

# AN ACT

To amend section 2505.02 and to enact sections 2307.84 to 2307.90, 2307.901, and 2307.902 of the Revised Code to establish minimum medical requirements for filing certain silicosis claims or mixed dust disease claims, to establish premises liability in relation to those claims, to specify a plaintiff's burden of proof in tort actions involving exposure to silica or mixed dust, and to prescribe the requirements for shareholder liability for silicosis claims or mixed dust disease claims under the doctrine of piercing the corporate veil.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 2505.02 be amended and sections 2307.84, 2307.85, 2307.86, 2307.87, 2307.88, 2307.89, 2307.90, 2307.901, and 2307.902 of the Revised Code be enacted to read as follows:

Sec. 2307.84. As used in sections 2307.84 to 2307.90 and 2307.901 of the Revised Code:

(A) "AMA guides to the evaluation of permanent impairment" means the American medical association's guides to the evaluation of permanent impairment (fifth edition 2000) as may be modified by the American medical association.

(B) "Board-certified internist" means a medical doctor who is currently certified by the American board of internal medicine.

(C) "Board-certified occupational medicine specialist" means a medical doctor who is currently certified by the American board of preventive medicine in the specialty of occupational medicine.

(D) "Board-certified oncologist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of medical oncology.

(E) "Board-certified pathologist" means a medical doctor who is currently certified by the American board of pathology.

(F) "Board-certified pulmonary specialist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of pulmonary medicine.

(G) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as amended.

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

(1) A civil action relating to any workers' compensation law;

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

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

(I) "Competent medical authority" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the requirements specified in section 2307.85 or 2307.86 of the Revised Code, whichever is applicable, and who meets the following requirements:

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

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

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

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

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

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

(4) The medical doctor spends not more than twenty-five per cent of the

medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty per cent of its revenues from providing those services.

(J) "Exposed person" means either of the following, whichever is applicable:

(1) A person whose exposure to silica is the basis for a silicosis claim under section 2307.85 of the Revised Code;

(2) A person whose exposure to mixed dust is the basis for a mixed dust disease claim under section 2307.86 of the Revised Code.

(K) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses (2000), as amended.

(L) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs.

(M) "Mixed dust" means a mixture of dusts composed of silica and one or more other fibrogenic dusts capable of inducing pulmonary fibrosis if inhaled in sufficient quantity.

(N) "Mixed dust disease claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with mixed dust. "Mixed dust disease claim" includes a claim made by or on behalf of any person who has been exposed to mixed dust, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to mixed dust.

(O) "Mixed dust pneumoconiosis" means the interstitial lung disease caused by the pulmonary response to inhaled mixed dusts.

(P) "Nonmalignant condition" means a condition, other than a diagnosed cancer, that is caused or may be caused by either of the following, whichever is applicable:

(1) Silica, as provided in section 2307.85 of the Revised Code;

(2) Mixed dust, as provided in section 2307.86 of the Revised Code.

(Q) "Pathological evidence of mixed dust pneumoconiosis" 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 and parenchymal stellate

(star-shaped) nodular scarring and that there is no other more likely explanation for the presence of the fibrosis.

(R) "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 a pattern of round silica nodules 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 that there is no other more likely explanation for the presence of the fibrosis.

(S) "Physical impairment" means any of the following, whichever is applicable:

(1) A nonmalignant condition that meets the minimum requirements of division (B) of section 2307.85 of the Revised Code or lung cancer of an exposed person who is a smoker that meets the minimum requirements of division (C) of section 2307.85 of the Revised Code;

(2) A nonmalignant condition that meets the minimum requirements of division (B) of section 2307.86 of the Revised Code or lung cancer of an exposed person who is a smoker that meets the minimum requirements of division (C) of section 2307.86 of the Revised Code.

(T) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters.

(U) "Radiological evidence of mixed dust pneumoconiosis" means a chest x-ray showing bilateral rounded or irregular opacities in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.

(V) "Radiological evidence of silicosis" means a chest x-ray showing bilateral small rounded opacities (p, q, or r) in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.

