

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 1133

4  
5 By: Senator Womack  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT CONCERNING ASBESTOS AND SILICA CLAIMS  
10 PRIORITIES; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT CONCERNING ASBESTOS AND SILICA  
14 CLAIMS PRIORITIES.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 16 is amended to add an additional  
20 chapter to read as follows:

21 16-127-101. Short title.

22 This chapter shall be known and may be cited as the "Asbestos and  
23 Silica Claims Priorities Act".  
24

25 16-127-102. Findings and purposes.

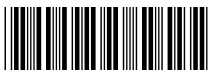
26 (a) The General Assembly finds that:

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

29 (2) Many American workers were exposed to asbestos, especially  
30 during the Second World War;

31 (3) Exposure to asbestos has been causally associated with  
32 mesothelioma and lung cancer, as well as non-malignant conditions, such as  
33 asbestosis, pleural plaques, and diffuse pleural thickening;

34 (4) The United States Supreme Court in Amchem Prods. Inc. v.  
35 Windsor, 521 U.S. 591, 597 (1997), stated that this country is in the midst  
36 of an "asbestos-litigation crisis";



1           (5) The vast majority of new asbestos claims are filed by  
2 individuals who allege exposure to asbestos but have only minimal or no  
3 physical evidence of exposure, and who suffer no present asbestos-related  
4 impairment. In Amchem, United States Supreme Court Justice Breyer observed  
5 that “up to one half of asbestos claims are now filed by people who have  
6 little or no physical impairment.” That number may be conservative. Recent  
7 reports indicate that as much as ninety percent (90%) of new asbestos-related  
8 claims are filed by plaintiffs with no impairment;

9           (6) Concerns about statutes of limitations can force claimants  
10 who have been exposed to asbestos but who have no current injury to bring  
11 premature lawsuits in order to protect against losing their rights to future  
12 compensation should they become impaired;

13           (7) X-ray screenings of workers at occupational locations are  
14 used to amass large numbers of claimants. Frequently, a complaint is filed  
15 on behalf of anyone who shows any evidence of asbestos or silica exposure,  
16 even though most claimants are functionally asymptomatic when suit is filed;

17           (8) These screenings and mass filings have contributed to the  
18 bankruptcy of approximately seventy-eight (78) companies, including nearly  
19 all manufacturers of asbestos textile and insulation products. The rate of  
20 asbestos-driven bankruptcies is accelerating;

21           (9) Bankruptcies resulting from asbestos litigation have led  
22 plaintiffs and their lawyers to expand their search for new solvent  
23 defendants, including many defendants with only an attenuated connection to  
24 asbestos. The number of asbestos defendants now includes over eight thousand  
25 four hundred (8,400) companies, touching firms in industries that span  
26 eighty-five percent (85%) of the United States economy. Some of these  
27 defendants are large companies, but others are firms with as few as twenty  
28 (20) employees and just a few million dollars in annual revenues;

29           (10) The cost of compensating exposed individuals who are not  
30 sick and legal costs spent on their claims:

31           (A) Jeopardize recoveries by people with cancer or other  
32 serious asbestos-related injuries;

33           (B) Threaten the savings, retirement benefits, and jobs of  
34 current and retired employees of the defendants; and

35           (C) Adversely affect the communities in which the  
36 defendants operate;

1           (11) Several jurisdictions have adopted “inactive dockets”, also  
2 called “pleural registries” or “deferred dockets”, or issued case management  
3 orders to control the unlimited filing of asbestos claims by persons who are  
4 not impaired. Other courts have decided that only sick claimants are  
5 entitled to compensation;

6           (12) Reports indicate that efforts to improve the asbestos  
7 litigation environment may lead to a proliferation in silica-related claims  
8 as personal injury attorneys seek to build new “inventories” of claimants and  
9 find new defendants to target in lawsuits; and

10          (13) Sound public policy requires:

11           (A) Deferring the claims of persons exposed to asbestos or  
12 silica who are not presently impaired in order to give priority to those  
13 cases that involve claims of actual and current conditions of impairment;

14           (B) Preserving compensation for people with cancer and  
15 other serious injuries; and

16           (C) Safeguarding the jobs, benefits, and savings of  
17 workers.

