

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 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 1488

4
5 By: Representative Pace
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH REQUIREMENTS AND PRIORITY FOR
10 CLAIMANTS WHO CAN DEMONSTRATE ACTUAL PHYSICAL
11 IMPAIRMENT WHEN FILING CERTAIN CIVIL ACTIONS
12 INVOLVING EXPOSURE TO SILICA OR MIXED DUST,
13 INCLUDING MINIMUM MEDICAL REQUIREMENTS,
14 OCCUPATIONAL HISTORY, AND EXPOSURE HISTORY; AND
15 FOR OTHER PURPOSES.
16

Subtitle

17 "THE SILICOSIS COMPENSATION FAIRNESS
18 ACT."
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

26 CHAPTER 127 - ARKANSAS SILICOSIS COMPENSATION FAIRNESS ACT.

27 16-127-101. Title.

28 This chapter shall be known as the "Arkansas Silicosis Compensation
29 Fairness Act".
30

31 16-127-102. Purpose.

32 It is the purpose of this chapter to:

33 (1) Give priority to silica and mixed dust claimants who can
34 demonstrate actual physical impairment caused by exposure to silica or mixed
35 dust;

36 (2) Fully preserve the rights of claimants who were exposed to



1 silica or mixed dust to pursue compensation should they become impaired in
2 the future as a result of such exposure;

3 (3) Enhance the ability of the judicial system to supervise and
4 control silica and mixed dust litigation; and

5 (4) Provide access to our court system for those who are
6 actually physically impaired by exposure to silica or mixed dust while
7 securing the right to similar access for those who may suffer physical
8 impairment in the future.

9
10 16-127-103. Definitions.

11 As used in this chapter:

12 (1) "AMA guides to the evaluation of permanent impairment" means
13 the most recent version of the American Medical Association's "Guidelines for
14 Assessment of Permanent Medical Impairment" at the time of the performance of
15 any examination or test required under this chapter;

16 (2) "Board-certified" means the medical doctor is currently
17 certified by one of the medical specialty boards approved by either the
18 American Board of Medical Specialties or the American Osteopathic Board of
19 Osteopathic Specialties;

20 (3) "Board-certified in occupational medicine" means a medical
21 doctor who is certified in the subspecialty of occupational medicine by the
22 American Board of Preventive Medicine or the American Osteopathic Board of
23 Preventive Medicine;

24 (4) "Board-certified oncologist" means a medical doctor who is
25 certified in the subspecialty of medical oncology by the American Board of
26 Internal Medicine or the American Osteopathic Board of Internal Medicine;

27 (5) "Board-certified pathologist" means a medical doctor who
28 holds primary certification in anatomic pathology or clinical pathology from
29 the American Board of Pathology or the American Osteopathic Board of Internal
30 Medicine;

31 (6) "Board-certified pulmonary specialist" means a medical
32 doctor who is certified in the subspecialty of pulmonary medicine by the
33 American Board of Internal Medicine or the American Osteopathic Board of
34 Internal Medicine;

35 (7) "Certified B-reader" means a person qualified as a "final"
36 or "B-reader" for x-ray interpretation as defined in 42 C.F.R. § 37.51(b), as

1 effective January 1, 2007;

2 (8)(A) "Civil action" means any suit or claim of a civil nature
 3 in a state or federal court.

4 (B) "Civil action" does not include any of the following:

5 (i) A civil action relating to any claim for workers
 6 compensation under § 11-9-114 or § 11-9-602;

7 (ii) A civil action alleging any claim or demand
 8 made against a trust established pursuant to 11 U.S.C. § 524(g), as effective
 9 January 1, 2007;

10 (iii) A civil action alleging any claim or demand
 11 made against a trust established pursuant to a plan of reorganization
 12 confirmed under the United States Bankruptcy Code; or

13 (iv) A civil action arising under the Federal
 14 Employers Liability Act pursuant to 45 U.S.C. § 51 et seq. as effective
 15 January 1, 2007;

