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To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos or silica exposure, to ensure that individuals who suffer impairment, now or in the future, from illnesses caused by exposure to asbestos or silica receive compensation for their injuries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. CANNON (for himself, Mr. PENCE, Mr. FLAKE, Mr. BISHOP of Utah, Mr. HENSARLING, Mr. MCHENRY, Mr. KING of Iowa, Mr. BARTLETT of Maryland, Mr. FEENEY, Mrs. MYRICK, Mr. HERGER, Mrs. CUBIN, Mr. BACHUS, Mr. GOHMERT, Mr. SAM JOHNSON of Texas, Mr. PITTS, Mr. KIRK, Mr. KELLER, Mr. CHABOT, Mr. SESSIONS, Mr. LINDER, Mr. HOSTETTLER, Mr. TOM DAVIS of Virginia, Mr. CARTER, Mr. BURGESS, Mr. PEARCE, Ms. HART, Mr. SMITH of Texas, Mr. SOUDER, Mr. OTTER, Mr. SCHWARZ of Michigan, Mr. WELDON of Florida, Mr. GOODLATTE, Mrs. BLACKBURN, Mr. COLE of Oklahoma, Mr. ENGLISH of Pennsylvania, Mr. SIMMONS, Mr. TIBERI, Mr. BAKER, Mr. MANZULLO, and Mr. CONAWAY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos or silica exposure, to ensure that individuals who suffer impairment, now or in the future, from illnesses caused by exposure to asbestos or silica receive compensation for their injuries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Asbestos Compensation Fairness Act of 2005”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Physical impairment.
- Sec. 4. Procedures.
- Sec. 5. Statute of limitations; two-disease rule.
- Sec. 6. Scope of liability; damages.
- Sec. 7. Liability rules applicable to product sellers, renters, lessors, and prem-
ises owners.
- Sec. 8. Definitions.
- Sec. 9. Miscellaneous provisions.
- Sec. 10. Effective date.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) asbestos is a mineral that was widely used
 10 prior to the 1980s for insulation, fireproofing, and
 11 other purposes;

12 (2) millions of American workers and others
 13 were exposed to asbestos, especially during and after
 14 World War II and prior to the advent of regulation
 15 by the Occupational Safety and Health Administra-
 16 tion in the early 1970s;

17 (3) long-term exposure to asbestos has been as-
 18 sociated with various types of cancer, including
 19 mesothelioma and lung cancer, as well as such non-

1 malignant conditions as asbestosis, pleural plaques,
2 and diffuse pleural thickening;

3 (4) the diseases caused by asbestos often have
4 long latency periods;

5 (5) although the use of asbestos has dramati-
6 cally declined since 1980 and workplace exposures
7 have been regulated since 1971 by the Occupational
8 Safety & Health Administration, past exposures will
9 continue to result in significant claims of death and
10 disability as a result of such exposure;

11 (6) exposure to asbestos has created a flood of
12 litigation in State and Federal courts that the
13 United States Supreme Court has characterized as
14 “an elephantine mass” of cases that “defies cus-
15 tomary judicial administration and calls for national
16 legislation,” *Ortiz v. Fibreboard Corporation*, 119 S.
17 Ct. 2295, 2302 (1999);

18 (7) asbestos personal injury litigation can be
19 unfair and inefficient, imposing a severe burden on
20 litigants and taxpayers alike;

21 (8) the extraordinary volume of nonmalignant
22 asbestos cases continues to strain State and Federal
23 courts, with a significant number of new cases filed
24 each year;

1 (9) asbestos personal injury litigation has al-
2 ready contributed to the bankruptcy of more than
3 70 companies, including nearly all manufacturers of
4 asbestos textile and insulation products, and the rate
5 of asbestos-driven bankruptcies is accelerating;

6 (10) the vast majority of asbestos claims are
7 filed by individuals who allege they have been ex-
8 posed to asbestos and who may have some physical
9 sign of exposure, but who suffer no present asbestos-
10 related impairment;

11 (11) the cost of compensating exposed individ-
12 uals who are not sick jeopardizes the ability of de-
13 fendants to compensate people with cancer and other
14 serious asbestos-related diseases, now and in the fu-
15 ture; threatens the savings, retirement benefits, and
16 jobs of defendants' current and retired employees;
17 adversely affects the communities in which these de-
18 fendants operate; and impairs the national economy
19 and interstate commerce;

20 (12) the several thousand asbestos-related can-
21 cer cases that are filed each year are manageable by
22 the courts and the litigants;

23 (13) silica is a naturally occurring mineral with
24 the Earth's crust consisting of over 90 percent silica,

1 and crystalline silica dust is the primary component
2 of sand, quartz, and granite;

3 (14) silicosis was recognized as an occupational
4 disease many years ago, and by the 1930s, the Fed-
5 eral Government launched a silica awareness cam-
6 paign, which led to greater protection for workers
7 exposed to silica resulting in a predictable number of
8 silica claims;

9 (15) in recent years, however, the number of
10 new lawsuits alleging silica disease being filed each
11 year began to rise precipitously;

12 (16) like asbestos claims, silica claims often
13 arise when an exposed person is identified as having
14 markings on his or her lungs that are possibly con-
15 sistent with silica exposure, but the exposed person
16 has no functional or physical impairment from silica;

17 (17) therefore, it is necessary to address silica
18 litigation to avoid an asbestos-like litigation crisis;

19 (18) concerns about statutes of limitations can
20 force claimants who have been exposed to asbestos
21 or silica, but who have no current injury, to bring
22 premature lawsuits in order to protect against losing
23 their rights to future compensation should they be-
24 come impaired;

1 (19) consolidations, joinder, and similar proce-
2 dures, to which some courts have resorted in order
3 to deal with the mass of asbestos and silica cases,
4 can undermine the appropriate functioning of the ju-
5 dicial process and encourage the filing of thousands
6 of cases by exposed individuals who are not yet sick
7 and who may never become sick;