18          (b) It is the purpose of this chapter to:

19           (1) Give priority to claimants who can demonstrate actual  
20 physical harm or illness caused by asbestos or silica;

21           (2) Preserve the rights of claimants to pursue asbestos or  
22 silica claims if an exposed person becomes sick in the future;

23           (3) Enhance the ability of the courts to supervise and control  
24 asbestos litigation and silica litigation; and

25           (4) Conserve resources to allow compensation of claimants who  
26 have cancer and others who are impaired as a result of exposure to asbestos  
27 or silica while securing the right to similar compensation for those who may  
28 suffer physical impairment in the future.

29  
30          16-127-103. Applicability.

31           (a) This chapter applies to any claim defined in this chapter as an  
32 asbestos claim or as a silica claim.

33           (b) This chapter applies to all asbestos or silica claims filed on or  
34 after the effective date of this chapter and to any pending asbestos or  
35 silica claims in which trial has not commenced as of the effective date of  
36 this chapter.

1  
2 16-127-104. Definitions.

3 As used in this chapter:

4 (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite  
5 asbestos, anthophyllite asbestos, actinolite asbestos, and any of these  
6 minerals that have been chemically treated or altered, including, but not  
7 limited to all minerals defined as asbestos in 29 C.F.R. 1910 as it existed  
8 on January 1, 2005;

9 (2)(A) "Asbestos claim" means any claim, wherever or whenever  
10 made, for damages, losses, indemnification, contribution, loss of consortium,  
11 or other relief arising out of, based on, or in any way related to the health  
12 effects of exposure to asbestos, including, but not limited to:

13 (i) Any claim for:

14 (a) Personal injury or death;

15 (b) Mental or emotional injury;

16 (c) Risk of disease or other injury; or

17 (d) The costs of medical monitoring or  
18 surveillance, to the extent the claims are recognized under state law; and

19 (ii) Any claim made by or on behalf of an exposed  
20 person or based on that exposed person's exposure to asbestos, including a  
21 representative, spouse, parent, child, or other relative of the exposed  
22 person.

23 (B) "Asbestos claim" shall not mean a claim brought under  
24 a workers' compensation law administered by the state to provide benefits,  
25 funded by a responsible employer or its insurance carrier, for occupational  
26 diseases or injuries or for disability or death caused by occupational  
27 diseases or injuries;

28 (3) "Asbestosis" means bilateral diffuse interstitial fibrosis  
29 of the lungs caused by inhalation of asbestos;

30 (4) "Board-certified internist" means a qualified physician  
31 licensed to practice medicine who has treated or is treating the exposed  
32 person or has or had a doctor-patient relationship with the exposed person,  
33 and who is currently certified by the American Board of Internal Medicine;

34 (5) "Board-certified pathologist" means a qualified physician  
35 licensed to practice medicine who holds primary certification in anatomic  
36 pathology or combined anatomic or clinical pathology from the American Board

1 of Pathology, and whose professional practice is principally in the field of  
2 pathology and involves regular evaluation of pathology materials obtained  
3 from surgical or post-mortem specimens;

4 (6) "Board-certified pulmonologist" means a qualified physician  
5 licensed to practice medicine who has treated or is treating the exposed  
6 person or has or had a doctor-patient relationship with the exposed person,  
7 and who is currently certified by the American Board of Internal Medicine in  
8 the Subspecialty of Pulmonary Medicine;

9 (7) "Certified B-reader" means a qualified physician who has  
10 successfully passed the B-reader certification examination for X-ray  
11 interpretation sponsored by the National Institute for Occupational Safety  
12 and Health, and whose certification was current at the time of any readings  
13 required by this chapter;

14 (8) "Chest X-rays" means films taken in two views, PA and  
15 Lateral, and graded quality 1 for reading in accordance with the radiological  
16 standards established by the International Labor Office, as the standards  
17 existed on January 1, 2005, and as interpreted by a certified B-reader;

18 (9)(A) "Claimant" means a party seeking recovery of damages for  
19 an asbestos or silica claim, including, the exposed person, and any other  
20 plaintiff making a claim as a result of the exposed person's exposure to  
21 asbestos or silica, counterclaimant, cross-claimant, or third-party  
22 plaintiff.

