WEST VIRGINIA CODE CHAPTER 55 ARTICLE 7G

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§55-7G-1. Short title.

This article shall be known and may be cited as the Asbestos and Silica Claims Priorities Act.

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§55-7G-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

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

(2) Millions of American workers and others were exposed to asbestos, especially during and after World War II and prior to the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s;

(3) Exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

(4) Diseases caused by asbestos often have long latency periods;

(5) Although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure;

(6) Over the years, West Virginia courts have been deluged with asbestos lawsuits;

(7) The United States Supreme Court in Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;

(8) Lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs;

(9) One of the country's most prolific B-readers was a doctor from West Virginia;

(10) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(11) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants nationally and many in West Virginia, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(12) Silica is a naturally occurring mineral as the earth's crust is over ninety percent silica, and crystalline silica dust is the basic component of sand, quartz and granite;

(13) Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;

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(14) Silica claims, like asbestos claims, have involved individuals with no demonstrable physical impairment, and plaintiffs have been identified through the use of for-profit, screening companies;

(15) Silica screening processes have been found subject to substantial abuse and potential fraud;

(16) The cost of compensating plaintiffs who have no present asbestos-related or silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies;

(17) Concerns about statutes of limitations and available funds can prompt unimpaired asbestos and silica claimants to bring lawsuits in order to protect against losing their rights to future compensation should they become impaired;

(18) Trial consolidations, joinders and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants and encourage the filing of cases by unimpaired asbestos and silica plaintiffs; and

(19) The public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related diseases, as well as silica-related injuries, and to safeguard the jobs, benefits and savings of workers in West Virginia and the well-being of the West Virginia economy.

(b) It is the purpose of this article to:

(1) Give priority to asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;

(2) Toll the running of the statutes of limitations for persons who have been exposed to asbestos or to silica but who have no present physical impairment caused by such exposure;

(3) Enhance the ability of the courts to supervise and manage asbestos and silica cases;

(4) Reduce the opportunity for fraud in asbestos and silica litigation; and

(5) Conserve the defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos or silica.

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§55-7G-3. Definitions.

For the purpose of this article:

(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

(2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C. F. R. §1910 at the time an asbestos action is filed.

(3) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits.

(4) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) "Board-certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) "Board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) "Board-certified in pathology" means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(8) "Board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the

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American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) "Certified B-reader" means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) "final" or "B-reader" of x-rays under 42 C. F. R. §37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader's Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) "Chest x-ray" means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) "Exposed person" means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC.

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

(16) "ILO" system and "ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) "Nonmalignant condition" means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) "Official statements of the American Thoracic Society" means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence

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of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in Pathology of Asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

(20) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(21) "Plaintiff" means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(22) "Plethysmography or body (BOX) plethysmography" means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow or volume change.

(23) "Predicted lower limit of normal" means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

(24) "Pulmonary function test" means spirometry, lung volume testing and diffusion capacity testing, including appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) "Qualified physician" means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed

occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) "Radiological evidence of silicosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) "Silica" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) "Silica action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law, veterans' benefits or claims brought by a

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person as a subrogee by virtue of the payment of benefits under a workers' compensation law. The term does not include any administrative claim or civil action related to coal workers' pnuemoconiosis.

(31) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. "Silicosis" does not mean coal workers' pnuemoconiosis.

(32) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

(33) "Supporting test results" means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

(34) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(35) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(36) "Veterans' benefits" means a program for benefits in connection with military service administered by the Veterans' Administration under Title 38 of the United States Code.

(37) "Workers' compensation law" means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §§901 et seq., and the Federal Employees' Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers'

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Liability Act of April 22, 1908, 45 U. S. C. §§51 et seq.

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§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for claims; individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed prior to the effective date of the amendments to this article enacted during the 2021 regular session of the Legislature shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

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

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

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) For any asbestos or silica action filed on or after the amendments to this article enacted during the 2021 regular session of the Legislature, a plaintiff shall file within 60 days of filing any complaint a sworn information form that specifies the evidence that provides the basis for each claim against each defendant. The sworn information form shall include all of the following with specificity:

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(1) The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person, and any person through which the exposed person alleges exposure;

(2) Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;

(3) Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;

(4) The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;

(5) The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;

(6) The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;

(7) The specific asbestos-related or silica-related disease claimed to exist; and

(8) Any supporting documentation relating to the information required under this section.

(e) Plaintiffs have a continuing duty to supplement the information that is required to be disclosed in this section.

(f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to any defendant whose product or premises is not identified in the required disclosures set forth in subsection (d) of this section.

(g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection (d) this section.

(h) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

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§55-7G-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, from the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person's physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

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(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, do not satisfy the requirements of this subdivision.

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements of subdivision (2), subsection (a) of this section, and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a) of this section, except that the exposure history required under subdivision (2), subsection (a) of this section shall describe the exposed person's history of exposure to the other exposed person.

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§55-7G-6. Elements of proof for silica actions alleging silicosis.

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis;

(5) Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, demonstrating that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated; and

(6) The specific conclusion of the qualified physician signing the report that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or words to that effect, do not satisfy the requirements of this subdivision.

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§55-7G-7. Evidence of physical impairment.

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this article or article seven-e of this chapter, shall:

(1) Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this article;

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

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

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§55-7G-8. Procedures.

(a) Evidence relating to the prima facie showings required under this article shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos or silica action under the provisions of this article; or

(2) The provisions of this article with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) Consolidation of cases. --

(1) A court may consolidate for trial any number and type of nonmalignant asbestos or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos or silica actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one exposed person and members of that person's household shall be permitted.

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

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§55-7G-9. Statute of limitations; two-disease rule.

(a) With respect to an asbestos or silica action not barred by limitations as of this article's effective date, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

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

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

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

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred on the effective date of this article.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement or other agreements with respect to an asbestos or silica action entered into prior to the effective date of this article.

(d) An asbestos or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos or silica action.

(e) Notwithstanding the provisions of this section, a plaintiff in an asbestos or silica action may not bring an action against the manufacturers of mining equipment used underground when the exclusive use of asbestos in the equipment was as a result of specific requirements under 30 CFR Part 18 or, as to the use of silica, the design was as specified in 30 CFR Part 33 when the equipment was originally manufactured, based on any theory or doctrine, except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease, or delivery of possession by the manufacturers or 10 years from the date of first sale, lease, or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, unless the manufacturers of equipment used in coal mining have expressly warranted or promised the product for a longer period and the action is brought within that period. This subsection does not apply to the use of brakes and any brake material.

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§55-7G-10. Application.

This article shall apply to all asbestos actions and silica actions filed on or after the effective date of this article.

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