16 (9)(A) "Competent medical authority" means a medical doctor who
 17 meets the following requirements:

18 (i) The medical doctor is board-certified in
 19 occupational medicine, a board-certified oncologist, a board-certified
 20 pathologist, or a board-certified pulmonary specialist;

21 (ii) The medical doctor is actually treating or has
 22 treated the exposed person and has or had a doctor-patient relationship with
 23 the exposed person, or in the case of a board-certified pathologist, has
 24 examined tissue samples of pathological slides of the exposed person at the
 25 request of the treating medical doctor;

26 (iii) As the basis for the diagnosis, the medical
 27 doctor has not relied, in whole or in part, on any of the following:

28 (a) The reports or opinions of any doctor,
 29 clinic, laboratory, or testing company that performed an examination, test,
 30 or screening of the exposed person's medical condition in violation of any
 31 law, regulation, licensing requirement, or medical code of practice with
 32 regard to the diagnosis set forth in the report required in this chapter; or

33 (b) The reports or opinions of any doctor,
 34 clinic, laboratory, or testing company that performed an examination, test,
 35 or screening of the exposed person's medical condition that required the
 36 exposed person to agree to retain the services of a law firm or lawyer

1 sponsoring the examination, test, or screening;

2 (iv) The medical doctor spends not more than twenty-
 3 five percent (25%) of the medical doctor's annual practice time in providing
 4 consulting or expert services in connection with prosecuting or defending
 5 actual or potential civil actions involving exposure to silica or mixed dust;
 6 and

7 (v) The medical doctor's medical group, professional
 8 corporation, clinic, or other affiliated group earns not more than twenty-
 9 five percent (25%) of its revenues from providing consulting or expert
 10 services in connection with prosecuting or defending actual or potential
 11 civil actions involving exposure to silica or mixed dust.

12 (B) The requirements for determining "competent medical
 13 authority" set forth in this chapter may be waived by written agreement of
 14 all the parties;

15 (10) "Exposed person" means a person whose exposure to silica or
 16 mixed dust is the basis for a silicosis claim or mixed dust disease claim
 17 under this chapter;

18 (11) "ILO scale" means the system for the classification of
 19 chest x-rays set forth in the International Labour Office's "Guidelines for
 20 the use of ILO International Classification of Radiographs of
 21 Pneumoconiosis," 2000 edition, or if amended, the version in effect at the
 22 time of the performance of any examination or test on the exposed person
 23 required under this chapter;

24 (12) "Lung cancer" means a malignant tumor in which the primary
 25 site of the origin of the malignant tumor is inside the lungs;

26 (13) "Mixed dust" means a mixture of dusts composed of silica
 27 and one (1) or more other fibrogenic dusts capable of inducing pulmonary
 28 fibrosis if inhaled in sufficient quantity;

29 (14)(A) "Mixed dust disease claim" means a civil action for
 30 damages, losses, indemnification, contribution, or other relief arising out
 31 of, based on, or in any way related to inhalation of, exposure to, or contact
 32 with mixed dust.

33 (B) "Mixed dust disease claim" includes a civil action
 34 made by or on behalf of any person who has been exposed to mixed dust, or any
 35 representative, spouse, parent, child, or other relative of that person, for
 36 injury, including mental or emotional injury, death, or loss to the person,

1 risk of disease or other injury, costs of medical monitoring or surveillance,
 2 or any other effects on the person's health that are caused by the person's
 3 exposure to mixed dust;

4 (15)(A) "Mixed dust pneumoconiosis" means the lung disease
 5 caused by the pulmonary response to inhaled mixed dusts.