23 (B) If a claim is brought through or on behalf of an  
24 estate, "claimant" includes the claimant's decedent.

25 (C) If a claim is brought through or on behalf of a minor  
26 or incompetent, "claimant" includes the claimant's parent or guardian;

27 (10) "Exposed person" means any person whose exposure to  
28 asbestos or silica is the basis for an asbestos claim or silica claim;

29 (11) "FEV-1" means forced expiratory volume in the first second,  
30 which is the maximal volume of air expelled in one (1) second during  
31 performance of simple spirometric tests;

32 (12) "FVC" means forced vital capacity, which is the maximal  
33 volume of air expired with maximum effort from a position of full  
34 inspiration;

35 (13) "ILO system" means the radiological ratings of the  
36 International Labor Office in Guidelines for the Use of ILO International

1 Classification of Radiographs of Pneumoconioses (1980) (revised ed. 2002), as  
2 it existed on January 1, 2005;

3 (14) "Lower limit of normal" means the fifth percentile of  
4 healthy populations based on age, height, and gender, as referenced in the  
5 American Medical Association's Guides to the Evaluation of Permanent  
6 Impairment (5th ed. 2000);

7 (15) "Prima facie evidence of physical impairment", in the  
8 context of an asbestos claim, means:

9 (A) That a board-certified pathologist has made a  
10 diagnosis of pleural or peritoneal mesothelioma, or a diagnosis of cancer  
11 demonstrated by a medical report showing the diagnosis as a primary cancer,  
12 and has signed a report certifying to a reasonable degree of medical  
13 certainty that exposure to asbestos was a substantial contributing factor to  
14 the diagnosed cancer and that it was not more probably the result of causes  
15 other than the asbestos exposure revealed by the exposed person's employment  
16 and medical history; or

17 (B) That a board-certified internist, pulmonologist, or  
18 pathologist has signed a detailed narrative medical report and diagnosis  
19 stating that the exposed person suffers from a non-malignant disease related  
20 to asbestos, and that the report and diagnosis:

21 (i) Verify that the doctor signing the detailed  
22 narrative Medical Report and Diagnosis or a medical professional employed by  
23 and under the direct supervision and control of that doctor has taken:

24 (a) A detailed occupational and exposure  
25 history from the exposed person or, if that person is deceased, from the  
26 person most knowledgeable about the exposures that form the basis for the  
27 action. The history shall include all of the principal employments, the  
28 exposed person's exposures to airborne contaminants, including, but not  
29 limited to, asbestos, silica, and other disease-causing dusts, that can cause  
30 pulmonary impairment, and the nature, duration, and level of any exposure;  
31 and

32 (b) A detailed medical and smoking history  
33 that includes a thorough review of the exposed person's past and present  
34 medical problems, and their most probable cause;

35 (ii) Set out the details of the occupational,  
36 medical, and smoking history of the exposed person, and verify that at least

1 fifteen (15) years have elapsed between the exposed person's first exposure  
2 to asbestos and the time of diagnosis;

3 (iii) Verify that the exposed person has:

4 (a) An ILO quality 1 chest X-ray taken in  
5 accordance with all applicable state and federal regulatory standards, and  
6 that the X-ray has been read by a certified B-reader according to the ILO  
7 system of classification as showing bilateral small irregular opacities (s,  
8 t, or u) graded 1/1 or higher or bilateral diffuse pleural thickening graded  
9 b2 or higher including blunting of the costophrenic angle. However, in a  
10 death case when no pathology is available, the necessary radiologic findings  
11 may be made with a quality 2 film if a quality 1 film is not available; or

12 (b) Pathological asbestosis graded 1(B) or  
13 higher under the criteria published in the Asbestos-Associated Diseases,  
14 Special Issue of the Archives of Pathological and Laboratory Medicine, Volume  
15 106, Number 11, Appendix 3 (October 8, 1982);