8 (20) similarly, the availability of sympathetic
9 forums in States with no connection to the plaintiff
10 or to the exposures that form the basis of the law-
11 suit has encouraged the filing of thousands of cases
12 on behalf of exposed individuals who are not yet sick
13 and may never become sick;

14 (21) excessive, unpredictable, and often arbi-
15 trary damage awards and unfair allocations of liabil-
16 ity jeopardize the financial well-being of many indi-
17 viduals, businesses, and entire industries, particu-
18 larly the Nation's small businesses;

19 (22) punitive damage awards unfairly divert the
20 resources of defendants from compensating genu-
21 inely impaired claimants and, given the lengthy his-
22 tory of asbestos and silica litigation and the regu-
23 latory restrictions on the use of asbestos-containing
24 products in the workplace, the legal justification for

1 such awards—punishment and deterrence—is either
2 inapplicable or inappropriate; and

3 (23) the public interest and the interest of
4 interstate commerce requires deferring the claims of
5 exposed individuals who are not sick in order to pre-
6 serve, now and for the future, defendants' ability to
7 compensate people who develop cancer and other se-
8 rious asbestos, or related, injuries and to safeguard
9 the jobs, benefits, and savings of American workers
10 and the well-being of the national economy.

11 (b) PURPOSES.—It is the purpose of this Act to—

12 (1) give priority to those asbestos or silica
13 claimants who can demonstrate actual physical harm
14 or illness caused by exposure to asbestos or silica;

15 (2) fully preserve the rights of claimants who
16 were exposed to asbestos or silica to pursue com-
17 pensation should they become impaired in the future
18 as a result of such exposure;

19 (3) enhance the ability of the State and Federal
20 judicial systems to supervise and control asbestos
21 and silica litigation and asbestos-related bankruptcy
22 proceedings; and

23 (4) conserve the scarce resources of the defend-
24 ants, and marshal assets in bankruptcy, to allow
25 compensation of cancer victims and others who are

1 physically impaired by exposure to asbestos or silica
2 while securing the right to similar compensation for
3 those who may suffer physical impairment in the fu-
4 ture.

5 **SEC. 3. PHYSICAL IMPAIRMENT.**

6 (a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—
7 Physical impairment of the exposed person, to which as-
8 bestos or silica exposure was a substantial contributing
9 factor, shall be an essential element of an asbestos or silica
10 claim.

11 (b) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIR-
12 MENT FOR NONMALIGNANT ASBESTOS CLAIMS.—No per-
13 son shall bring or maintain a civil action alleging a non-
14 malignant asbestos claim in the absence of a prima facie
15 showing of physical impairment as a result of a medical
16 condition to which exposure to asbestos was a substantial
17 contributing factor. Such a prima facie showing shall in-
18 clude all of the following minimum requirements:

19 (1) Evidence verifying that a qualified physician
20 has taken a detailed occupational and exposure his-
21 tory of the exposed person or, if such person is de-
22 ceased, from the person who is the most knowledge-
23 able about the exposures that form the basis of the
24 nonmalignant asbestos claim, including—

1 (A) all of the exposed person's principal
2 places of employment and exposures to airborne
3 contaminants; and

4 (B) whether each place of employment in-
5 volved exposures to airborne contaminants (in-
6 cluding but not limited to asbestos fibers or
7 other disease causing dusts) that can cause pul-
8 monary impairment and the nature, duration,
9 and level of any such exposure.

10 (2) Evidence verifying that a qualified physician
11 has taken detailed medical and smoking history, in-
12 cluding a thorough review of the exposed person's
13 past and present medical problems, and their most
14 probable cause.

15 (3) A determination by a qualified physician, on
16 the basis of a medical examination and pulmonary
17 function testing, that the exposed person has a per-
18 manent respiratory impairment rating of at least
19 Class 2 as defined by and evaluated pursuant to the
20 AMA Guides to the Evaluation of Permanent Im-
21 pairment.

22 (4) A diagnosis by a qualified physician of as-
23 bestosis or diffuse pleural thickening, based at a
24 minimum on radiological or pathological evidence of

1 asbestosis or radiological evidence of diffuse pleural
2 thickening.

3 (5) A determination by a qualified physician
4 that asbestosis or diffuse pleural thickening (rather
5 than solely chronic obstructive pulmonary disease) is
6 a substantial contributing factor to the exposed per-
7 son's physical impairment, based at a minimum on
8 a determination that the exposed person has—

9 (A) total lung capacity, by
10 plethysmography or timed gas dilution, below
11 the predicted lower limit of normal; or

12 (B) forced vital capacity below the lower
13 limit of normal and a ratio of FEV1 to FVC
14 that is equal to or greater than the predicted
15 lower limit of normal; and

16 (C) a chest x-ray showing small, irregular
17 opacities (s,t,u) graded by a certified B-reader
18 at least 2/1 on the ILO scale.

19 (c) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED
20 LUNG CANCER.—No person shall bring or maintain a civil
21 action alleging an asbestos claim which is based upon lung
22 cancer, in the absence of a prima facie showing which shall
23 include the following minimum requirements:

24 (1) Diagnosis by a Board-certified pathologist,
25 pulmonary specialist, or oncologist of a primary lung

1 cancer and that exposure to asbestos was a substan-
2 tial contributing factor to the lung cancer.

3 (2) Evidence sufficient to demonstrate that at
4 least 10 years have elapsed between the date of first
5 exposure to asbestos and the date of diagnosis of the
6 lung cancer.

