person was the result of a physical impairment, that the death and physical
316 impairment were the result of a medical condition, and that the person's exposure to mixed dust
317 was a substantial contributing factor to the medical condition. That prima-facie showing shall
318 include all of the following minimum requirements:

319 (a) A diagnosis by a competent medical authority that exposure to mixed
320 dust was a substantial contributing factor to the death of the exposed person;

321 (b) Evidence that is sufficient to demonstrate that at least [ten years] have
322 elapsed from the date of the exposed person's first exposure to mixed dust until the date of
323 diagnosis under division (D)(1)(a) of this section or death of the exposed person. The [ten-year]
324 latency period described in this division is a rebuttable presumption, and the plaintiff has the

325 burden of proof to rebut the presumption.

326 (c) Both of the following:

327 (i) Radiological or pathological evidence of mixed dust
328 pneumoconiosis;

329 (ii) Evidence of the exposed person's substantial occupational
330 exposure to mixed dust.

331 (2) If a person files a tort action that alleges a mixed dust disease claim based on
332 wrongful death, as defined in [insert citation] of an exposed person and further alleges in the
333 action that the death of the exposed person was the result of living with another person who, if
334 the tort action had been filed by the other person, would have met the requirements specified in
335 division (D)(1)(c) of this section and that the exposed person lived with the other person for the
336 period of time specified in division (DD) of section 2 of this Act the exposed person is
337 considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

338 (E) Evidence relating to physical impairment under this section, including pulmonary
339 function testing and diffusing studies, shall comply with the technical recommendations for
340 examinations, testing procedures, quality assurance, quality control, and equipment incorporated
341 in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20
342 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set
343 forth in the official statement of the American thoracic society entitled "Lung Function Testing:
344 Selection of Reference Values And Interpretive Strategies" as published in *American Review of*
345 *Respiratory Disease*, 1991:144:1202-1218.

346 (F) All of the following apply to the court's decision on the prima-facie showing that
347 meets the requirements of division (B), (C), or (D) of this section:

348 (1) The court's decision does not result in any presumption at trial that the
349 exposed person has a physical impairment that is caused by a mixed dust-related condition.

350 (2) The court's decision is not conclusive as to the liability of any defendant in the
351 case.

352 (3) The court's findings and decision are not admissible at trial.

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

356

357 Section 5. [*Written Report Supporting Test Results for Physical Impairment.*]

358 (A) The plaintiff in any tort action who alleges a silicosis claim or a mixed dust disease
359 claim shall file, within [thirty days] after filing the complaint or other initial pleading, a written
360 report and supporting test results constituting prima-facie evidence of the exposed person's
361 physical impairment that meets the minimum requirements specified in division (B), (C), or (D)
362 of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is
363 applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the
364 defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the
365 physical impairment for failure to comply with the minimum requirements specified in division
366 (B), (C), or (D) of section 3 of this Act or division (B), (C), or (D) of section 4 of this Act,
367 whichever is applicable. The defendant has [one hundred twenty days] from the date the prima-
368 facie evidence of the exposed person's physical impairment is proffered to challenge the
369 adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a
370 physician to do so, the physician must meet the requirements specified in divisions (I)(1), (3),
371 and (4) of section 2 of this Act.

372 (B) If the defendant challenges the adequacy of the prima-facie evidence of the exposed
373 person's physical impairment as provided in division (A) of this section, the court shall determine

374 from all of the evidence submitted whether the proffered prima-facie evidence meets the
 375 minimum requirements specified in division (B), (C), or (D) of section 3 of this Act or division
 376 (B), (C), or (D) of section 4 of this Act, whichever is applicable. The court shall resolve the issue
 377 of whether the plaintiff has made the prima-facie showing required by any of those divisions as
 378 applicable, by applying the standard for resolving a motion for summary judgment.

379 (C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a
 380 finding of failure to make the prima-facie showing required by division (B), (C), or (D) of
 381 section 3 of this Act or division (B), (C), or (D) of section 4 of this Act, whichever is applicable.
 382 The court shall maintain its jurisdiction over any case that is administratively dismissed under
 383 this division. Any plaintiff whose case has been administratively dismissed under this division
 384 may move to reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets
 385 the minimum requirements specified in any of those divisions as applicable.