16 (iv) Verify that the exposed person has pulmonary  
17 impairment related to asbestos as demonstrated by pulmonary function testing,  
18 performed using equipment, methods of calibration and technique that meet the  
19 criteria incorporated in the American Medical Association's Guides to the  
20 Evaluation of Permanent Impairment (5th ed. 2000) and reported in 20 CFR 404,  
21 Subpt. P, App 1, Part (A)§3.00 (E) and (F), as it existed on January 1, 2005,  
22 and the interpretative standards of the American Thoracic Society, Lung  
23 Function Testing: Selection of Reference Values and Interpretive Strategies,  
24 144 Am. Rev. Resp. Dis. 1202-1218 (1991), that shows:

25 (a) Forced Vital Capacity (FVC) below the  
26 lower limit of normal and FEV1/FVC ratio, using actual values, at or above  
27 the lower limit of normal; or

28 (b) Total Lung Capacity (TLC), by  
29 plethysmography or timed gas dilution, below the lower limit of normal; and

30 (v) Verifies that the doctor signing the detailed  
31 narrative medical report and diagnosis has concluded that exposure to  
32 asbestos was a substantial contributing factor to the exposed person's  
33 medical condition and physical impairment and that the medical condition and  
34 physical impairment were not more probably the result of other causes  
35 revealed by the exposed person's employment and medical history;

36 (16) "Prima facie evidence of physical impairment", in the

1 context of a silica claim, means:

2 (A) A written diagnosis of silica-related lung cancer  
3 demonstrated by:

4 (i) A medical report showing the diagnosis as a  
5 diagnosis as a primary lung cancer; and

6 (ii) A signed report certified by a board-certified  
7 internist, pulmonologist, or pathologist stating to a reasonable degree of  
8 medical probability that exposure to silica was the cause of the diagnosed  
9 lung cancer with underlying silicosis demonstrated by bilateral nodular  
10 opacities (p, q, or r) occurring primarily in the upper lung fields, graded  
11 1/1 or higher and not more probably the result of causes other than the  
12 silica exposure revealed by the exposed person's employment and medical  
13 history;

14 (B) A written diagnosis of silica-related progressive  
15 massive fibrosis or acute silicoproteinosis; or silicosis complicated by  
16 documented tuberculosis, demonstrated by a signed report certified by a  
17 Board-certified internist, pulmonologist, or pathologist; or

18 (C) That a board-certified internist, pulmonologist, or  
19 pathologist has signed a detailed narrative Medical Report and Diagnosis  
20 stating that the exposed person suffers from other stages of non-malignant  
21 disease related to silicosis other than those in subdivisions (16)(A) and (B)  
22 of this section, and that the narrative:

23 (i) Verify that the doctor signing the detailed  
24 narrative Medical Report and Diagnosis or a medical professional employed by  
25 and under the direct supervision and control of that doctor has taken:

26 (a) A detailed occupational and exposure  
27 history from the exposed person or, if that person is deceased, from the  
28 person most knowledgeable about the exposures that form the basis for the  
29 action. The history shall include all of the principal employments, the  
30 exposed person's exposures to airborne contaminants, including, but not  
31 limited to, asbestos, silica, and other disease-causing dusts, that can cause  
32 pulmonary impairment, and the nature, duration, and level of any exposure;  
33 and

34 (b) A detailed medical and smoking history of  
35 the exposed person that includes a thorough review of the exposed person's  
36 past and present medical problems, and their most probable cause;



1                   (ii) Set out the details of the occupational,  
2 medical, and smoking history of the exposed person, and verifies a sufficient  
3 latency period for the applicable stage of silicosis;

4                   (iii) Verify that the exposed person has at least  
5 Class 2 or higher impairment due to silicosis, in the American Medical  
6 Association's Guides to the Evaluation of Permanent Impairment (5th ed.  
7 2000);

8                   (iv) Verify that:

9                   (a) An ILO quality 1 chest X-ray taken in  
10 accordance with all applicable state and federal regulatory standards, and  
11 that the X-ray has been read by a certified B-reader according to the ILO  
12 system of classification as showing bilateral nodular opacities (p, q, or r)  
13 occurring primarily in the upper lung fields, graded 1/1 or higher. However,  
14 in a death case when no pathology is available, the necessary radiologic  
15 findings may be made with a quality 2 film if a quality 1 film is not  
16 available; or

17                   (b) Pathological demonstration of classic  
18 silicotic nodules exceeding one (1) centimeter in diameter as set forth in  
19 112 Archives of Pathology & Laboratory Medicine 7 (July 1988); and