7 (3) Depending on whether the exposed person
8 has a history of smoking, the requirements of either
9 (A) or (B) below—

10 (A) in the case of an exposed person who
11 is a nonsmoker, either—

12 (i) radiological or pathological evi-
13 dence of asbestosis or radiological evidence
14 of diffuse pleural thickening; or

15 (ii) either—

16 (I) evidence of the exposed per-
17 son's substantial occupational expo-
18 sure to asbestos; or

19 (II) evidence of the exposed per-
20 son's exposure to asbestos at least
21 equal to 25 fiber per cc years as de-
22 termined to a reasonable degree of
23 scientific probability by a scientifically
24 valid retrospective exposure recon-
25 struction conducted by a certified in-

1 industrial hygienist or certified safety
2 professional based upon all reasonably
3 available quantitative air monitoring
4 data and all other reasonably available
5 information about the exposed per-
6 son's occupational history and history
7 of exposure to asbestos; or

8 (B) in the case of an exposed person who
9 is a smoker, the criteria contained in both
10 (A)(i) and (A)(ii) must be met.

11 (d) PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED
12 OTHER CANCER.—No person shall bring or maintain a
13 civil action alleging an asbestos claim which is based upon
14 cancer of the colon, rectum, larynx, pharynx, esophagus,
15 or stomach, in the absence of a prima facie showing which
16 shall include the following minimum requirements:

17 (1) A diagnosis by a Board-certified patholo-
18 gist, Board-certified pulmonary specialist, or Board-
19 certified oncologist (as appropriate for the type of
20 cancer claimed) of primary cancer of the colon, rec-
21 tum, larynx, pharynx, esophagus, or stomach, and
22 that exposure to asbestos was a substantial contrib-
23 uting factor to the condition.

24 (2) Evidence sufficient to demonstrate that at
25 least 10 years have elapsed between the date of first

1 exposure to asbestos and the date of diagnosis of the
2 cancer.

3 (3) The requirements of (A) and (B) below—

4 (A) radiological or pathological evidence of
5 asbestosis or radiological evidence of diffuse
6 pleural thickening; and

7 (B) either of the following:

8 (i) Evidence of the exposed person's
9 substantial occupational exposure to asbes-
10 tos.

11 (ii) Evidence of the exposed person's
12 exposure to asbestos at least equal to 25
13 fiber per cc years as determined to a rea-
14 sonable degree of scientific probability by a
15 scientifically valid retrospective exposure
16 reconstruction conducted by a certified in-
17 dustrial hygienist or certified safety profes-
18 sional based upon all reasonably available
19 quantitative air monitoring data and all
20 other reasonably available information
21 about the exposed person's occupational
22 history and history of exposure to asbestos.

23 (e) PRIMA FACIE REQUIREMENT FOR MESOTHE-
24 LIOMA.—No person shall bring or maintain a civil action
25 alleging an asbestos claim based upon mesothelioma, in

1 the absence of a prima facie showing which shall include
2 a diagnosis of malignant mesothelioma disease on the
3 basis of findings by a qualified physician and credible evi-
4 dence of identifiable exposure to asbestos resulting from—

5 (1) occupational exposure to asbestos;

6 (2) exposure to asbestos fibers brought into the
7 home of the claimant by a worker occupationally ex-
8 posed to asbestos; or

9 (3) exposure to asbestos fibers resulting from
10 living or working in the proximate vicinity of a fac-
11 tory, shipyard, building demolition site, or other op-
12 eration that regularly released asbestos fibers into
13 the air due to operations involving asbestos at that
14 site.

15 (f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIR-
16 MENT FOR NONMALIGNANT SILICA CLAIMS.—No person
17 shall bring or maintain a civil action alleging a nonmalig-
18 nant silica claim in the absence of a prima facie showing
19 of physical impairment as a result of a medical condition
20 to which exposure to silica was a substantial contributing
21 factor. Such a prima facie showing shall include all of the
22 following minimum requirements:

23 (1) Evidence verifying that a qualified physician
24 has taken a detailed occupational and exposure his-
25 tory of the exposed person or, if such person is de-

1 ceased, from the person who is the most knowledge-
2 able about the exposures that form the basis of the
3 nonmalignant silica claim, including—

4 (A) all of the exposed person's principal
5 places of employment and exposures to airborne
6 contaminants; and

7 (B) whether each place of employment in-
8 volved exposures to airborne contaminants (in-
9 cluding but not limited to silica or other disease
10 causing dusts) that can cause pulmonary im-
11 pairment and the nature, duration, and level of
12 any such exposure.

13 (2) Evidence verifying that a qualified physician
14 has taken detailed medical and smoking history, in-
15 cluding a thorough review of the exposed person's
16 past and present medical problems, and their most
17 probable cause.

18 (3) A determination by a qualified physician, on
19 the basis of a medical examination and pulmonary
20 function testing, that the exposed person has both—

21 (A) a permanent respiratory impairment
22 rating of at least Class 2 as defined by and
23 evaluated pursuant to the AMA Guides to the
24 Evaluation of Permanent Impairment; and

1 (B) silicosis based at a minimum on radio-
2 logical or pathological evidence of silicosis.

3 (g) PRIMA FACIE EVIDENCE OF SILICA-RELATED
4 LUNG CANCER.—No person shall bring or maintain a civil
5 action alleging an asbestos claim which is based upon lung
6 cancer, in the absence of a prima facie showing which shall
7 include the following minimum requirements:

8 (1) Diagnosis by a Board-certified pathologist,
9 pulmonary specialist, or oncologist of a primary lung
10 cancer and that exposure to silica was a substan-
11 tially contributing factor to the condition.

12 (2) Evidence sufficient to demonstrate that at
13 least 10 years have elapsed from the date of the ex-
14 posed person's first exposure to silica until the date
15 of diagnosis of the exposed person's primary lung
16 cancer.

