

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 Claims.”

2

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

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

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

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

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

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

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

28 (a) As stated by Linda Woggon, Vice President of Governmental Affairs
29 of the Ohio Chamber of Commerce, a recent RAND study found that during the first ten months
30 of 2002, fifteen companies facing significant asbestos-related liabilities filed for bankruptcy and
31 more than sixty thousand jobs have been lost because of these bankruptcies. The RAND study

32 estimates that the eventual cost of asbestos litigation could reach as high as four hundred twenty-
33 three thousand jobs.

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

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

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

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

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

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

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

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

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

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

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

78 (E) With respect to procedures for consolidation of asbestos claims, the [General
79 Assembly] hereby requests the [state Supreme Court] to adopt a rule that permits consolidation
80 of asbestos claims only with the consent of all parties, and in absence of that consent, permits a

81 court to consolidate for trial only those asbestos claims that relate to the same exposed person
82 and members of the exposed person's household.

83 (F) It is the intent of the [General Assembly] in enacting section 9 of this Act to establish
84 specific factors to be considered when determining whether a particular plaintiff's exposure to a
85 particular defendant's asbestos was a substantial factor in causing the plaintiff's injury or loss.
86 The consideration of these factors involving the plaintiff's proximity to the asbestos exposure,
87 frequency of the exposure, or regularity of the exposure in tort actions involving exposure to
88 asbestos is consistent with the factors listed by the court in *Lohrmann v. Pittsburgh Corning Cor.*
89 (4th Cir. 1986), 782 F.2d 1156. The [General Assembly] by its enactment of those factors
90 intends to clarify and define for judges and juries that evidence which is relevant to the common
91 law requirement that plaintiff must prove proximate causation. The [General Assembly] also
92 recognizes that the courts [of this state] generally followed the rationale of the *Lohrmann*
93 decision in determining whether plaintiff had submitted any evidence that a particular
94 defendant's product was a substantial cause of the plaintiff's injury in tort actions involving
95 exposure to certain hazardous or toxic substances, and that the *Lohrmann* factors were of great
96 assistance to the trial courts in the consideration of summary judgment motions and to juries
97 when deciding issues of proximate causation. The [General Assembly] further recognizes that a
98 large number of states have adopted this standard. It has also held hearings where medical
99 evidence has been submitted indicating such a standard is medically appropriate and is
100 scientifically sound public policy. The *Lohrmann* standard provides litigants, juries, and the
101 courts of [this state] an objective and easily applied standard for determining whether a plaintiff
102 has submitted evidence sufficient to sustain plaintiff's burden of proof as to proximate causation.
103 Where specific evidence of frequency of exposure, proximity and length of exposure to a
104 particular defendant's asbestos is lacking, summary judgment is appropriate in tort actions
105 involving asbestos because such a plaintiff lacks any evidence of an essential element necessary
106 to prevail. To submit a legal concept such as a "substantial factor" to a jury in these complex
107 cases without such scientifically valid defining factors would be to invite speculation on the part
108 of juries, something that the [General Assembly] has determined not to be in the best interests of
109 [this state] and its courts.

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

115
116 Section 3. [*Definitions.*] As used in sections 3 through 9 of this Act:

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

120 (B) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
121 asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or
122 altered.

123 (C) "Asbestos claim" means any claim for damages, losses, indemnification,
124 contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos
125 claim" includes a claim made by or on behalf of any person who has been exposed to asbestos,
126 or any representative, spouse, parent, child, or other relative of that person, for injury, including
127 mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of
128 medical monitoring or surveillance, or any other effects on the person's health that are caused by
129 the person's exposure to asbestos.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (U) “Pathological evidence of asbestosis” means a statement by a board-certified
178 pathologist that more than one representative section of lung tissue uninvolved with any other

179 disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the
180 presence of characteristic asbestos bodies and that there is no other more likely explanation for
181 the presence of the fibrosis.