20                   (v) Verify that the doctor signing the detailed  
21 narrative Medical Report and Diagnosis has concluded that the exposure to  
22 silica is a substantial contributing factor to the exposed person's medical  
23 condition and physical impairment and that the medical condition and physical  
24 impairment were not more probably the result of other causes revealed by the  
25 exposed person's employment and medical history;

26                   (17) "Qualified physician" means a medical doctor, who:

27                   (A) Spends no more than ten percent (10%) of his or her  
28 professional practice time in providing consulting or expert services in  
29 connection with actual or potential civil actions, and whose medical group,  
30 professional corporation, clinic, or other affiliated group earns not more  
31 than twenty percent (20%) of its revenues from providing the services;

32                   (B) Receives or received payment for the treatment of the  
33 exposed person from that person or from that person's health maintenance  
34 organization or other medical provider; and

35                   (C) Does not require as a condition of diagnosing,  
36 examining, testing, screening, or treating the exposed person that legal

1 services be retained by the exposed person or any other person pursuing an  
 2 asbestos or silica claim based on the exposed person's exposure to asbestos  
 3 or silica;

4 (18) "Silica" means a group of naturally occurring crystalline  
 5 forms of silicon dioxide, including, but not limited to, quartz and silica  
 6 sand, whether in the form of respirable free silica, or any quartz-containing  
 7 or crystalline silica-containing dust, or in the form of a quartz-containing  
 8 by-product or crystalline silica-containing by-product, or dust released from  
 9 individual or commercial use, release, or disturbance of silica sand, silicon  
 10 dioxide, or crystalline-silica containing media, consumables or materials;

11 (19)(A) "Silica claim" means any claim, wherever or whenever  
 12 made, for damages, losses, indemnification, contribution, loss of consortium,  
 13 or other relief arising out of, based on, or in any way related to the health  
 14 effects of exposure to silica, including, but not limited to:

15 (i) Any claim for:

16 (A) Personal injury or death;

17 (B) Mental or emotional injury;

18 (C) Risk of disease or other injury; or

19 (D) The costs of medical monitoring or  
 20 surveillance, to the extent the claims are recognized under state law; and

21 (ii) Any claim made by or on behalf of any exposed  
 22 person or based on that exposed person's exposure to silica, including a  
 23 representative, spouse, parent, child, or other relative of the exposed  
 24 person.

25 (B) "Silica claim" shall not mean a claim brought under a  
 26 workers' compensation law administered by a state to provide benefits, funded  
 27 by a responsible employer or its insurance carrier, for occupational diseases  
 28 or injuries or for disability or death caused by occupational diseases or  
 29 injuries;

30 (20) "Silicosis" means nodular interstitial fibrosis of the lung  
 31 produced by inhalation of silica; and

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

34  
 35 16-127-105. Physical impairment essential element of asbestos or  
 36 silica claims.

1       (a) Physical impairment of an exposed person is an essential element  
2 of an asbestos or silica claim.

3       (b) No person shall bring or maintain a civil action alleging an  
4 asbestos or silica claim in the absence of prima facie evidence of physical  
5 impairment resulting from a medical condition for which exposure to asbestos  
6 or silica was a substantial contributing factor.

7  
8       16-127-106. Statutes of limitations for asbestos or silica claim.

9       Notwithstanding any other provision of law, with respect to any  
10 asbestos or silica claim not barred as of the effective date of this chapter,  
11 the limitations period shall not begin to run until the exposed person or any  
12 plaintiff making an asbestos or silica claim based on the exposed person's  
13 exposure to asbestos or silica discovers, or through the exercise of  
14 reasonable diligence should have discovered, that the exposed person is or  
15 was physically impaired.

16  
17       16-127-107. Dismissal of asbestos or silica claims.