17 (3) Depending on whether the exposed person
18 has a history of smoking, the requirements of either
19 (A) or (B) below—

20 (A) in the case of an exposed person who
21 is a nonsmoker, either—

22 (i) radiological or pathological evi-
23 dence of silicosis; or

1 (ii) evidence of the exposed person's
2 substantial occupational exposure to silica;

3 or

4 (B) in the case of an exposed person who
5 is a smoker, the criteria contained in both
6 (A)(i) and (A)(ii) must be met.

7 (h) COMPLIANCE WITH TECHNICAL STANDARDS.—
8 Evidence relating to physical impairment under this sec-
9 tion, including pulmonary function testing and diffusing
10 studies, shall comply with the technical recommendations
11 for examinations, testing procedures, quality assurance/
12 quality control, and equipment of the AMA Guides to the
13 Evaluation of Permanent Impairment. No adjustments
14 with respect to pulmonary function testing shall be made
15 on the basis of race.

16 (i) NO PRESUMPTION AT TRIAL.—Presentation of
17 prima facie evidence meeting the requirements of sub-
18 section (b), (c), (d), (f), or (g) of this section shall not—

19 (1) result in any presumption at trial that the
20 exposed person is impaired by an asbestos- or silica-
21 related condition;

22 (2) be conclusive as to the liability of any de-
23 fendant; and

24 (3) be admissible at trial.

1 **SEC. 4. PROCEDURES.**

2 (a) CONSOLIDATION.—A court may consolidate for
3 trial any number and type of asbestos or silica claims with
4 consent of all the parties. In the absence of such consent,
5 the court may consolidate for trial only asbestos or silica
6 claims relating to the same exposed person and members
7 of his or her household.

8 (b) FEDERAL VENUE.—The Federal district courts
9 shall have original jurisdiction of any asbestos or silica
10 claim. A civil action alleging an asbestos or silica claim
11 may only be brought in the Federal district court of plain-
12 tiff's domicile or where all, or a substantial part, including
13 the most significant, exposure to asbestos or silica oc-
14 curred, that is a substantial contributing factor to the
15 physical impairment on which the claim is based.

16 (c) PRELIMINARY PROCEEDINGS.—The plaintiff in
17 any civil action alleging an asbestos or silica claim shall
18 file together with the complaint or other initial pleading
19 a written report and supporting test results constituting
20 prima facie evidence of the exposed person's asbestos- or
21 silica-related impairment meeting the requirements of sub-
22 section (b), (c), (d), (f), or (g) of section 3. For any asbes-
23 tos or silica claim pending on the effective date of this
24 Act, the plaintiff shall file such a written report and sup-
25 porting test results no later than 60 days following the
26 effective date, or if trial is scheduled within 60 days of

1 the effective date, no later than 30 days prior to trial. The
2 defendant shall be afforded a reasonable opportunity to
3 challenge the adequacy of the proffered prima facie evi-
4 dence of asbestos- or silica-related impairment. The plain-
5 tiff's claim shall be dismissed without prejudice upon a
6 finding of failure to make the required prima facie show-
7 ing.

8 (d) BURDEN OF PROOF.—The plaintiff in any civil
9 action alleging an asbestos or silica claim shall have the
10 following burden of proof:

11 (1) The plaintiff must prove that the conduct of
12 each defendant was a substantial contributing factor
13 of the exposed person's asbestos- or silica-related im-
14 pairment.

15 (2) The plaintiff must prove exposure to asbes-
16 tos or silica that was manufactured, supplied, in-
17 stalled, or used by each defendant in the civil action
18 and that the plaintiff's exposure to each defendant's
19 asbestos or silica was a substantial factor in causing
20 the asbestos- or silica-related impairment. In deter-
21 mining whether exposure to a particular defendant's
22 asbestos or silica was a substantial contributing fac-
23 tor in causing the asbestos- or silica-related impair-
24 ment, the trier of fact in the civil action shall con-
25 sider, without limitation, all of the following:

1 (A) The manner in which the plaintiff was
2 exposed to defendant's asbestos or silica.

3 (B) The proximity of the defendant's as-
4 bestos or silica to the plaintiff when the expo-
5 sure to the defendant's asbestos or silica oc-
6 curred.

7 (C) The frequency and length of the plain-
8 tiff's exposure to the defendant's asbestos or
9 silica.

10 (D) Any factors that mitigated or en-
11 hanced the plaintiff's exposure to asbestos or
12 silica.

13 **SEC. 5. STATUTE OF LIMITATIONS; TWO-DISEASE RULE.**

14 (a) **STATUTE OF LIMITATIONS.**—Notwithstanding
15 any other provision of law, with respect to any asbestos
16 or silica claim not barred as of the effective date of this
17 Act, the limitations period shall not begin to run until the
18 exposed person discovers, or through the exercise of rea-
19 sonable diligence should have discovered, that he or she
20 is physically impaired by an asbestos- or silica-related con-
21 dition.

22 (b) **TWO-DISEASE RULE.**—An asbestos or silica claim
23 arising out of a nonmalignant condition shall be a distinct
24 cause of action from an asbestos or silica claim relating
25 to the same exposed person arising out of asbestos- or sili-

1 ca-related cancer. No damages shall be awarded for fear
2 or risk of cancer in any civil action asserting an asbestos
3 or silica claim.

4 **SEC. 6. SCOPE OF LIABILITY; DAMAGES.**

5 (a) **PROPORTIONAL LIABILITY.**—A defendant against
6 whom a final judgment is entered in a civil action alleging
7 an asbestos or silica claim shall be liable only for that por-
8 tion of the judgment that corresponds to the percentage
9 of responsibility of such defendant. For the purposes of
10 determining the percentage of responsibility of a defend-
11 ant, the trier of fact shall determine that percentage as
12 a percentage of the total fault of all persons (including
13 the plaintiff and those who have filed for bankruptcy pro-
14 tection) who are responsible for the harm to the plaintiff,
15 regardless of whether or not such person is a party to the
16 action. The court shall render a separate judgment against
17 each defendant in an amount determined pursuant to this
18 subsection.