386 (D) This section applies only to tort actions that allege a silicosis claim or a mixed dust
 387 disease claim and that are filed on or after the effective date of this section.

388

389 Section 6. [*Period of Limitations Regarding Silicosis Claims or Mixed Dust Disease*
 390 *Claims.*]

391 (A) Notwithstanding any other provision of the Revised Code, with respect to any
 392 silicosis claim or mixed dust disease claim based upon a nonmalignant condition that is not
 393 barred as of the effective date of this section, the period of limitations shall not begin to run until
 394 the exposed person discovers, or through the exercise of reasonable diligence should have
 395 discovered, that the person has a physical impairment due to a nonmalignant condition. A
 396 silicosis claim or a mixed dust disease claim based upon a nonmalignant condition that is filed
 397 before the cause of action pursuant to this division arises is preserved for purposes of the period
 398 of limitations.

399 (B) A silicosis claim or a mixed dust disease claim that arises out of a nonmalignant
 400 condition shall be a distinct cause of action from a silicosis claim or a mixed dust disease claim,
 401 as the case may be, relating to the same exposed person that arises out of silica-related cancer or
 402 mixed dust-related cancer. No damages shall be awarded for fear or risk of cancer in any tort
 403 action asserting only a silicosis claim or a mixed dust disease claim for a nonmalignant
 404 condition.

405 (C) No settlement of a silicosis claim or a mixed dust disease claim for a nonmalignant
 406 condition that is concluded after the effective date of this section shall require, as a condition of
 407 settlement, the release of any future claim for silica-related cancer or mixed dust-related cancer.

408

409 Section 7. [*Premises Owner's Liability for Silicosis or Mixed Dust Disease Claims.*] The
 410 following apply to all tort actions for silicosis or mixed dust disease claims brought against a
 411 premises owner to recover damages or other relief for exposure to silica or mixed dust on the
 412 premises owner's property:

413 (A) A premises owner is not liable for any injury to any individual resulting from silica or
 414 mixed dust exposure unless that individual's alleged exposure occurred while the individual was
 415 at the premises owner's property.

416 (B) If exposure to silica or mixed dust is alleged to have occurred before [January 1,
 417 1972], it is presumed that a premises owner knew that this state had adopted safe levels of
 418 exposure for silica or mixed dust and that products containing silica or mixed dust were used on
 419 its property only at levels below those safe levels of exposure. To rebut this presumption, the
 420 plaintiff must prove by a preponderance of the evidence that the premises owner knew or should
 421 have known that the levels of silica or mixed dust in the immediate breathing zone of the
 422 plaintiff regularly exceeded the threshold limit values adopted by this state and that the premises

423 owner allowed that condition to persist.

424 (C) (1) A premises owner is presumed to be not liable for any injury to any invitee
425 who was engaged to work with, install, or remove products containing silica or mixed dust on the
426 premises owner's property if the invitee's employer held itself out as qualified to perform the
427 work. To rebut this presumption, the plaintiff must demonstrate by a preponderance of the
428 evidence that the premises owner had actual knowledge of the potential dangers of the products
429 containing silica or mixed dust at the time of the alleged exposure that was superior to the
430 knowledge of both the invitee and the invitee's employer.

431 (2) A premises owner that hired a contractor before [January 1, 1972], to perform
432 the type of work at the premises owner's property that the contractor was qualified to perform
433 cannot be liable for any injury to any individual resulting from silica or mixed dust exposure
434 caused by any of the contractor's employees or agents on the premises owner's property unless
435 the premises owner directed the activity that resulted in the injury or gave or denied permission
436 for the critical acts that led to the individual's injury.

437 (3) If exposure to silica or mixed dust is alleged to have occurred after [January 1,
438 1972], a premises owner is not liable for any injury to any individual resulting from that
439 exposure caused by a contractor's employee or agent on the premises owner's property unless the
440 plaintiff establishes the premises owner's intentional violation of an established safety standard
441 that was in effect at the time of the exposure and that the alleged violation was in the plaintiff's
442 breathing zone and was the proximate cause of the plaintiff's medical condition.

443 (D) As used in this section:

444 (1) "Threshold limit values" means the maximum allowable concentration of
445 silica, or other dust, set forth in [insert citation].