18       (a)(1) Any asbestos claim or silica claim pending in this state on the  
19 effective date of this chapter shall be dismissed without prejudice within  
20 one hundred twenty (120) days of the effective date of this chapter unless:

21               (A) All parties have stipulated by that date, but in no  
22 event less than sixty (60) days before the commencement of trial, that the  
23 plaintiff has established the prima facie evidence of physical impairment  
24 set forth in this chapter with respect to an asbestos claim or a silica  
25 claim; or

26               (B) The trial court in which the complaint was initially  
27 filed issues an order that the plaintiff has established the prima facie  
28 evidence of physical impairment set forth in this chapter with respect to an  
29 asbestos claim or a silica claim. The order shall be issued only if the  
30 following conditions and procedures are met:

31                       (i) Within one hundred twenty (120) days of the  
32 effective date of this chapter, but in no event less than sixty (60) days  
33 before the commencement of trial, the plaintiff files with the trial court  
34 and serves on each defendant named in the complaint or on counsel designated  
35 by each defendant the medical documentation necessary to establish prima  
36 facie evidence of physical impairment as required by this chapter;

1                   (ii) Within thirty (30) days of service of  
2 plaintiff's documentation establishing prima facie evidence of physical  
3 impairment, any defendant may file an opposition with the trial court  
4 challenging plaintiff's prima facie evidence of physical impairment.  
5 Defendant's opposition shall be filed with the trial court and served on  
6 plaintiff's counsel and each defendant;

7                   (iii) If a defendant does not file an opposition  
8 within the time permitted, the trial court shall determine if the plaintiff  
9 has established prima facie evidence of physical impairment in a timely  
10 manner based on the papers and documentation submitted to the trial court.

11                   (iv) If a defendant files an objection, then within  
12 ten (10) days of service of defendant's opposition, the plaintiff may file a  
13 reply with the trial court. The reply must be served on each defendant; and

14                   (v)(a) The trial court shall determine if the  
15 plaintiff has established prima facie evidence of physical impairment in a  
16 timely manner based on the papers and documentation submitted to the trial  
17 court.

18                   (b) A hearing will be conducted only if the  
19 trial court so orders on its own motion, or if, in the exercise of  
20 discretion, the trial court grants a party's request for a hearing. No  
21 testimony shall be taken at the hearing.

22                   (c) A decision of the trial court not to grant  
23 a request for a hearing may not be appealed and does not constitute  
24 reversible error.

25                   (d) If the trial court determines that the  
26 plaintiff has failed to establish prima facie evidence of physical  
27 impairment as set forth in this chapter, it shall dismiss the plaintiff's  
28 complaint without prejudice.

29                   (2) If a trial is scheduled to begin in less than sixty (60)  
30 days from the effective date of this chapter, a trial court may shorten the  
31 deadlines contained in this subsection as necessary in order to make a  
32 determination regarding the prima facie evidence of physical impairment  
33 before trial commences.

34                   (b) The plaintiff in any asbestos claim or silica claim filed in this  
35 State on or after the effective date of this chapter shall file together with  
36 the complaint the medical documentation necessary to establish prima facie

1 evidence of physical impairment. In addition, the plaintiff's complaint  
2 shall allege with specificity that the plaintiff satisfies the prima facie  
3 evidence of physical impairment with respect to an asbestos claim or a silica  
4 claim.

5 (c)(1) Within ninety (90) days of service of plaintiff's complaint,  
6 any defendant may file an opposition with the trial court challenging  
7 plaintiff's prima facie evidence of physical impairment. A defendant's  
8 opposition shall be filed with the trial court and served on the plaintiff's  
9 counsel and each defendant.

10 (2) If the defendant does not file an opposition  
11 challenging the plaintiff's prima facie evidence of physical impairment  
12 within the time permitted, the trial court shall determine if the plaintiff  
13 has established a prima facie evidence of physical impairment based on the  
14 papers and documentation submitted to the trial court. The trial court's  
15 decision shall be made in a timely manner.

16 (3) If the defendant files an objection, the plaintiff may file  
17 a reply with the trial court within ten (10) days of service of the  
18 defendant's opposition. The reply must be served on each defendant.

19 (4)(A) The trial court shall determine if the plaintiff has  
20 established prima facie evidence of impairment as set forth in this chapter  
21 with respect to an asbestos claim or a silica claim in a timely manner based  
22 on the papers and documentation submitted to the trial court.

23 (B)(i) A hearing will be conducted only if the trial court  
24 so orders on its own motion, or if, in the exercise of discretion, the trial  
25 court grants a party's request for a hearing.