19 (b) **NONECONOMIC LOSS.**—In any civil action alleg-
20 ing an asbestos or silica claim, the total amount of dam-
21 ages that may be awarded for noneconomic loss shall not
22 exceed \$250,000, regardless of the number of parties
23 against whom the action is brought. However, in actions
24 involving an asbestos or silica claim based upon mesothe-

1 lioma, the total amount of damages that may be awarded
2 for noneconomic loss shall not exceed \$500,000.

3 (c) PUNITIVE DAMAGES.—No punitive damages shall
4 be awarded in any civil action alleging an asbestos or silica
5 claim.

6 (d) COLLATERAL SOURCE PAYMENTS.—At the time
7 a complaint is filed in a civil action alleging an asbestos
8 or silica claim, the plaintiff must file a written report with
9 the court that discloses the total amount of any collateral
10 source payments received, including payments which the
11 plaintiff will receive in the future, as a result of settle-
12 ments or judgments based upon the same claim. For any
13 asbestos or silica claim pending on the date of enactment
14 of this Act, the plaintiff shall file such written report no
15 later than 60 days after the date of enactment, or if trial
16 is scheduled within 60 days of enactment, no later than
17 30 days prior to trial. Further, the plaintiff shall be re-
18 quired to update this report on a regular basis during the
19 course of the proceeding until a final judgment is entered
20 in the case. The court shall ensure that the information
21 contained in the initial and updated reports is treated as
22 privileged and confidential and that the contents of the
23 written reports shall not be disclosed to anyone except the
24 other parties to the action. The amount of an award other-
25 wise available to an asbestos or silica plaintiff shall be re-

1 duced by the amount of collateral source compensation
2 disclosed pursuant to this section.

3 **SEC. 7. LIABILITY RULES APPLICABLE TO PRODUCT SELL-**
4 **ERS, RENTERS, LESSORS, AND PREMISES**
5 **OWNERS.**

6 (a)(1) IN GENERAL.—In any civil action alleging an
7 asbestos or silica claim, a product seller other than a man-
8 ufacturer shall be liable to a plaintiff only if the plaintiff
9 establishes that—

10 (A)(i) the product that allegedly caused the
11 harm that is the subject of the complaint was sold,
12 rented, or leased by the product seller;

13 (ii) the product seller failed to exercise reason-
14 able care with respect to the product; and

15 (iii) the failure to exercise reasonable care was
16 a proximate cause of the harm to the exposed per-
17 son;

18 (B)(i) the product seller made an express war-
19 ranty applicable to the product that allegedly caused
20 the harm that is the subject of the complaint, inde-
21 pendent of any express warranty made by the manu-
22 facturer as to the same product;

23 (ii) the product failed to conform to the war-
24 ranty; and

1 (iii) the failure of the product to conform to the
2 warranty caused the harm to the exposed person; or

3 (C)(i) the product seller engaged in intentional
4 wrongdoing, as determined under applicable State
5 law; and

6 (ii) the intentional wrongdoing caused the harm
7 that is the subject of the complaint.

8 (2) REASONABLE OPPORTUNITY FOR INSPECTION.—

9 For the purposes of paragraph (1)(A)(i), a product seller
10 shall not be considered to have failed to exercise reason-
11 able care with respect to a product based upon an alleged
12 failure to inspect the product, if—

13 (A) the failure occurred because there was no
14 reasonable opportunity to inspect the product; or

15 (B) the inspection, in the exercise of reasonable
16 care, would not have revealed the aspect of the prod-
17 uct that allegedly caused the exposed person's im-
18 pairment.

19 (b) RENTED OR LEASED PRODUCTS.—In any civil
20 action alleging an asbestos or silica claim, a person en-
21 gaged in the business of renting or leasing a product shall
22 not be liable for the tortious act of another solely by rea-
23 son of ownership of that product.

24 (c) PREMISES OWNERS.—In any civil action alleging
25 an asbestos or silica claim, a premises owner, or any entity

1 performing any operations on a premises, is not liable to
2 a plaintiff for asbestos or silica claims, unless that plain-
3 tiff's alleged exposure occurred while the exposed person
4 was at the premises.

5 **SEC. 8. DEFINITIONS.**

6 In this Act:

7 (1) **AMA GUIDES TO THE EVALUATION OF PER-**
8 **MANENT IMPAIRMENT.**—The term “AMA Guides to
9 the Evaluation of Permanent Impairment” means
10 the American Medical Association’s Guides to the
11 Evaluation of Permanent Impairment (Fifth Edition
12 2000) as may be modified from time to time by the
13 American Medical Association.

14 (2) **ASBESTOS.**—The term “asbestos” includes
15 all minerals defined as “asbestos” in 29 CFR 1910
16 as amended from time to time.

17 (3) **ASBESTOS CLAIM.**—The term “asbestos
18 claim” means any claim for damages or other relief
19 presented in a civil action or bankruptcy proceeding,
20 arising out of, based on, or related to the health ef-
21 fects of exposure to asbestos, including loss of con-
22 sortium and any other derivative claim made by or
23 on behalf of any exposed person or any representa-
24 tive, spouse, parent, child, or other relative of any
25 exposed person. The term does not include claims

1 for benefits under a workers' compensation law or
2 veterans' benefits program, or claims brought by any
3 person as a subrogee by virtue of the payment of
4 benefits under a workers' compensation law.

5 (4) ASBESTOSIS.—The term “asbestosis”
6 means bilateral diffuse interstitial fibrosis of the
7 lungs caused by inhalation of asbestos fibers.