(W) "Regular basis" means on a frequent or recurring basis.

(X) "Silica" means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha quartz, cristobalite, and trydymite.

(Y) "Silicosis claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. "Silicosis claim" includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional

injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to silica.

(Z) "Silicosis" means an interstitial lung disease caused by the pulmonary response to inhaled silica.

(AA) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority pursuant to section 2307.85 or 2307.86 and section 2307.87 of the Revised Code, during the last fifteen years.

(BB) "Substantial contributing factor" means both of the following:

(1) Exposure to silica or mixed dust is the predominate cause of the physical impairment alleged in the silicosis claim or mixed dust disease claim, whichever is applicable.

(2) A competent medical authority has determined with a reasonable degree of medical certainty that without the silica or mixed dust exposures the physical impairment of the exposed person would not have occurred.

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

(1) Handled silica;

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

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

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

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

(1) Handled mixed dust;

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

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

(4) Worked in close proximity to other workers engaged in any of the activities described in division (DD)(1), (2), or (3) of this section in a

manner that exposed the person on a regular basis to mixed dust.

(EE) "Tort action" means a civil action for damages for injury, death, or loss to person. "Tort action" includes a product liability claim that is subject to sections 2307.71 to 2307.80 of the Revised Code. "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(FF) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code.

(GG) "Workers' compensation law" means Chapters 4121., 4123., 4127., and 4131. of the Revised Code.

Sec. 2307.85. (A) Physical impairment of the exposed person, to which the person's exposure to silica is a substantial contributing factor, shall be an essential element of a silicosis claim in any tort action.

(B) No person shall bring or maintain a tort action alleging a silicosis claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to silica is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

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

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

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

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

(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that both

of the following apply to the exposed person:

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

(b) The exposed person has silicosis based at a minimum on radiological or pathological evidence of silicosis.

(C) No person shall bring or maintain a tort action alleging that silica caused that person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to silica is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

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

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

(3) Both of the following:

(a) Radiological or pathological evidence of silicosis;

(b) Evidence of the exposed person's substantial occupational exposure to silica.

(D)(1) No person shall bring or maintain a tort action alleging a silicosis claim based on wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were the result of a medical condition, and that the person's exposure to silica was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

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

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis under division (D)(1)(a) of this section or death of the

exposed person. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Both of the following:

(i) Radiological or pathological evidence of silicosis;

(ii) Evidence of the exposed person's substantial occupational exposure to silica.

(2) If a person files a tort action that alleges a silicosis claim based on wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in division (CC) of section 2307.84 of the Revised Code, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.

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

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

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

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

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



Sec. 2307.86. (A) Physical impairment of the exposed person, to which the person's exposure to mixed dust is a substantial contributing factor, shall be an essential element of a mixed dust disease claim in any tort action.

(B) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

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

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

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, mixed dust, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of the exposure.

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

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

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

(b) The exposed person has mixed dust pneumoconiosis, based at a minimum on radiological or pathological evidence of mixed dust pneumoconiosis.

(C) No person shall bring or maintain a tort action alleging that mixed dust caused that person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a

result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to mixed dust is a substantial contributing factor to that cancer;

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

(3) Both of the following:

(a) Radiological or pathological evidence of mixed dust pneumoconiosis;

(b) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(D)(1) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were the result of a medical condition, and that the person's exposure to mixed dust was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

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

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to mixed dust until the date of diagnosis under division (D)(1)(a) of this section or death of the exposed person. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Both of the following:

(i) Radiological or pathological evidence of mixed dust pneumoconiosis;

(ii) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(2) If a person files a tort action that alleges a mixed dust disease claim based on wrongful death, as defined in section 2125.01 of the Revised Code, of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in division (DD) of section 2307.84 of the Revised Code, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.