446 (2) "Established safety standard" means that, for the years after [1971], the
447 concentration of silica or mixed dust in the breathing zone of the worker does not exceed the
448 maximum allowable exposure limits for the eight-hour time-weighted average airborne
449 concentration as promulgated by the Occupational Safety and Health Administration (OSHA) in
450 effect at the time of the alleged exposure.

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

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

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

458 (c) The individual's services are integrated into the regular functioning of
459 the other contracting party.

460 (d) The individual is required to perform the work personally.

461 (e) The individual is hired, supervised, or paid by the other contracting
462 party.

463 (f) A continuing relationship exists between the individual and the other
464 contracting party that contemplates continuing or recurring work even if the work is not full
465 time.

466 (g) The individual's hours of work are established by the other contracting
467 party.

468 (h) The individual is required to devote full time to the business of the
469 other contracting party.

470 (i) The individual is required to perform the work on the premises of the
471 other contracting party.

- 472 (j) The individual is required to follow the order of work set by the other
 473 contracting party.
- 474 (k) The individual is required to make oral or written reports of progress
 475 to the other contracting party.
- 476 (l) The individual is paid for services on a regular basis, including hourly,
 477 weekly, or monthly.
- 478 (m) The individual's expenses are paid for by the other contracting party.
- 479 (n) The individual's tools and materials are furnished by the other
 480 contracting party.
- 481 (o) The individual is provided with the facilities used to perform services.
- 482 (p) The individual does not realize a profit or suffer a loss as a result of
 483 the services provided.
- 484 (q) The individual is not performing services for a number of employers at
 485 the same time.
- 486 (r) The individual does not make the same services available to the
 487 general public.
- 488 (s) The other contracting party has a right to discharge the individual.
- 489 (t) The individual has the right to end the relationship with the other
 490 contracting party without incurring liability pursuant to an employment contract or agreement.

491
 492 Section 8. [*Exceptions.*]

493 (A) Nothing in this Act is intended to do, and nothing in any of those sections is
 494 interpreted to do, either of the following:

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

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

500 (B) This Act shall not affect the scope or operation of any workers' compensation law or
 501 veterans' benefit program or the exclusive remedy of subrogation under the provisions of that
 502 law or program and shall not authorize any lawsuit that is barred by any provision of any
 503 workers' compensation law.

504 (C) Nothing in this Act shall require or permit the exhumation of bodies in making the
 505 prima-facie showing as required by section 3 or 4 of this Act or rebutting the presumption as
 506 provided in section 3 or 4 of this Act.

507
 508 Section 9. [*Burden of Proof a Tort Action Alleges any Injury or Loss to Person Resulting*
 509 *from Exposure to Silica or Mixed Dust as a Result of the Tortious Act of One or More*
 510 *Defendants.*]

511 (A) If a plaintiff in a tort action alleges any injury or loss to person resulting from
 512 exposure to silica or mixed dust as a result of the tortious act of one or more defendants, in order
 513 to maintain a cause of action against any of those defendants based on that injury or loss, the
 514 plaintiff must prove that the conduct of that particular defendant was a substantial factor in
 515 causing the injury or loss on which the cause of action is based.

516 (B) A plaintiff in a tort action who alleges any injury or loss to person resulting from
 517 exposure to silica or mixed dust has the burden of proving that the plaintiff was exposed to silica
 518 or mixed dust that was manufactured, supplied, installed, or used by the defendant in the action
 519 and that the plaintiff's exposure to the defendant's silica or mixed dust was a substantial factor in
 520 causing the plaintiff's injury or loss. In determining whether exposure to a particular defendant's

521 silica or mixed dust was a substantial factor in causing the plaintiff's injury or loss, the trier of
522 fact in the action shall consider, without limitation, all of the following:

523 (1) The manner in which the plaintiff was exposed to the defendant's silica or
524 mixed dust;

525 (2) The proximity of the defendant's silica or mixed dust to the plaintiff when the
526 exposure to the defendant's silica or mixed dust occurred;

527 (3) The frequency and length of the plaintiff's exposure to the defendant's silica or
528 mixed dust;

529 (4) Any factors that mitigated or enhanced the plaintiff's exposure to silica or
530 mixed dust.

531 (C) This section applies only to tort actions that allege any injury or loss to person
532 resulting from exposure to silica or mixed dust and that are brought on or after the effective date
533 of this section.