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

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

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

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

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

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

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

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

208 (a) The reports or opinions of any doctor, clinic, laboratory, or testing
209 company that performed an examination, test, or screening of the claimant’s medical condition in
210 violation of any law, regulation, licensing requirement, or medical code of practice of the state in
211 which that examination, test, or screening was conducted;

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

216 (c) The reports or opinions of any doctor, clinic, laboratory, or testing
217 company that performed an examination, test, or screening of the claimant’s medical condition
218 that required the claimant to agree to retain the legal services of the law firm sponsoring the
219 examination, test, or screening.

220 (4) The medical doctor spends not more than [twenty-five percent] of the medical
221 doctor’s professional practice time in providing consulting or expert services in connection with
222 actual or potential tort actions, and the medical doctor’s medical group, professional corporation,
223 clinic, or other affiliated group earns not more than [twenty percent] of its revenues from
224 providing those services.

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

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

230 (CC) “Regular basis” means on a frequent or recurring basis.

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

234 (EE) “Spirometry” means the measurement of volume of air inhaled or exhaled by the
235 lung.

236 (FF) “Substantial contributing factor” means both of the following:

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

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

242 (GG) “Substantial occupational exposure to asbestos” means employment for a
243 cumulative period of at least five years in an industry and an occupation in which, for a
244 substantial portion of a normal work year for that occupation, the exposed person did any of the
245 following:

246 (1) Handled raw asbestos fibers;

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

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

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

254 (HH) “Timed gas dilution” means a method for measuring total lung capacity in which
255 the subject breathes into a spirometer containing a known concentration of an inert and insoluble
256 gas for a specific time, and the concentration of the inert and insoluble gas in the lung is then
257 compared to the concentration of that type of gas in the spirometer.

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

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

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

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

268

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

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

274 (B) No person shall bring or maintain a tort action alleging an asbestos claim based on a
275 nonmalignant condition in the absence of a prima-facie showing, in the manner described in

276 division (A) of section 5 of this Act, that the exposed person has a physical impairment, that the
277 physical impairment is a result of a medical condition, and that the person's exposure to asbestos
278 is a substantial contributing factor to the medical condition. That prima-facie showing shall
279 include all of the following minimum requirements:

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

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

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

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

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

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

300 (b) Either of the following:

301 (i) The exposed person has asbestosis or diffuse pleural thickening,
302 based at a minimum on radiological or pathological evidence of asbestosis or radiological
303 evidence of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in
304 this division, rather than solely chronic obstructive pulmonary disease, is a substantial
305 contributing factor to the exposed person's physical impairment, based at a minimum on a
306 determination that the exposed person has any of the following:

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

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

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

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

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

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

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

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

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

338 (c) Either of the following:

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

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

347 (2) If a plaintiff files a tort action that alleges an asbestos claim based upon lung
348 cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to asbestos
349 was the result of living with another person who, if the tort action had been filed by the other
350 person, would have met the requirements specified in division (C)(1)(c) of this section, and
351 alleges that the plaintiff lived with the other person for the period of time specified in division
352 (GG) of section 3 of this Act, the plaintiff is considered as having satisfied the requirements
353 specified in division (C)(1)(c) of this section.

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

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

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

368 (c) Either of the following:

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

371 (ii) Evidence of the deceased exposed person's exposure to
372 asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific

373 probability by a scientifically valid retrospective exposure reconstruction conducted by a
374 certified industrial hygienist or certified safety professional based upon all reasonably available
375 quantitative air monitoring data and all other reasonably available information about the
376 deceased exposed person's occupational history and history of exposure to asbestos.

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

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

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

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

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

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

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

404 (3) The court's findings and decisions are not admissible at trial.

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

408

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

410 (A) (1) The plaintiff in any tort action who alleges an asbestos claim shall file, within
411 [thirty days] after filing the complaint or other initial pleading, a written report and supporting
412 test results constituting prima-facie evidence of the exposed person's physical impairment that
413 meets the minimum requirements specified in division (B), (C), or (D) of section 4 of this Act,
414 whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity,
415 upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of
416 the physical impairment for failure to comply with the minimum requirements specified in
417 division (B), (C), or (D) of section 4 of this Act. The defendant has [one hundred twenty days]
418 from the date the specified type of prima-facie evidence is proffered to challenge the adequacy of
419 that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so,
420 the physician must meet the requirements specified in divisions (Z)(1), (3), and (4) of section 3
421 of this Act.