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

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

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

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

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

Sec. 2307.87. (A) The plaintiff in any tort action who alleges a silicosis claim or a mixed dust disease claim shall file, within thirty days after filing the complaint or other initial pleading, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The defendant in the case

shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The defendant has one hundred twenty days from the date the prima-facie evidence of the exposed person's physical impairment is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (I)(1), (3), and (4) of section 2307.84 of the Revised Code.

(B) If the defendant challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A) of this section, the court shall determine from all of the evidence submitted whether the proffered prima-facie evidence meets the minimum requirements specified in division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by any of those divisions as applicable, by applying the standard for resolving a motion for summary judgment.

(C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima-facie showing required by division (B), (C), or (D) of section 2307.85 or division (B), (C), or (D) of section 2307.86 of the Revised Code, whichever is applicable. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets the minimum requirements specified in any of those divisions as applicable.

(D) This section applies only to tort actions that allege a silicosis claim or a mixed dust disease claim and that are filed on or after the effective date of this section.

Sec. 2307.88. (A) Notwithstanding any other provision of the Revised Code, with respect to any silicosis claim or mixed dust disease claim based upon a nonmalignant condition that is not barred as of the effective date of this section, the period of limitations shall not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that the person has a physical impairment due to a nonmalignant condition. A silicosis claim or a mixed dust disease claim

based upon a nonmalignant condition that is filed before the cause of action pursuant to this division arises is preserved for purposes of the period of limitations.

(B) A silicosis claim or a mixed dust disease claim that arises out of a nonmalignant condition shall be a distinct cause of action from a silicosis claim or a mixed dust disease claim, as the case may be, relating to the same exposed person that arises out of silica-related cancer or mixed dust-related cancer. No damages shall be awarded for fear or risk of cancer in any tort action asserting only a silicosis claim or a mixed dust disease claim for a nonmalignant condition.

(C) No settlement of a silicosis claim or a mixed dust disease claim for a nonmalignant condition that is concluded after the effective date of this section shall require, as a condition of settlement, the release of any future claim for silica-related cancer or mixed dust-related cancer.

Sec. 2307.89. The following apply to all tort actions for silicosis or mixed dust disease claims brought against a premises owner to recover damages or other relief for exposure to silica or mixed dust on the premises owner's property:

(A) A premises owner is not liable for any injury to any individual resulting from silica or mixed dust exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.

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

(C)(1) A premises owner is presumed to be not liable for any injury to any invitee who was engaged to work with, install, or remove products containing silica or mixed dust on the premises owner's property if the invitee's employer held itself out as qualified to perform the work. To rebut this presumption, the plaintiff must demonstrate by a preponderance of the evidence that the premises owner had actual knowledge of the potential dangers of the products containing silica or mixed dust at the time of the alleged exposure that was superior to the knowledge of both the invitee and

the invitee's employer.

(2) A premises owner that hired a contractor before January 1, 1972, to perform the type of work at the premises owner's property that the contractor was qualified to perform cannot be liable for any injury to any individual resulting from silica or mixed dust exposure caused by any of the contractor's employees or agents on the premises owner's property unless the premises owner directed the activity that resulted in the injury or gave or denied permission for the critical acts that led to the individual's injury.

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

(D) As used in this section:

(1) "Threshold limit values" means the maximum allowable concentration of silica, or other dust, set forth in regulation 247 of the "regulations for the prevention and control of diseases resulting from exposure to toxic fumes, vapors, mists, gases, and dusts in order to preserve and protect the public health," as adopted by the public health council of the department of health on January 1, 1947, and set forth by the industrial commission of Ohio in bulletin no. 203, "specific requirements and general safety standards of the industrial commission of Ohio for work shops and factories, chapter XV, ventilation and exhausts," effective January 3, 1955.

(2) "Established safety standard" means that, for the years after 1971, the concentration of silica or mixed dust in the breathing zone of the worker does not exceed the maximum allowable exposure limits for the eight-hour time-weighted average airborne concentration as promulgated by the occupational safety and health administration (OSHA) in effect at the time of the alleged exposure.