8 (5) BANKRUPTCY PROCEEDING.—The term
9 “bankruptcy proceeding” means a case brought
10 under title 11, United States Code, or any related
11 proceeding as provided in section 157 of title 28,
12 United States Code.

13 (6) BOARD-CERTIFIED IN INTERNAL MEDI-
14 CINE.—The term “Board-certified in internal medi-
15 cine” means a physician who is certified by the
16 American Board of Internal Medicine or the Amer-
17 ican Osteopathic Board of Internal Medicine.

18 (7) BOARD-CERTIFIED IN OCCUPATIONAL MEDI-
19 CINE.—The term “Board-certified in occupational
20 medicine” means a physician who is certified in the
21 subspecialty of occupational medicine by the Amer-
22 ican Board of Preventive Medicine or the American
23 Osteopathic Board of Preventive Medicine.

24 (8) BOARD-CERTIFIED IN ONCOLOGY.—The
25 term “Board-certified in oncology” means a physi-

1 cian who is certified in the subspecialty of medical
2 oncology by the American Board of Internal Medi-
3 cine or the American Osteopathic Board of Internal
4 Medicine.

5 (9) BOARD-CERTIFIED IN PATHOLOGY.—The
6 term “Board-certified in pathology” means a physi-
7 cian who holds primary certification in anatomic pa-
8 thology or clinical pathology from the American
9 Board of Pathology or the American Osteopathic
10 Board of Internal Medicine and whose professional
11 practice—

12 (A) is principally in the field of pathology;

13 and

14 (B) involves regular evaluation of pathol-
15 ogy materials obtained from surgical or post-
16 mortem specimens.

17 (10) BOARD-CERTIFIED IN PULMONARY MEDI-
18 CINE.—The term “Board-certified in pulmonary
19 medicine” means a physician who is certified in the
20 subspecialty of pulmonary medicine by the American
21 Board of Internal Medicine or the American Osteo-
22 pathic Board of Internal Medicine.

23 (11) CERTIFIED B-READER.—The term “cer-
24 tified B-reader” means an individual qualified as a

1 “final” or “B-reader” under 42 CFR 37.51(b) as
2 amended.

3 (12) CIVIL ACTION.—The term “civil action”
4 means all suits or claims of a civil nature in State
5 or Federal court, whether cognizable as cases at law
6 or in equity or in admiralty, including an asbestos
7 or silica claim in a bankruptcy proceeding. The term
8 does not include an action relating to any workers’
9 compensation law, or a proceeding for benefits under
10 any veterans’ benefits program.

11 (13) ECONOMIC LOSS.—The term “economic
12 loss” means any pecuniary loss resulting from phys-
13 ical impairment, including the loss of earnings or
14 other benefits related to employment, medical ex-
15 pense loss, replacement services loss, loss due to
16 death, burial costs, and loss of business or employ-
17 ment opportunities.

18 (14) EXPOSED PERSON.—The term “exposed
19 person” means any person whose exposure to asbes-
20 tos or silica or to asbestos- or silica-containing prod-
21 ucts which is the basis for an asbestos or silica
22 claim.

23 (15) EXPOSURE YEARS.—The term “exposure
24 years” means—

1 (A) each single year of exposure prior to
2 1972 will be counted as one year;

3 (B) each single year of exposure from
4 1972 through 1979 will be counted as one-half
5 year; and

6 (C) exposure after 1979 will not be count-
7 ed, except that each year from 1972 forward
8 for which the plaintiff can establish exposure
9 exceeding the OSHA limit for 8-hour time-
10 weighted average airborne concentration for a
11 substantial portion of the year will count as one
12 year.

13 (16) FEV1.—The term “FEV1” means forced
14 expiratory volume in the first second, which is the
15 maximal volume of air expelled in one second during
16 performance of simple spirometric tests.

17 (17) FVC.—The term “FVC” means forced
18 vital capacity which is the maximal volume of air ex-
19 pired with maximum effort from a position of full in-
20 spiration.

21 (18) ILO SCALE.—The term “ILO Scale”
22 means the system for the classification of chest x-
23 rays set forth in the International Labour Office’s
24 Guidelines for the Use of ILO International Classi-
25 fication of Radiographs of Pneumoconioses (2000)

1 as amended from time to time by the International
2 Labour Office.

3 (19) LUNG CANCER.—The term “lung cancer”
4 means a malignant tumor located inside of the
5 lungs, but such term does not include an asbestos
6 claim based upon mesothelioma.

7 (20) MESOTHELIOMA.—The term “mesothe-
8 lioma” means a malignant tumor with a primary site
9 in the pleura, the peritoneum, or pericardium, which
10 has been diagnosed by a Board-certified pathologist,
11 using standardized and accepted criteria of micro-
12 scopic morphology and/or appropriate staining tech-
13 niques.

14 (21) NONECONOMIC LOSS.—The term “non-
15 economic loss” means subjective, nonmonetary loss
16 resulting from physical impairment, including pain,
17 suffering, inconvenience, mental anguish, emotional
18 distress, disfigurement, loss of society and compan-
19 ionship, loss of consortium, injury to reputation, or
20 any other nonpecuniary loss of any kind or nature.

21 (22) NONMALIGNANT CONDITION.—The term
22 “nonmalignant condition” means any condition that
23 is caused or may be caused by asbestos or silica
24 other than a diagnosed cancer.

1 (23) NONSMOKER.—The term “nonsmoker”
2 means the exposed person has not smoked cigarettes
3 or used any other tobacco products within 15 years
4 from the date the person was diagnosed with an
5 asbestos- or silica-related disease.

6 (24) PATHOLOGICAL EVIDENCE OF ASBES-
7 TOSIS.—The term “pathological evidence of asbes-
8 tosis” means a statement by a Board-certified pa-
9 thologist that more than one representative section
10 of lung tissue uninvolved with any other disease
11 process demonstrates a pattern of peribronchiolar or
12 parenchymal scarring in the presence of char-
13 acteristic asbestos bodies and that there is no other
14 more likely explanation for the presence of the fibro-
15 sis.