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

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

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

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

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

436 (c) If the court that has jurisdiction of the case finds that the plaintiff has
437 failed to provide sufficient evidence to support the plaintiff's cause of action or right to relief
438 under division (A)(3)(b) of this section, the court shall administratively dismiss the plaintiff's
439 claim without prejudice. The court shall maintain its jurisdiction over any case that is
440 administratively dismissed under this division. Any plaintiff whose case has been
441 administratively dismissed under this division may move to reinstate the plaintiff's case if the
442 plaintiff provides sufficient evidence to support the plaintiff's cause of action or the right to
443 relief under the law that was in effect when the plaintiff's cause of action arose.

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

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

458
459 Section 6. [*Period of Limitations, Nonmalignant Condition and Future Claims for*
460 *Asbestos-related Cancer.*]

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

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

471 (C) No settlement of an asbestos claim for a nonmalignant condition that is concluded
472 after the effective date of this section shall require, as a condition of settlement, the release of
473 any future claim for asbestos-related cancer.
474

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

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

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

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

490 (3) (a) A premises owner is presumed to be not liable for any injury to any
491 invitee who was engaged to work with, install, or remove asbestos products on the premises
492 owner's property if the invitee's employer held itself out as qualified to perform the work. To
493 rebut this presumption, the plaintiff must prove by a preponderance of the evidence that at the
494 time of the exposure to asbestos that is alleged the premises owner had actual knowledge of the
495 potential dangers of the asbestos products at the time of the alleged exposure that was superior to
496 the knowledge of both the invitee and the invitee's employer.

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

503 (c) If exposure to asbestos is alleged to have occurred on or after [January
504 1, 1972], a premises owner is not liable for any injury to any individual resulting from that
505 exposure caused by a contractor's employee or agent on the premises owner's property unless
506 the plaintiff establishes the premises owner's intentional violation of an established safety
507 standard that was in effect at the time of the exposure and that the alleged violation was in the
508 plaintiff's breathing zone and was the proximate cause of the plaintiff's medical condition.

509 (B) As used in this section:

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

- 513 (a) Asbestos: five million particles per cubic foot;
514 (b) Cadmium: 0.10 milligrams per cubic meter;
515 (c) Chromic acid and chromates (calculated as chromic oxide): 0.10
516 milligrams per cubic meter;
517 (d) Lead: 0.15 milligrams per cubic meter;
518 (e) Manganese: 6.0 milligrams per cubic meter;
519 (f) Mercury: 0.10 milligrams per cubic meter;

520 (g) Zinc oxide: 15.0 milligrams per cubic meter;
521 (h) Chlorinated diphenyls: 1.0 milligram per cubic meter;
522 (i) Chlorinated naphthalenes (trichloronaphthalene): 5.0 milligrams per
523 cubic meter;
524 (j) Chlorinated naphthalenes (pentachloronaphthalene): 0.50 milligrams per
525 cubic meter.

526 (2) “Established safety standard” means that, for the years after 1971, the
527 concentration of asbestos in the breathing zone of a worker does not exceed the maximum
528 allowable exposure limits for the eight-hour time-weighted average airborne concentration as
529 promulgated by the Occupational Safety and Health Administration (OSHA) in effect at the time
530 of the alleged exposure.

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

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

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

538 (c) The individual’s services are integrated into the regular functioning of
539 the other contracting party.

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

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

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

546 (g) The individual’s hours of work are established by the other contracting
547 party.

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

550 (i) The person is required to perform the work on the premises of the other
551 contracting party.

552 (j) The individual is required to follow the order of work set by the other
553 contracting party.

554 (k) The individual is required to make oral or written reports of progress
555 to the other contracting party.

556 (l) The individual is paid for services on a regular basis, including hourly,
557 weekly, or monthly.

558 (m) The individual’s expenses are paid for by the other contracting party.

559 (n) The individual’s tools and materials are furnished by the other
560 contracting party.

