

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 342**

**Representative Widener**

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**A BILL**

To enact sections 2307.84 to 2307.90 and section 1  
2307.901 of the Revised Code to establish minimum 2  
medical requirements for filing certain silica 3  
claims or mixed dust disease claims, to establish 4  
premises liability in relation to those claims, 5  
and to prescribe the requirements for shareholder 6  
liability for those claims under the doctrine of 7  
piercing the corporate veil. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2307.84, 2307.85, 2307.86, 2307.87, 9  
2307.88, 2307.89, 2307.90, and 2307.901 of the Revised Code be 10  
enacted to read as follows: 11

**Sec. 2307.84.** As used in sections 2307.84 to 2307.90 of the 12  
Revised Code: 13

(A) "AMA guides to the evaluation of permanent impairment" 14  
means the American medical association's guides to the evaluation 15  
of permanent impairment (fifth edition 2000) as may be modified by 16  
the American medical association. 17

(B) "Board-certified internist" means a medical doctor who is 18  
currently certified by the American board of internal medicine. 19

(C) "Board-certified occupational medicine specialist" means a medical doctor who is currently certified by the American board of internal medicine or the American board of preventive medicine in the specialty of occupational medicine. 20  
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(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. 24  
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(E) "Board-certified pathologist" means a medical doctor who is currently certified by the American board of pathology. 27  
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(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. 29  
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(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. 32  
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(H) "Exposed person" means either of the following, whichever is applicable: 35  
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(1) A person whose exposure to silica is the basis for a silica claim under section 2307.85 of the Revised Code; 37  
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(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. 39  
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(I) "Forced vital capacity" means forced vital capacity that is maximal volume of air expired with maximum effort from a position of full inspiration. 42  
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(J) "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 (1980), as amended. 45  
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(K) "Lung cancer" means a malignant tumor in which the 49

primary site of origin of the cancer is inside the lungs. 50

(L) "Mixed dust" means a mixture of dusts composed of silica or asbestos or one or more other dusts. 51  
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(M) "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 mixed dust pneumoconiosis. "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. 53  
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(N) "Mixed dust pneumoconiosis" means the interstitial lung disease caused by the pulmonary response to inhaled mixed dusts. 64  
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(O) "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: 66  
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(1) Silica, as provided in section 2307.85 of the Revised Code; 69  
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(2) Mixed dust, as provided in section 2307.86 of the Revised Code. 71  
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(P) "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. 73  
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(O) "Pathological evidence of silicosis" means a statement by 80  
a board-certified pathologist that more than one representative 81  
section of lung tissue uninvolved with any other disease process 82  
demonstrates a pattern of round silica nodules (well-organized 83  
concentric whorls of collagen surrounded by inflammatory cells) in 84  
the lung parenchyma and that there is no other more likely 85  
explanation for the presence of the fibrosis. 86

(R) "Physical impairment" means any of the following, 87  
whichever is applicable: 88

(1) A nonmalignant condition that meets the minimum 89  
requirements of division (B) of section 2307.85 of the Revised 90  
Code or lung cancer of an exposed person who is a smoker that 91  
meets the minimum requirements of division (C) of section 2307.85 92  
of the Revised Code; 93

(2) A nonmalignant condition that meets the minimum 94  
requirements of division (B) of section 2307.86 of the Revised 95  
Code or lung cancer of an exposed person who is a smoker that 96  
meets the minimum requirements of division (C) of section 2307.86 97  
of the Revised Code. 98

(S) "Plethysmography" means a test for determining lung 99  
volume, also known as "body plethysmography," in which the subject 100  
of the test is enclosed in a chamber that is equipped to measure 101  
pressure, flow, or volume changes. 102

(T) "Predicted lower limit of normal" means the fifth 103  
percentile of healthy populations based on age, height, and 104  
gender, as referenced in the AMA guides to the evaluation of 105  
permanent impairment. 106

(U) "Premises owner" means a person who owns, in whole or in 107  
part, leases, rents, maintains, or controls privately owned lands, 108  
ways, or waters, or any buildings and structures on those lands, 109  
ways, or waters, and all privately owned and state-owned lands, 110

ways, or waters leased to a private person, firm, or organization, 111  
including any buildings and structures on those lands, ways, or 112  
waters. 113