26 (ii) No testimony shall be taken at the hearing.

27 (C) A decision of the trial court not to grant a request  
28 for a hearing may not be appealed and does not constitute reversible error.

29 (D) If the trial court determines that the plaintiff has  
30 failed to establish prima facie evidence of impairment as set forth in this  
31 chapter, it shall dismiss the plaintiff's complaint without prejudice.

32  
33 16-127-108. General rules applicable to new filings.

34 (a) All asbestos claims and silica claims filed in this state on or  
35 after the effective date of this chapter shall include a sworn information  
36 form containing the following information:

1           (1) The exposed person's name, address, date of birth, social  
2 security number, and marital status;

3           (2) If the exposed person alleges exposure to asbestos or silica  
4 through the testimony of another person or other than by direct or bystander  
5 exposure to a product or products, the name, address, date of birth, social  
6 security number, and marital status, for each person by which claimant  
7 alleges exposure and the claimant's relationship to each person;

8           (3) The specific location of each alleged exposure;

9           (4) The specific asbestos-containing product or silica-  
10 containing product to which the exposed person was exposed and the  
11 manufacturer of each product;

12           (5) The beginning and ending dates of each alleged exposure as  
13 to each asbestos-containing product or silica-containing product for each  
14 location at which exposure allegedly took place for plaintiff and for each  
15 person by which the claimant alleges exposure;

16           (6) The occupation and name of employer of the exposed person at  
17 the time of each alleged exposure;

18           (7) The specific condition related to asbestos or silica claimed  
19 to exist; and

20           (8) Any supporting documentation of the condition claimed to  
21 exist.

22           (b) All asbestos claims and silica claims along with the sworn  
23 information forms shall be individually filed in separate civil actions  
24 except that claims relating to the exposure to asbestos or silica for the  
25 same exposed person whose alleged injury is the basis for the civil action  
26 may be joined in a single action. Otherwise, no claims on behalf of a group  
27 or class of persons shall be joined in single civil action.

28  
29           16-127-109. Filings to demonstrate compliance with standards.

30           (a) Copies of the B-reading, the pulmonary function tests, including  
31 printouts of the flow volume loops and all other elements required to  
32 demonstrate compliance with the equipment, quality, interpretation and  
33 reporting standards in this chapter, and the diagnosing physician's detailed  
34 narrative medical report and diagnosis shall be attached to any complaint  
35 alleging non-malignant disease related to exposure to asbestos or silica.

36           (b) The reports, as well as all other evidence used to establish

1 primaefacie evidence of physical impairment, must meet objective criteria  
2 for generally accepted medical standards related to exposure to asbestos or  
3 silica and must not be obtained through testing or examinations that violate  
4 any applicable law, regulation, licensing requirement, or medical code of  
5 practice.

6 (c) Failure to attach the required reports or demonstration by any  
7 party that the reports do not satisfy the standards in this chapter shall  
8 result in the dismissal of the action, without prejudice, upon motion of any  
9 party.

10  
11 16-127-110. Miscellaneous.

12 (a) Until the trial court enters an order determining that the  
13 plaintiff has established primaefacie evidence of physical impairment, no  
14 asbestos or silica claim shall be subject to discovery, except discovery  
15 related to establishing or challenging the primaefacie evidence of physical  
16 impairment, except by order of the trial court upon motion of one (1) of the  
17 parties and for good cause shown.

18 (b)(1) The medical criteria set forth in this chapter to establish  
19 primaefacie evidence of physical impairment are solely for the purpose of  
20 determining whether a claim meets the criteria to proceed in court.

21 (2) The fact that a plaintiff satisfies the criteria necessary  
22 to establish primaefacie evidence of physical impairment for an asbestos or  
23 silica claim shall not be construed as an admission or determination that the  
24 exposed person in fact has a condition related to exposure to asbestos or to  
25 silica and shall not be cited, referred to, or otherwise used at trial.

26 (c) Unless stipulated to by the parties, an expert report submitted  
27 for the purpose of establishing or challenging primaefacie evidence of  
28 physical impairment is inadmissible for any other purpose.

29  
30 16-127-111. Forum non conveniens.