6 (B) "Mixed dust pneumoconiosis" does not mean silicosis
 7 and another pneumoconiosis, including, but not limited to, asbestosis;

8 (16) "Nonmalignant condition" means a condition, other than a
 9 diagnosed cancer, that is caused or may be caused by either silica or mixed
 10 dust, whichever is applicable;

11 (17) "Pathological evidence of mixed dust pneumoconiosis" means
 12 a statement by a board-certified pathologist that more than one (1)
 13 representative section of lung tissue uninvolved with any other disease
 14 process demonstrates a pattern of peribronchioiar and paranchymal stellate
 15 (star-shaped) nodular scarring and that there is no other more likely
 16 explanation for the presence of the fibrosis;

17 (18) "Pathological evidence of silicosis" means a statement by a
 18 board-certified pathologist that more than one (1) representative section of
 19 lung tissue uninvolved with any other disease process demonstrates a pattern
 20 of round silica nodules and birefringent crystals or other demonstration of
 21 crystal structures consistent with silica such as well-organized concentric
 22 whorls of collagen surrounded by inflammatory cells in the lung parenchyma
 23 and that there is no other more likely explanation for the presence of the
 24 fibrosis;

25 (19) "Physical impairment" means a condition of an exposed
 26 person as defined in this chapter;

27 (20) "Premises owner" means a person who owns, in whole or in
 28 part, leases, rents, maintains, or controls privately owned lands, ways, or
 29 waters, or any buildings and structures on those lands, ways, or waters, and
 30 all privately owned and state-owned lands, ways, or waters leased to a
 31 private person, firm, or organization, including any buildings and structures
 32 on those lands, ways, or waters;

33 (21) "Radiological evidence of mixed dust pneumoconiosis" means
 34 an ILO quality chest x-ray read by a certified B-reader as showing bilateral
 35 rounded or irregular opacities in the upper lung fields graded at least 1/1
 36 on the ILO scale;

1 (22) "Radiological evidence of silicosis" means an ILO quality
 2 chest x-ray read by a certified B-reader as showing either bilateral small
 3 rounded opacities such as p, q, or r occurring in the upper lung fields
 4 graded at least 1/1 on the ILO scale or A, B, or C sized opacities
 5 representing complicated silicosis or progressive massive fibrosis;

6 (23) "Silica" means a respirable crystalline form of the mineral
 7 form of silicon dioxide, including, but not limited to, quartz, cristobalite,
 8 and tridymite;

9 (24)(A) "Silica claim" means a civil action for damages, losses,
 10 indemnification, contribution, or other relief arising out of, based on, or
 11 in any way related to inhalation of, exposure to, or contact with silica.

12 (B) "Silica claim" includes a civil action made by or on
 13 behalf of any person who has been exposed to silica, or any representative,
 14 spouse, parent, child, or other relative of that person, for injury,
 15 including mental or emotional injury, death, or loss to the person, risk of
 16 disease or other injury, costs of medical monitoring or surveillance, or any
 17 other effects on the person's health that are caused by the person's exposure
 18 to silica;

19 (25) "Silicosis" means a lung disease caused by inhalation of
 20 silica;

21 (26) "Substantial contributing factor" means both of the
 22 following elements are met:

23 (A) Exposure to silica or mixed dust is the predominate
 24 cause of the physical impairment alleged in the silica claim or mixed dust
 25 disease claim, whichever is applicable; and

26 (B) A competent medical authority has determined with a
 27 reasonable degree of medical certainty that without the silica or mixed dust
 28 exposure the physical impairment of the exposed person would not have
 29 occurred;

30 (27) "Substantial occupational exposure to silica" means
 31 employment for a cumulative period of at least five (5) years in an
 32 occupation in which, for a substantial portion of a normal work year for that
 33 occupation, the exposed person did any of the following:

34 (A) Handled silica;

35 (B) Fabricated silica-containing products so that the
 36 person was exposed to silica in the fabrication process;

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

4 (D) Worked in close proximity to workers who experienced
 5 substantial occupational exposure to silica in a manner that exposed the
 6 person on a regular basis to silica;