534

535 Section 10. [*Applying the Doctrine of Piercing the Corporate Veil to a Silicosis Claim or*
536 *a Mixed Dust Disease Claim.*]

537 (A) A holder has no obligation to, and has no liability to, the covered entity or to any
538 person with respect to any obligation or liability of the covered entity in a silicosis claim or a
539 mixed dust disease claim under the doctrine of piercing the corporate veil unless the person
540 seeking to pierce the corporate veil demonstrates all of the following:

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

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

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

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

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

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

559 (3) The officers and directors of the holder are also the officers and directors of
560 the covered entity.

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

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

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

568 (D) Any liability of the holder described in division (A) of this section for an obligation
569 or liability that is limited by that division is exclusive and preempts any other obligation or

570 liability imposed upon that holder for that obligation or liability under common law or otherwise.

571 (E) This section is intended to codify the elements of the common law cause of action for
 572 piercing the corporate veil and to abrogate the common law cause of action and remedies relating
 573 to piercing the corporate veil in silicosis claims and mixed dust disease claims. Nothing in this
 574 section shall be construed as creating a right or cause of action that did not exist under the
 575 common law as it existed on the effective date of this section.

576 (F) This section applies to all silicosis claims and mixed dust disease claims commenced
 577 on or after the effective date of this section or commenced prior to and pending on the effective
 578 date of this section.

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

581 (1) The holder is an individual and resides in this state.
 582 (2) The holder is a corporation organized under the laws of this state.
 583 (3) The holder is a corporation with its principal place of business in this state.
 584 (4) The holder is a foreign corporation that is authorized to conduct or has
 585 conducted business in this state.

586 (5) The holder is a foreign corporation the parent corporation of which is
 587 authorized to conduct business in this state.

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

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

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

592 (2) "Mixed dust," "mixed dust disease claim," "silica," and "silicosis claim" have
 593 the same meanings as in section 2 of this Act.

594 (3) "Covered entity" means a corporation, limited liability company, limited
 595 partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign,
 596 in which the shareholders, owners, or members are generally not responsible for the debts and
 597 obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed
 598 on a general partner of a limited partnership.

599 (4) "Holder" means a person who is the holder, beneficial owner, or subscriber of
 600 shares or any other ownership interest of a covered entity, a member of a covered entity, or an
 601 affiliate of any person who is the holder, beneficial owner, or subscriber of shares or any other
 602 ownership interest of a covered entity.

603 (5) "Piercing the corporate veil" means any and all common law doctrines by
 604 which a holder may be liable for an obligation or liability of a covered entity on the basis that the
 605 holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or
 606 the covered entity has been used for the purpose of actual or constructive fraud or as a sham to
 607 perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded
 608 for purposes of imposing liability on a holder for the debts or obligations of that covered entity.

609 (6) "Person" has the same meaning as in [insert citation].

610

611 Section 11. [*Final Orders.*]

612 (A) As used in this section:

613 (1) "Substantial right" means a right that the United States Constitution, this
 614 state's constitution, a statute, the common law, or a rule of procedure entitles a person to enforce
 615 or protect.

616 (2) "Special proceeding" means an action or proceeding that is specially created
 617 by statute and that [prior to 1853] was not denoted as an action at law or a suit in equity.

618 (3) "Provisional remedy" means a proceeding ancillary to an action, including, but
619 not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged
620 matter, or suppression of evidence, or a prima-facie showing pursuant to section 3 or 4 of this
621 Act.

622 (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with
623 or without retrial, when it is one of the following:

624 (1) An order that affects a substantial right in an action that in effect determines
625 the action and prevents a judgment;

626 (2) An order that affects a substantial right made in a special proceeding or upon a
627 summary application in an action after judgment;

628 (3) An order that vacates or sets aside a judgment or grants a new trial;

629 (4) An order that grants or denies a provisional remedy and to which both of the
630 following apply:

631 (a) The order in effect determines the action with respect to the
632 provisional remedy and prevents a judgment in the action in favor of the appealing party with
633 respect to the provisional remedy.

634 (b) The appealing party would not be afforded a meaningful or effective
635 remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in
636 the action.

637 (5) An order that determines that an action may or may not be maintained as a
638 class action.

639 (C) When a court issues an order that vacates or sets aside a judgment or grants a new
640 trial, the court, upon the request of either party, shall state in the order the grounds upon which
641 the new trial is granted or the judgment vacated or set aside.