16 (25) PATHOLOGICAL EVIDENCE OF SILICOSIS.—
17 The term “pathological evidence of silicosis” means
18 a statement by a Board-certified pathologist that
19 more than one representative section of lung tissue
20 uninvolved with any other disease process dem-
21 onstrates a pattern of round silica nodules and
22 birefringent crystals or other demonstration of crys-
23 tal structures consistent with silica (well-organized
24 concentric whorls of collagen surrounded by inflam-
25 matory cells) in the lung parenchyma and that there

1 is no other more likely explanation for the presence
2 of the fibrosis.

3 (26) PREDICTED LOWER LIMIT OF NORMAL.—
4 The term “predicted lower limit of normal” for any
5 pulmonary function test means the calculated stand-
6 ard convention lying at the fifth percentile, below the
7 upper 95 percent of the reference population based
8 on age, height, and gender, according to the rec-
9 ommendations of the American Thoracic Society as
10 referenced in the AMA Guides to the Evaluation of
11 Permanent Impairment (5th Ed. 2000).

12 (27) PREMISES OWNER.—The term “premises
13 owner” means a person who owns, in whole or in
14 part, leases, rents, maintains, or controls privately
15 owned lands, ways or waters, or any buildings and
16 structures on those lands, ways or waters, and all
17 privately owned and State-owned lands, ways, or wa-
18 ters leased to a private person, firm, or organization,
19 including any buildings and structures on those
20 lands, ways or waters.

21 (28) PULMONARY FUNCTION TEST.—The term
22 “pulmonary function test” means spirometry, lung
23 volume testing and diffusion capacity testing (includ-
24 ing appropriate measurements and graphs) per-
25 formed in accordance with the AMA Guides to the

1 Evaluation of Permanent Impairment (5th Ed.
2 2000), 20 CFR 404, Subpart P, Appendix 1, Part
3 (A), Sections 3.00 (E) and (F) (2003) and the Offi-
4 cial Statements of the American Thoracic Society,
5 “Lung Function Testing: Selection of Reference Val-
6 ues and Interpretative Strategies”, Am. Rev. Resp.
7 Dis. 1991; 144:1202–1218; “Standardization of
8 Spirometry, 1994 Update”, Am. J. Resp. Critical
9 Care Med 1995; 152:1107–1136; and “Single-breath
10 Carbon Monoxide Diffusion Capacity (Transfer Fac-
11 tor): Recommendations for A Standard Technique-
12 1995 Update”, Am. J. Resp. Critical Care Med
13 1995; 152:2185–2198.

14 (29) PUNITIVE DAMAGES.—The term “punitive
15 damages” means damages awarded against a de-
16 fendant in order to punish or deter such defendant
17 or others from engaging in similar behavior in the
18 future.

19 (30) QUALIFIED PHYSICIAN.—The term “quali-
20 fied physician” means a medical doctor, who—

21 (A) is a Board-certified internist,
22 oncologist, pathologist, pulmonary specialist, ra-
23 diologist, or specialist in occupational and envi-
24 ronmental medicine;

1 (B) has conducted a physical examination
2 of the exposed person;

3 (C) is actually treating or treated the ex-
4 posed person, and has or had a doctor-patient
5 relationship with such person at the time of the
6 physical examination;

7 (D) spends no more than 10 percent of
8 his/her professional practice time, or rendered
9 more than 40 diagnoses, whichever quantity is
10 smaller, in providing consulting or expert serv-
11 ices in connection with actual or potential civil
12 actions, and whose medical group, professional
13 corporation, clinic, or other affiliated group
14 earns not more than 20 percent of their reve-
15 nues from providing such services;

16 (E) is currently licensed to practice and
17 actively practices in the State where the plain-
18 tiff resides or where the plaintiff's civil action
19 was filed or was licensed and practiced at the
20 time of the physical examination;

21 (F) receives or received payment for the
22 treatment of the exposed person from that per-
23 son's health maintenance organization or other
24 medical provider, or from the exposed person or

1 from a member of the exposed person's family;
2 and

3 (G) a physician may not, as the basis for
4 a diagnosis, rely, in whole or in part, on any
5 of—

6 (i) the reports or opinions of any doc-
7 tor, clinic, laboratory, or testing company
8 that performed an examination, test, or
9 screening of the exposed person's medical
10 condition in violation of any law, regula-
11 tion, licensing requirement, or medical code
12 of practice of the State in which the exam-
13 ination, test, or screening was conducted;

14 (ii) the reports or opinions of any doc-
15 tor, clinic, laboratory, or testing company
16 that performed an examination, test, or
17 screening of the exposed person's medical
18 condition that was conducted without
19 clearly establishing a doctor-patient rela-
20 tionship with the exposed person or med-
21 ical person involved in the examination,
22 test, or screening process; or

23 (iii) the reports or opinions of any
24 doctor, clinic, laboratory, or testing com-
25 pany that performed an examination, test,

1 or screening of the exposed person's med-
2 ical condition that required the exposed
3 person to agree to retain the legal service
4 of the law firm sponsoring the examina-
5 tion, test, or screening.

6 (31) RADIOLOGICAL EVIDENCE OF ASBES-
7 TOSIS.—The term “radiological evidence of asbes-
8 tosis” means a quality 1 chest x-ray under the ILO
9 system of classification (in a death case where no
10 pathology is available, the necessary radiological
11 findings may be made with a quality 2 film, if a
12 quality 1 film is not available) showing small, irreg-
13 ular opacities (s,t,u) graded by a certified B-reader
14 as at least 1/1 on the ILO scale.