31 (a)(1) A civil action alleging an asbestos or silica claim may only be  
32 brought or maintained in the courts of Arkansas if the plaintiff is a  
33 resident of Arkansas at the time of filing the action or the exposure to  
34 asbestos or silica on which the claim is based occurred in Arkansas.

35 (2) However, nothing in this chapter shall preclude a  
36 nonresident of Arkansas who currently has a case pending in this state on the

1 effective date of this chapter from maintaining an asbestos claim or silica  
2 claim if, within sixty (60) days of the effective date of this chapter, a  
3 qualified physician certifies in writing that the plaintiff is likely to die  
4 as a result of the asbestos or silica related medical condition within one  
5 (1) year of the effective date of this chapter.

6 (b) The trial court, on motion of a defendant, shall dismiss each  
7 asbestos claim or silica claim against the defendant that is subject to this  
8 section unless the plaintiff files a written statement with the trial court  
9 electing to abate the plaintiff's claim against the defendant for a period of  
10 one hundred eighty (180) days from the date the trial court disposes of the  
11 defendant's motion, to afford the plaintiff an opportunity to file a new  
12 action on the claims in another state of the United States.

13 (c)(1) A trial court may not abate or dismiss a claim under this  
14 section until the defendant files with the trial court or with the clerk of  
15 the court a written stipulation that, with respect to a new action on the  
16 claim commenced by the plaintiff, the defendant waives the right to assert a  
17 statute of limitations defense in all other states of the United States in  
18 which the claim was not barred by limitations at the time the claim was filed  
19 in this state as necessary to effect a tolling of the limitations periods in  
20 those states beginning on the date the claim was filed in this state and  
21 ending on the date the claim is dismissed or the period of abatement ends.

22 (2) The fact that a claim subject to this section was barred by  
23 the statute of limitations in all other states of the United States at the  
24 time it was filed in this state shall not prevent the claim from being  
25 dismissed pursuant to this section, and the claim shall be dismissed even if  
26 it can not be filed in another state.

27 (3) The trial court may not abate or dismiss a claim under this  
28 section until the defendant files with the trial court or with the clerk of  
29 the court a written stipulation that, with respect to a new action on the  
30 claim commenced by the plaintiff in another state of the United States, the  
31 plaintiff may elect that the plaintiff and the defendant may rely on  
32 responses to discovery already provided under the Arkansas Rules of Civil  
33 Practice Act, plus any additional discovery that may be conducted under the  
34 rules of civil procedure in another state, or use responses to discovery  
35 already provided and conduct additional discovery as permitted under the  
36 rules of civil procedure in the other state.



1       (d) To comply with this section in relation to an action that involves  
2 both claims that arose in this state and claims that arose outside this  
3 state, a trial court shall consider each claim individually and shall sever  
4 from the action the claims that are subject to this section.

5       (e) If a plaintiff alleges that the exposed person was exposed to  
6 asbestos or silica while located in more than one (1) jurisdiction, the trial  
7 court shall determine, for purposes of this section, which of the  
8 jurisdictions is the most appropriate forum for the claim, considering the  
9 relative amounts and lengths of the exposed person's exposure to asbestos or  
10 silica in each jurisdiction.

11  
12       16-127-112. Venue.

13       (a) Notwithstanding any other provision of law, an asbestos claim or a  
14 silica claim that meets the requirements of this chapter permitting a claim  
15 to be filed in this state may be filed only in the county where the plaintiff  
16 resides, or in the county in which the exposure to asbestos or silica on  
17 which the claim is based occurred and that exposure was a substantial  
18 contributing factor to the physical impairment of the exposed person on which  
19 plaintiff's claim is based.

20       (b) If a plaintiff alleges that an exposed person was exposed to  
21 asbestos or silica while located in more than one (1) county the trial court  
22 shall determine which of the counties is the most appropriate forum for the  
23 claim, considering the relative amounts and lengths of the exposed person's  
24 exposure to asbestos or silica in each of the counties.

25  
26       16-127-113. Joinder – Consolidation.

27       (a) A trial court may consolidate for trial any number and type of  
28 asbestos or silica claims with the consent of all the parties.

29       (b) In the absence of the consent, the trial court may consolidate for  
30 trial only asbestos claims or silica claims relating to the same exposed  
31 person and members of his or her household.

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