7 (28) "Substantial occupational exposure to mixed dust" means
 8 employment for a cumulative period of at least five (5) years in an
 9 occupation in which, for a substantial portion of a normal work year for that
 10 occupation, the exposed person did any of the following:

11 (A) Handled mixed dust;

12 (B) Fabricated mixed dust-containing products so that the
 13 person was exposed to mixed dust in the fabrication process;

14 (C) Altered, repaired, or otherwise worked with a mixed
 15 dust-containing product in a manner that exposed the person on a regular
 16 basis to mixed dust; or

17 (D) Worked in close proximity to other workers who
 18 experienced substantial occupational exposure to mixed dust in a manner that
 19 exposed the person on a regular basis to mixed dust;

20 (29) "Veterans' benefit program" means any program for benefits
 21 in connection with military service under Title 38 of the United States Code
 22 as effective January 1, 2007; and

23 (30) "Workers' compensation law" means the Workers' Compensation
 24 Law, § 11-9-101 et seq., and judicial decisions rendered thereunder.

25
 26 16-127-104. The prima facie case - Physical impairment.

27 (a) No person shall file or maintain a civil action alleging a silica
 28 claim or mixed dust disease claim based on a nonmalignant condition without a
 29 prima facie showing that, in the opinion of a competent medical authority,
 30 the exposed person has a physical impairment and that the person's exposure
 31 to silica or mixed dust is a substantial contributing factor to the physical
 32 impairment. The prima facie showing shall include:

33 (1) Evidence that a competent medical authority has taken from
 34 the exposed person a detailed medical history which includes the occupational
 35 and exposure history of the exposed person. If the exposed person is
 36 deceased, the occupational and exposure history of the exposed person shall

1 be taken from the person or persons who are most knowledgeable about the
2 occupational and exposure history of the exposed person's life;

3 (2) Evidence verifying that there has been a sufficient latency
4 period in the context of the chronic, accelerated, or acute forms of the
5 silicosis or mixed dust disease;

6 (3) A diagnosis by a competent medical authority, based on the
7 detailed medical history, a medical examination, and pulmonary function
8 testing, that both of the following apply to the exposed person:

9 (A) The exposed person has a permanent respiratory
10 impairment rating of at least class 2, as defined by and evaluated pursuant
11 to the AMA guides to the Evaluation of Permanent Impairment; and

12 (B) The exposed person has silicosis or mixed dust disease
13 based at a minimum on radiological or pathological evidence of silicosis or
14 radiological or pathological evidence of mixed dust disease; and

15 (4) Verification that a competent medical authority has
16 concluded that exposure to silica or mixed dust was a substantial
17 contributing factor to the exposed person's impairment. A diagnosis which
18 states that the medical findings and impairment are consistent with or
19 compatible with silica or mixed dust exposure does not meet the requirements
20 of this subdivision (a)(4).

21 (b) No person shall bring or maintain a civil action alleging that
22 silica or mixed dust caused that person to contract lung cancer without a
23 prima facie showing that, in the opinion of competent medical authority, the
24 person has a primary lung cancer, and that the person's exposure to silica or
25 mixed dust is a substantial contributing factor to the lung cancer. The
26 prima facie showing shall include:

27 (1) Evidence that a competent medical authority has taken from
28 the exposed person a detailed medical history that includes the occupational
29 and exposure history of the exposed person. If the exposed person is
30 deceased, the occupational and exposure history of the exposed person shall
31 be taken from the person or persons who are most knowledgeable about the
32 occupational and exposure history of the exposed person's life;

33 (2) Evidence sufficient to demonstrate that at least ten (10)
34 years have elapsed from the date of the exposed person's first exposure to
35 silica or mixed dust until the date of diagnosis of the exposed person's
36 primary lung cancer;

1 (3) Radiological or pathological evidence of silicosis or
 2 radiological or pathological evidence of mixed dust disease;

3 (4) Evidence of the exposed person’s substantial occupational
 4 exposure to silica or mixed dust; and

5 (5) Verification that a competent medical authority has
 6 concluded that exposure to silica or mixed dust was a substantial
 7 contributing factor to the exposed person’s lung cancer. A diagnosis which
 8 states that the cancer is consistent with or compatible with silica or mixed
 9 dust exposure does not meet the requirements of this subdivision (b)(5).