561 (o) The individual is provided with the facilities used to perform services.

562 (p) The individual does not realize a profit or suffer a loss as a result of
563 the services provided.

564 (q) The individual is not performing services for a number of employers at
565 the same time.

566 (r) The individual does not make the same services available to the
567 general public.

568 (s) The other contracting party has a right to discharge the individual.

569 (t) The individual has the right to end the relationship with the other
570 contracting party without incurring liability pursuant to an employment contract or agreement.
571

572 Section 8. [*Bankruptcy Proceedings, Workers Compensation, Veterans' Benefits, and*
573 *Wrongful Death Claims*].

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

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

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

581 (B) Sections 3 to 8 of this Act shall not affect the scope or operation of any workers'
582 compensation law or veterans' benefit program or the exclusive remedy of subrogation under the
583 provisions of that law or program and shall not authorize any lawsuit that is barred by any
584 provision of any workers' compensation law.

585 (C) Except as provided in division (D) of section 4 of this Act and in other provisions
586 that relate to the application of that division and the procedures and criteria it contains, nothing
587 in sections 4, 5, 6, and 8 of this Act, is intended, and nothing in any of those sections shall be
588 interpreted, to affect any wrongful death claim, as described in [insert citation].
589

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

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

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

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

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

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

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

610 (C) This section applies only to tort actions that allege any injury or loss to person
611 resulting from exposure to asbestos and that are brought on or after the effective date of this
612 section.
613

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

616 (A) A holder has no obligation to, and has no liability to, the covered entity or to any
617 person with respect to any obligation or liability of the covered entity in an asbestos claim under

618 the doctrine of piercing the corporate veil unless the person seeking to pierce the corporate veil
619 demonstrates all of the following:

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

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

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

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

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

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

638 (3) The officers and directors of the holder are also officers and directors of the
639 covered entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

667 (H) As used in this section, unless the context otherwise requires:
668 (1) “Affiliate” and “beneficial owner” have the same meanings as in [insert
669 citation].
670 (2) “Asbestos” has the same meaning as in section 3 of this Act.
671 (3) “Asbestos claim” means any claim, wherever or whenever made, for damages,
672 losses, indemnification, contribution, or other relief arising out of, based on, or in any way
673 related to asbestos. “Asbestos claim” includes any of the following:
674 (a) A claim made by or on behalf of any person who has been exposed to
675 asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury,
676 including mental or emotional injury, death, or loss to person, risk of disease or other injury,
677 costs of medical monitoring or surveillance, or any other effects on the person’s health that are
678 caused by the person’s exposure to asbestos;
679 (b) A claim for damage or loss to property that is caused by the
680 installation, presence, or removal of asbestos.
681 (4) “Corporation” means a corporation for profit, including the following:
682 (a) A domestic corporation that is organized under the laws of this state;
683 (b) A foreign corporation that is organized under laws other than the laws
684 of this state and that has had a certificate of authority to transact business in this state or has done
685 business in this state.
686 (5) “Covered entity” means a corporation, limited liability company, limited
687 partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign,
688 in which the shareholders, owners, or members are generally not responsible for the debts and
689 obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed
690 on a general partner of a limited partnership.
691 (6) “Holder” means a person who is the holder or beneficial owner of, or
692 subscriber to, shares or any other ownership interest of a covered entity, a member of a covered
693 entity, or an affiliate of any person who is the holder or beneficial owner of, or subscriber to,
694 shares or any other ownership interest of a covered entity.
695 (7) “Piercing the corporate veil” means any and all common law doctrines by
696 which a holder may be liable for an obligation or liability of a covered entity on the basis that the
697 holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or
698 the covered entity has been used for the purpose of actual or constructive fraud or as a sham to
699 perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded
700 for purposes of imposing liability on a holder for the debts or obligations of that covered entity.
701 (8) “Person” has the same meaning as in [insert citation].
702
703 Section 11. [*Severability.*] [Insert severability clause.]
704
705 Section 12. [*Repealer.*] [Insert repealer clause.]
706
707 Section 13. [*Effective Date.*] [Insert effective date.]