(3) "Employee" means an individual who performs labor or provides construction services pursuant to a construction contract, as defined in section 4123.79 of the Revised Code, or a remodeling or repair contract, whether written or oral, if at least ten of the following criteria apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2307.90. (A) Nothing in sections 2307.84 to 2307.90 of the Revised Code is intended to do, and nothing in any of those sections is interpreted to do, either of the following:

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

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

(B) Sections 2307.84 to 2307.90 of the Revised Code shall not affect the scope or operation of any workers' compensation law or veterans' benefit program or the exclusive remedy of subrogation under the provisions of that law or program and shall not authorize any lawsuit that is barred by any provision of any workers' compensation law.

(C) Nothing in sections 2307.85, 2307.86, 2307.87, and 2307.88 of the Revised Code shall require or permit the exhumation of bodies in making the prima-facie showing as required by section 2307.85 or 2307.86 of the Revised Code or rebutting the presumption as provided in section 2307.85 or 2307.86 of the Revised Code.

Sec. 2307.901. (A) If a plaintiff in a tort action alleges any injury or loss to person resulting from exposure to silica or mixed dust as a result of the tortious act of one or more defendants, in order to maintain a cause of action against any of those defendants based on that injury or loss, the plaintiff must prove that the conduct of that particular defendant was a substantial factor in causing the injury or loss on which the cause of action is based.

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

(1) The manner in which the plaintiff was exposed to the defendant's silica or mixed dust;

(2) The proximity of the defendant's silica or mixed dust to the plaintiff when the exposure to the defendant's silica or mixed dust occurred;

(3) The frequency and length of the plaintiff's exposure to the defendant's silica or mixed dust;

(4) Any factors that mitigated or enhanced the plaintiff's exposure to silica or mixed dust.

(C) This section applies only to tort actions that allege any injury or loss to person resulting from exposure to silica or mixed dust and that are



brought on or after the effective date of this section.

Sec. 2307.902. (A) A holder has no obligation to, and has no liability to, the covered entity or to any person with respect to any obligation or liability of the covered entity in a silicosis claim or a mixed dust disease claim under the doctrine of piercing the corporate veil unless the person seeking to pierce the corporate veil demonstrates all of the following:

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

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

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

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

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

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

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

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

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

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

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

(E) This section is intended to codify the elements of the common law

cause of action for piercing the corporate veil and to abrogate the common law cause of action and remedies relating to piercing the corporate veil in silicosis claims and mixed dust disease claims. Nothing in this section shall be construed as creating a right or cause of action that did not exist under the common law as it existed on the effective date of this section.

(F) This section applies to all silicosis claims and mixed dust disease claims commenced on or after the effective date of this section or commenced prior to and pending on the effective date of this section.

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

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

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

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

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

(5) The holder is a foreign corporation the parent corporation of which is authorized to conduct business in this state.

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

(H) As used in this section, unless the context otherwise requires:

(1) "Affiliate" and "beneficial owner" have the same meanings as in section 1704.01 of the Revised Code.

(2) "Mixed dust," "mixed dust disease claim," "silica," and "silicosis claim" have the same meanings as in section 2307.84 of the Revised Code.

(3) "Covered entity" means a corporation, limited liability company, limited partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign, in which the shareholders, owners, or members are generally not responsible for the debts and obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed on a general partner of a limited partnership.

(4) "Holder" means a person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity, a member of a covered entity, or an affiliate of any person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity.

(5) "Piercing the corporate veil" means any and all common law doctrines by which a holder may be liable for an obligation or liability of a covered entity on the basis that the holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or the covered entity has

been used for the purpose of actual or constructive fraud or as a sham to perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded for purposes of imposing liability on a holder for the debts or obligations of that covered entity.

(6) "Person" has the same meaning as in section 1701.01 of the Revised Code.

Sec. 2505.02. (A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, ~~or~~ suppression of evidence, or a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal,

that is pending in any court on ~~the effective date of this amendment~~ July 22, 1998, and all claims filed or actions commenced on or after ~~the effective date of this amendment~~ July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

SECTION 2. That existing section 2505.02 of the Revised Code is hereby repealed.