10 (c) No person shall bring or maintain a civil action alleging a silica
 11 claim or mixed dust disease claim based on the wrongful death of an exposed
 12 person without a prima facie showing that, in the opinion of a competent
 13 medical authority, the death of the exposed person was the result of a
 14 physical impairment, and that the person’s exposure to silica or mixed dust
 15 was a substantial contributing factor to the physical impairment causing the
 16 person’s death. The prima facie showing shall include:

17 (1) Evidence that a competent medical authority has taken from
 18 the exposed person a detailed medical history that includes the occupational
 19 and exposure history of the exposed person. If the exposed person is
 20 deceased, the occupational and exposure history of the exposed person shall
 21 be taken from the person or persons who are most knowledgeable about the
 22 occupation and exposure history of the exposed person’s life;

23 (2) Evidence sufficient to demonstrate that at least ten (10)
 24 years have elapsed from the date of the exposed person’s first exposure to
 25 silica or mixed dust until the date of diagnosis of the exposed person’s
 26 primary lung cancer or, if the death is not alleged to be cancer-related,
 27 evidence verifying that there has been a sufficient latency period in the
 28 context of the chronic, accelerated, or acute forms of a silicosis or mixed
 29 dust disease;

30 (3) Radiological or pathological evidence of silicosis or
 31 radiological or pathological evidence of mixed dust disease;

32 (4) Evidence of the exposed person’s substantial occupational
 33 exposure to silica or mixed dust; and

34 (5) Verification that a competent medical authority has
 35 concluded that exposure to silica or mixed dust was a substantial
 36 contributing factor to the exposed person’s death. A diagnosis which states

1 that the medical findings, impairment, or lung cancer are consistent with or
 2 compatible with silica or mixed dust exposure does not meet the requirements
 3 of this subdivision (c)(5).

4 (d) In determining whether exposure to silica or mixed dust was a
 5 substantial contributing factor in causing an exposed person's injury or
 6 loss, the trier of fact in the civil action shall consider all of the
 7 following, without limitation:

8 (1) The manner in which the exposed person was exposed;

9 (2) The proximity of silica or mixed dust to the exposed person
 10 when the exposure occurred;

11 (3) The frequency and length of the exposed person's exposure;
 12 and

13 (4) Any factors that mitigated or enhanced the exposed person's
 14 exposure to silica or mixed dust.

15 (e) Evidence relating to any physical impairment under this chapter,
 16 including pulmonary function testing and diffusing studies, shall comply with
 17 the following criteria that are in effect at the time of the performance of
 18 any examination or test on the exposed person required under this chapter:

19 (1) The technical recommendations for examinations, testing
 20 procedures, quality assurance, quality control, and equipment incorporated in
 21 the AMA guides to the evaluation of permanent impairment; and

22 (2) The official statements of the American Thoracic Society
 23 regarding lung function testing, including general considerations for lung
 24 function testing, standardization of spirometry, standardization of the
 25 measurement of lung volumes, standardization of the single-breath
 26 determination of carbon monoxide uptake in the lung, and interpretative
 27 strategies for lung testing.

28 (f) Nothing in this chapter shall be interpreted as authorizing the
 29 exhumation of bodies.

30
 31 16-127-105. Civil procedure – Filings - Written report.

32 (a)(1) The plaintiff in a civil action alleging a silica claim or
 33 mixed dust disease claim shall file within one hundred and twenty (120) days
 34 after filing the complaint a written report by a competent medical authority
 35 and any supporting evidence composing the applicable prima facie case
 36 specified in this chapter.