(V) "Qualified physician" means a medical doctor who is 114  
providing a diagnosis for purposes of constituting prima-facie 115  
evidence of an exposed person's physical impairment that meets the 116  
requirements specified in section 2307.85 or 2307.86 of the 117  
Revised Code, whichever is applicable, and who meets the following 118  
requirements: 119

(1) The medical doctor is a board-certified internist, 120  
pulmonary specialist, oncologist, pathologist, or occupational 121  
medicine specialist. 122

(2) The medical doctor is actually treating or has treated 123  
the exposed person and has or had a doctor-patient relationship 124  
with the person. 125

(3) The medical doctor spends not more than twenty-five per 126  
cent of the medical doctor's professional practice time in 127  
providing consulting or expert services in connection with actual 128  
or potential tort actions, and the medical doctor's medical group, 129  
professional corporation, clinic, or other affiliated group earns 130  
not more than twenty per cent of its revenues from providing those 131  
services. 132

(W) "Radiological evidence of mixed dust pneumoconiosis" 133  
means a chest x-ray showing irregular opacities in the upper lung 134  
fields graded by a certified B-reader as at least 1/1 on the ILO 135  
scale. 136

(X) "Radiological evidence of silicosis" means a chest x-ray 137  
showing small rounded opacities in the upper lung fields graded by 138  
a certified B-reader as at least 1/1 on the ILO scale. 139

(Y) "Regular basis" means on a frequent or recurring basis. 140

(Z) "Silica" means a group of naturally occurring crystalline forms of silicon dioxide, including, but not limited to, quartz and sand. 141  
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(AA) "Silica claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to silica. "Silica 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. 144  
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(BB) "Silicosis" means an interstitial lung disease caused by the pulmonary response to inhaled silica. 154  
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(CC) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a qualified physician pursuant to section 2307.85 or 2307.86 and section 2307.87 of the Revised Code, during the last fifteen years. 156  
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(DD) "Spirometry" means the measurement of volume of air inhaled or exhaled by the lung. 160  
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(EE) "Substantial contributing factor" means both of the following: 162  
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(1) Exposure to silica or mixed dust is the predominate cause of the physical impairment alleged in the silica claim or mixed dust disease claim, whichever is applicable. 164  
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(2) A qualified physician has determined with a reasonable degree of medical certainty that the physical impairment of the exposed person would not have occurred but for the silica or mixed dust exposures. 167  
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(FF) "Substantial occupational exposure to silica" means 171  
employment for a cumulative period of at least five years in an 172  
industry and an occupation in which, for a substantial portion of 173  
a normal work year for that occupation, the exposed person did any 174  
of the following: 175

(1) Handled silica; 176

(2) Fabricated silica-containing products so that the person 177  
was exposed to silica in the fabrication process; 178

(3) Altered, repaired, or otherwise worked with a 179  
silica-containing product in a manner that exposed the person on a 180  
regular basis to silica; 181

(4) Worked in close proximity to other workers engaged in any 182  
of the activities described in division (FF)(1), (2), or (3) of 183  
this section in a manner that exposed the person on a regular 184  
basis to silica. 185

(GG) "Substantial occupational exposure to mixed dust" means 186  
employment for a cumulative period of at least five years in an 187  
industry and an occupation in which, for a substantial portion of 188  
a normal work year for that occupation, the exposed person did any 189  
of the following: 190

(1) Handled mixed dust; 191

(2) Fabricated mixed dust-containing products so that the 192  
person was exposed to mixed dust in the fabrication process; 193

(3) Altered, repaired, or otherwise worked with a mixed 194  
dust-containing product in a manner that exposed the person on a 195  
regular basis to mixed dust; 196

(4) Worked in close proximity to other workers engaged in any 197  
of the activities described in division (GG)(1), (2), or (3) of 198  
this section in a manner that exposed the person on a regular 199  
basis to mixed dust. 200

(HH) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the lung is then compared to the concentration of that type of gas in the spirometer. 201  
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(II) "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 or a silica claim or mixed dust claim that is subject to sections 2307.84 to 2307.88 of the Revised Code. "Tort action" does not include any of the following: 207  
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(1) A civil action for damages for a breach of contract or another agreement between persons; 213  
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(2) A civil action relating to any workers' compensation law; 215