642 (D) This section applies to and governs any action, including an appeal, that is pending
643 in any court on [July 22, 1998], and all claims filed or actions commenced on or after [July 22,
644 1998], notwithstanding any provision of any prior statute or rule of law of this state.

645

646 Section 12. [*Procedures and Venues for Consolidating Silicosis Claims or Mixed Dust*
647 *Disease Claims.*]

648 (A) As used in this section, "exposed person," "mixed dust," "mixed dust disease claim,"
649 "silica," "silicosis claim," and "substantial contributing factor" have the same meanings as in
650 section 2 of this Act.

651 (B) The [General Assembly] acknowledges the [Court's] authority in prescribing rules
652 governing practice and procedure in the courts of this state, as provided by the [state
653 constitution].

654 (C) The [General Assembly] hereby requests the [Supreme Court] to adopt rules to
655 specify procedures for venue and consolidation of silicosis claims or mixed dust disease claims
656 brought pursuant to this Act.

657 (D) With respect to procedures for venue in regard to silicosis claims or mixed dust
658 disease claims, the [General Assembly] hereby requests the [Supreme Court] to adopt a rule that
659 requires that a silicosis claim or a mixed dust disease claim meet specific nexus requirements,
660 including the requirement that the plaintiff be domiciled in this state or this state is the state in
661 which the plaintiff's exposure to silica or mixed dust is a substantial contributing factor.

662 (E) With respect to procedures for consolidation of silicosis claims or mixed dust disease
663 claims, the [General Assembly] hereby requests the [Supreme Court] to adopt a rule that permits
664 consolidation of silicosis claims or mixed dust disease claims only with the consent of all parties,
665 and in absence of that consent, permits a court to consolidate for trial only those silicosis claims

666 or mixed dust disease claims that relate to the same exposed person and members of the exposed
667 person's household.

668

669 Section 13. [*The Lohrman Standard.*]

670 (A) It is the intent of the [General Assembly] in enacting this Act to establish specific
671 factors to be considered when determining whether a particular plaintiff's exposure to a particular
672 defendant's silica or mixed dust was a substantial factor in causing the plaintiff's injury or loss.
673 The consideration of these factors, involving the plaintiff's proximity to the dust exposure,
674 frequency of the exposure, or regularity of the exposure in tort actions involving exposure to
675 silica or mixed dust is consistent with the factors listed by the court in *Lohrmann v. Pittsburgh*
676 *Corning Cor.* (4th Cir. 1986), 782 F.2d 1156. The [General Assembly], by its enactment of these
677 factors, intends to clarify and define for judges and juries the evidence that is relevant to the
678 common law requirement that the plaintiff must prove proximate causation. The [General
679 Assembly] recognizes that the courts of this state generally followed the rationale of the
680 *Lohrmann* decision in determining whether a plaintiff had submitted any evidence that a
681 particular defendant's product was a substantial cause of the plaintiff's injury in tort actions
682 involving exposure to certain hazardous or toxic substances, and that the *Lohrmann* factors were
683 of great assistance to the trial courts in the consideration of motions for summary judgment and
684 to juries when deciding issues of proximate causation. The [General Assembly] further
685 recognizes that a large number of states have adopted the *Lohrmann* standard.

686 (B) The *Lohrmann* standard provides litigants, juries, and the courts of this state an
687 objective and easily applied standard for determining whether a plaintiff has submitted evidence
688 that is sufficient to sustain the plaintiff's burden of proof as to proximate causation. Where
689 specific evidence of frequency of exposure to, or proximity and length of exposure to, a
690 particular defendant's silica or mixed dust is lacking, summary judgment is appropriate in tort
691 actions involving silica or mixed dust because such a plaintiff lacks any evidence of an essential
692 element that is necessary to prevail. To submit the legal concept of "substantial factor" to a jury
693 in these complex cases without those scientifically valid defining factors would be to invite
694 speculation on the part of juries, something that the [General Assembly] has determined not to be
695 in the best interests of this state and its courts.

696

697 Section 14. [*Severability.*] [Insert severability clause.]

698

699 Section 15. [*Repealer.*] [Insert repealer clause.]

700

701 Section 16. [*Effective Date.*] [Insert effective date.]