1 (2) A defendant may challenge the adequacy of the plaintiff's
2 applicable prima facie case for failure to comply with the minimum applicable
3 requirements specified in this chapter. A defendant's challenge shall be
4 filed within one hundred and twenty (120) days after the plaintiff's filing
5 of the written report and supporting evidence composing the applicable prima
6 facie case.

7 (b)(1) If the court finds that a plaintiff fails to make the
8 applicable prima facie case, the court shall dismiss a plaintiff's silica
9 claim or mixed dust claim without prejudice as a matter of law.

10 (2) The court shall maintain its jurisdiction over any silica
11 claim or mixed dust claim that is dismissed without prejudice under this
12 chapter.

13 (3) A plaintiff whose silica claim or mixed dust disease claim
14 has been dismissed without prejudice under this chapter may move at any time
15 to reinstate the silica claim or mixed dust claim upon a renewed prima facie
16 showing that meets the applicable minimum requirements specified in this
17 chapter.

18 (c) The court's findings and decision on the prima facie showing shall
19 not:

20 (1) Result in any presumption at trial that the exposed person
21 has a physical impairment that is caused by silica or mixed dust exposure;

22 (2) Be conclusive as to the liability of any defendant in the
23 case; or

24 (3) Be admissible at trial.

25 (d) If the trier of fact is a jury:

26 (1) The court shall not instruct the jury with respect to the
27 court's findings or decision on the prima facie showing; and

28 (2) Neither counsel for any party nor a witness shall inform the
29 jurors or potential jurors of the prima facie showing.

30 (e) A court may consolidate for trial any number and type of silica
31 claims or mixed dust disease claims only with the consent of all of the
32 parties. In the absence of such consent, a court may consolidate for trial
33 any claims relating to the exposed person and members of his or her
34 household.

35 (f) No civil action alleging a silica claim or mixed dust disease
36 claim may be filed in a court of Arkansas after the effective date of this

1 chapter unless the plaintiff was a resident of Arkansas at the time the
 2 silica claim or mixed dust disease claim arose or the plaintiff's silica
 3 claim or mixed dust disease claim arose in Arkansas. For purposes of this
 4 chapter, a silica claim or mixed dust disease claim arises in Arkansas if the
 5 exposed person was located in Arkansas at the time the exposed person alleges
 6 to have been exposed to silica or mixed dust.

7 (g) For a civil action that involves a silica claim or mixed dust
 8 disease claim that arose both in this state and outside this state, a court
 9 shall consider each silica claim or mixed dust disease claim individually and
 10 shall sever from the civil action a silica claim or mixed dust disease claim
 11 that is subject to this chapter.

12 (h)(1) A civil action under this chapter may be filed only in the
 13 venue where the plaintiff resides, or where the exposed person was exposed to
 14 silica, mixed dust, or both.

15 (2) If a civil action is filed in more than one (1) venue, upon
 16 motion of any defendant found outside the venue in which the civil action is
 17 pending, the court shall determine which venue is the most appropriate forum
 18 for the silica claim or mixed dust disease claim, considering the relative
 19 amounts and lengths of the exposed person's exposure to silica or mixed dust
 20 in each venue.

21
 22 16-127-106. Statute of limitations.

23 The period of limitations shall not begin to run until the exposed
 24 person discovers, or through the exercise of reasonable diligence should have
 25 discovered, that the person has a physical impairment resulting from silica
 26 or mixed dust exposure.

27
 28 16-127-107. Liability of premises owner.

29 The following shall apply to all civil actions for silica or mixed dust
 30 disease claims brought against a premises owner to recover damages or other
 31 relief for exposure to silica or mixed dust on the premises owner's property:

32 (a) A premises owner is not liable for any injury to any person resulting
 33 from silica or mixed dust exposure unless that person's alleged exposure
 34 occurred while the person was on the premises owner's property.