SECTION 3. (A) As used in this section, "exposed person," "mixed dust," "mixed dust disease claim," "silica," "silicosis claim," and "substantial contributing factor" have the same meanings as in section 2307.84 of the Revised Code.

(B) The General Assembly acknowledges the Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

(C) The General Assembly hereby requests the Supreme Court to adopt rules to specify procedures for venue and consolidation of silicosis claims or mixed dust disease claims brought pursuant to sections 2307.84 to 2307.90 of the Revised Code.

(D) With respect to procedures for venue in regard to silicosis claims or mixed dust disease claims, the General Assembly hereby requests the Supreme Court to adopt a rule that requires that a silicosis claim or a mixed dust disease claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in Ohio or that Ohio is the state in which the plaintiff's exposure to silica or mixed dust is a substantial contributing factor.

(E) With respect to procedures for consolidation of silicosis claims or mixed dust disease claims, the General Assembly hereby requests the Supreme Court to adopt a rule that permits consolidation of silicosis claims or mixed dust disease claims only with the consent of all parties, and in absence of that consent, permits a court to consolidate for trial only those silicosis claims or mixed dust disease claims that relate to the same exposed person and members of the exposed person's household.

SECTION 4. It is the intent of the General Assembly in enacting section 2307.901 of the Revised Code in this act to establish specific factors to be considered when determining whether a particular plaintiff's exposure to a particular defendant's silica or mixed dust was a substantial factor in causing

the plaintiff's injury or loss. The consideration of these factors, involving the plaintiff's proximity to the dust exposure, frequency of the exposure, or regularity of the exposure in tort actions involving exposure to silica or mixed dust is consistent with the factors listed by the court in *Lohrmann v. Pittsburgh Corning Cor.* (4th Cir. 1986), 782 F.2d 1156. The General Assembly, by its enactment of these factors, intends to clarify and define for judges and juries the evidence that is relevant to the common law requirement that the plaintiff must prove proximate causation. The General Assembly recognizes that the language in section 2307.091 of the Revised Code, as enacted by this act, is contrary to the language contained in paragraph 2 of the Syllabus of the Ohio Supreme Court in *Horton v. Harwick Chemical Corp.* (1995), 73 Ohio St.3d 679. However, the General Assembly also recognizes that the courts of Ohio prior to the *Horton* decision generally followed the rationale of the *Lohrmann* decision in determining whether a plaintiff had submitted any evidence that a particular defendant's product was a substantial cause of the plaintiff's injury in tort actions involving exposure to certain hazardous or toxic substances, and that the *Lohrmann* factors were of great assistance to the trial courts in the consideration of motions for summary judgment and to juries when deciding issues of proximate causation. The General Assembly further recognizes that a large number of states have adopted the *Lohrmann* standard. The General Assembly also has held hearings in which medical evidence has been submitted indicating that such a standard is medically appropriate and is scientifically sound public policy.

The *Lohrmann* standard provides litigants, juries, and the courts of Ohio an objective and easily applied standard for determining whether a plaintiff has submitted evidence that is sufficient to sustain the plaintiff's burden of proof as to proximate causation. Where specific evidence of frequency of exposure to, or proximity and length of exposure to, a particular defendant's silica or mixed dust is lacking, summary judgment is appropriate in tort actions involving silica or mixed dust because such a plaintiff lacks any evidence of an essential element that is necessary to prevail. To submit the legal concept of "substantial factor" to a jury in these complex cases without those scientifically valid defining factors would be to invite speculation on the part of juries, something that the General Assembly has determined not to be in the best interests of Ohio and its courts.

SECTION 5. If any item of law that constitutes the whole or part of a

section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the sections contained in this act are composed, and their applications, are independent and severable.

SECTION 6. If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law contained in this act, is held to be preempted by federal law, the preemption of the item of law or its application does not affect other items of law or applications that can be given affect. The items of law of which the sections of this act are composed, and their applications, are independent and severable.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_