15 (32) RADIOLOGICAL EVIDENCE OF DIFFUSE
16 PLEURAL THICKENING.—The term “radiological evi-
17 dence of diffuse pleural thickening” means a quality
18 1 chest x-ray under the ILO system of classification
19 (in a death case where no pathology is available, the
20 necessary radiological findings may be made with a
21 quality 2 film, if a quality 1 film is not available)
22 showing bilateral pleural thickening of at least B2
23 on the ILO scale and blunting of at least one
24 costophrenic angle.

1 (33) RADIOLOGICAL EVIDENCE OF SILICOSIS.—

2 The term “radiological evidence of silicosis” means
3 a chest x-ray showing bilateral rounded or irregular
4 opacities (p, q, or r) in the upper lung fields graded
5 by a certified B-reader as at least 1/1 on the ILO
6 scale.

7 (34) SILICA.—The terms “silica” means a res-
8 pirable crystalline form of silicon dioxide, including,
9 but not limited to, alpha, quartz, cristobalite, and
10 trydmite.

11 (35) SILICA CLAIM.—The term “silica claim”
12 means any claim for damages or other relief pre-
13 sented in a civil action or bankruptcy proceeding,
14 arising out of, based on, or related to the health ef-
15 fects of exposure to silica, including loss of consor-
16 tium and any other derivative claim made by or on
17 behalf of any exposed person or any representative,
18 spouse, parent, child, or other relative of any ex-
19 posed person. The term does not include claims for
20 benefits under a workers’ compensation law or vet-
21 erans’ benefits program, or claims brought by any
22 person as a subrogee by virtue of the payment of
23 benefits under a workers’ compensation law.

1 (36) SILICOSIS.—The term “silicosis” means
2 nodular interstitial fibrosis of the lungs caused by
3 inhalation of silica.

4 (37) SMOKER.—The term “smoker” means a
5 person who has smoked cigarettes or used other to-
6 bacco products within 15 years from the date the
7 person was diagnosed with an asbestos, silica, or
8 mixed-dust related disease.

9 (38) STATE.—The term “State” means any
10 State of the United States, the District of Columbia,
11 Commonwealth of Puerto Rico, the Northern Mar-
12 iana Islands, the Virgin Islands, Guam, American
13 Samoa, and any other territory or possession of the
14 United States or any political subdivision of any of
15 the foregoing.

16 (39) SUBSTANTIAL CONTRIBUTING FACTOR.—
17 The term “substantial contributing factor” means—

18 (A) exposure to asbestos or silica is the
19 predominate cause of the physical impairment
20 alleged in the asbestos or silica claim;

21 (B) the exposure to asbestos or silica took
22 place on a regular basis over an extended period
23 of time and in close proximity to the exposed
24 person; and

1 (C) a qualified physician has determined
2 with a reasonable degree of medical certainty
3 that the physical impairment of the exposed
4 person would not have occurred but for the as-
5 bestos or silica exposures.

6 (40) SUBSTANTIAL OCCUPATIONAL EXPOSURE
7 TO ASBESTOS.—The term “substantial occupational
8 exposure to asbestos” means employment for a cu-
9 mulative period of at least ten years in an industry
10 and an occupation in which, for a substantial portion
11 of a normal work year for that occupation, the ex-
12 posed person did any of the following:

13 (A) Handled raw asbestos fibers.

14 (B) Fabricated asbestos-containing prod-
15 ucts so that the person was exposed to raw as-
16 bestos fibers in the fabrication process.

17 (C) Altered, repaired, or otherwise worked
18 with an asbestos-containing product in a man-
19 ner that exposed the person on a regular basis
20 to asbestos fibers.

21 (D) Worked in close proximity to other
22 workers engaged in any of the activities de-
23 scribed herein in a manner that exposed the
24 person on a regular basis to asbestos fibers.

1 (41) TOTAL LUNG CAPACITY.—The term “total
2 lung capacity” means the volume of air in the lungs
3 after a maximal inspiration as measured by either
4 plethysmography or time gas dilution techniques.

5 (42) VETERANS’ BENEFITS PROGRAM.—The
6 term “veterans’ benefits program” means any pro-
7 gram for benefits in connection with military service
8 administered by the Veterans’ Administration under
9 title 38, United States Code.

10 (43) WORKERS’ COMPENSATION LAW.—The
11 term “workers’ compensation law” means a law re-
12 specting a program administered by a State or the
13 United States to provide benefits, funded by a re-
14 sponsible employer or its insurance carrier, for occu-
15 pational diseases or injuries or for disability or death
16 caused by occupational diseases or injuries. The
17 term includes the Longshore and Harbor Workers’
18 Compensation Act (33 U.S.C. 901–944, 948–950),
19 and chapter 81 of title 5, United States Code
20 (known as the Federal Employees Compensation
21 Act), but does not include the Act of April 22, 1908
22 (45 U.S.C. 51 et seq.) (popularly referred to as the
23 “Federal Employers’ Liability Act”).

1 **SEC. 9. MISCELLANEOUS PROVISIONS.**

2 (a) CONSTRUCTION WITH OTHER LAWS.—This Act
3 shall not be construed to affect the scope or operation of
4 any workers' compensation law or veterans' benefit pro-
5 gram, to affect the exclusive remedy or subrogation provi-
6 sions of any such law, or to authorize any lawsuit which
7 is barred by any such provision of law.

8 (b) CONSTITUTIONAL AUTHORITY.—The Constitu-
9 tional authority for this Act is contained in article I, sec-
10 tion 8, clause 3 of the Constitution of the United States
11 and in article III, section 1 of the Constitution of the
12 United States.

13 **SEC. 10. EFFECTIVE DATE.**

14 This Act shall be effective on the date of the enact-
15 ment of this Act and apply to any civil action asserting
16 an asbestos or silica claim in which final judgment has
17 not been entered as of the date of the enactment of this
18 Act.

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