35 (b) If exposure to silica or mixed dust is alleged to have occurred
 36 after January 1, 1972, it is presumed that products containing silica or

1 mixed dust used on the premises owner's property contained silica or mixed
 2 dust only at levels below safe levels of exposure. To rebut this
 3 presumption, the plaintiff must prove by a preponderance of the evidence that
 4 the levels of silica or mixed dust in the immediate breathing zone of the
 5 exposed person regularly exceeded the threshold limit values adopted by this
 6 state.

7 (c) A premises owner is presumed to not be liable for any injury to
 8 any invitee who was engaged to work with, install, or removed products
 9 containing silica or mixed dust on the premises owner's property if the
 10 invitee's employer held itself out as qualified to perform the work. To
 11 rebut this presumption, the plaintiff must demonstrate by a preponderance of
 12 the evidence that the premises owner had actual knowledge of the potential
 13 dangers of the products containing silica or mixed dust at the time of the
 14 alleged exposure that was superior to the knowledge of both the invitee and
 15 the invitee's employer.

16 (d) A premises owner that hired a contractor before January 1, 1972,
 17 to perform the type of work that the contractor was qualified to perform at
 18 the premises owner's property shall not be liable for any injury to any
 19 person resulting from silica or mixed dust exposure caused by any of the
 20 contractor's employees or agents on the premises owner's property unless the
 21 premises owner directed the activity that resulted in the injury or approved
 22 the critical acts that led to the person's injury.

23 (e) If exposure to silica or mixed dust is alleged to have occurred
 24 after January 1, 1972, a premises owner is not liable for any injury to any
 25 person resulting from that exposure caused by a contractor's employee or
 26 agent on the premises owner's property unless the plaintiff establishes:

27 (1) The premises owner's intentional violation of an established
 28 safety standard in effect at the time of the exposure; and

29 2) The alleged violation was in the exposed person's immediate
 30 breathing zone and was the proximate cause of the exposed person's injury.

31
 32 16-127-107. Applicability and Severability.

33 (a) This chapter applies to any civil action that alleges a silica
 34 claim or mixed dust disease claim that is filed on or after the effective
 35 date of this Act.

36 (b) If any provision of this chapter or the application thereof to any

1 person or circumstance is held invalid, such invalidity shall not affect
 2 other provisions or applications of this chapter which can be given effect
 3 without the invalid provision or application, and to this end the provisions
 4 of this chapter are declared to be severable.

5
 6 SECTION 2. Emergency Clause.

7 It is found and determined by the General Assembly of the State of
 8 Arkansas that in this state, existing conditions, such as the use of the
 9 legal system to pursue unfounded liability claims for exposure to silica and
 10 mixed dust has adversely impacted the availability of liability insurance
 11 coverage for contractors doing business in this state; that these existing
 12 conditions have caused general liability insurance carriers to stop offering
 13 coverage for claims relating to silica or mixed dust exposure in this state;
 14 that the unavailability of liability insurance is exposing the construction
 15 industry in this state to unprotected risk of liability and substantial
 16 adverse financial impact; that there is the need to improve and preserve
 17 access to the courts for deserving claimants suffering physical injury from
 18 exposure to silica and mixed dust; and that this act is immediately necessary
 19 in order to remedy these conditions and give priority to the claims of
 20 exposed individuals who are sick in order to help preserve, now and for the
 21 future, access to our court system for those who develop silica-related
 22 disease and to safeguard jobs, benefits, and savings of workers in Arkansas.
 23 Therefore, an emergency is declared to exist and this act being immediately
 24 necessary for the public peace, health and safety shall become effective on:

25 (1) The date of its approval by the Governor;

26 (2) If the bill is neither approved nor vetoed by the Governor,
 27 the expiration of the period of time during which the Governor may veto the
 28 bill; or

29 (3) If the bill is vetoed by the Governor and the veto is
 30 overridden, the date the last house overrides the veto.

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