(3) A civil action alleging any claim or demand made against a trust established pursuant to 11 U.S.C. section 524(g); 216  
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(4) 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. 218  
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(JJ) "Total lung capacity" means the volume of air contained in the lungs at the end of a maximal inspiration. 221  
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(KK) "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. 223  
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(LL) "Workers' compensation law" means Chapters 4121., 4123., 4127., and 4131. of the Revised Code. 226  
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**Sec. 2307.85. (A) Physical impairment of the exposed person, to which the person's exposure to silica is a substantial** 228  
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contributing factor, shall be an essential element of a silica 230  
claim in any tort action. 231

(B) No person shall bring or maintain a tort action alleging 232  
a silica claim based on a nonmalignant condition in the absence of 233  
a prima-facie showing, in the manner described in division (A) of 234  
section 2307.87 of the Revised Code, that the exposed person has a 235  
physical impairment, that the physical impairment is a result of a 236  
medical condition, and that the person's exposure to silica is a 237  
substantial contributing factor to the medical condition. That 238  
prima-facie showing shall include all of the following minimum 239  
requirements: 240

(1) Evidence verifying that a qualified physician has taken a 241  
detailed occupational and exposure history of the exposed person 242  
from the exposed person or, if that person is deceased, from the 243  
person who is most knowledgeable about the exposures that form the 244  
basis of the silica claim for a nonmalignant condition, including 245  
all of the following: 246

(a) All of the exposed person's principal places of 247  
employment and exposures to airborne contaminants; 248

(b) Whether each place of employment involved exposures to 249  
airborne contaminants, including, but not limited to, silica or 250  
other disease causing dusts, that can cause pulmonary impairment 251  
and, if that type of exposure is involved, the nature, duration, 252  
and level of exposure. 253

(2) Evidence verifying that a qualified physician has taken a 254  
detailed medical and smoking history of the exposed person, 255  
including a thorough review of the exposed person's past and 256  
present medical problems and the most probable causes of those 257  
medical problems; 258

(3) A diagnosis by a qualified physician, based on a medical 259

examination and pulmonary function testing of the exposed person, 260  
that all of the following apply to the exposed person: 261

(a) The exposed person has a permanent respiratory impairment 262  
rating of at least class 2 as defined by and evaluated pursuant to 263  
the AMA guides to the evaluation of permanent impairment. 264

(b) The exposed person has silicosis based at a minimum on 265  
radiological or pathological evidence of silicosis. In the case of 266  
death of an exposed person, if no pulmonary function testing 267  
results are available, the pathological or radiological evidence 268  
of silicosis and evidence from a qualified physician who treated 269  
the exposed person showing that the silicosis was a substantial 270  
contributing factor of the exposed person's physical impairment 271  
prior to death or a substantial contributing factor of the exposed 272  
person's death are sufficient to satisfy the minimum requirements 273  
for a prima-facie showing under division (B) of this section. 274

(c) The silicosis described in division (B)(3)(b) of this 275  
section is a substantial contributing factor to the exposed 276  
person's physical impairment or death, based at a minimum on a 277  
determination that the exposed person has any of the following: 278

(i) A forced vital capacity below the predicted lower limit 279  
of normal; 280

(ii) A total lung capacity, by plethysmography or timed gas 281  
dilution, below the predicted lower limit of normal; 282

(iii) A chest x-ray showing small, rounded opacities in the 283  
upper lung fields graded by a certified B-reader at least 1/1 on 284  
the ILO scale. 285

(C)(1) No person shall bring or maintain a tort action 286  
alleging a silica claim based upon lung cancer of an exposed 287  
person who is a smoker, in the absence of a prima-facie showing, 288  
in the manner described in division (A) of section 2307.87 of the 289

<u>Revised Code, of all of the following minimum requirements:</u>	290
<u>(a) A diagnosis by a board-certified pathologist,</u>	291
<u>board-certified pulmonary specialist, or board-certified</u>	292
<u>oncologist that the exposed person has primary lung cancer and</u>	293
<u>that exposure to silica is a substantial contributing factor to</u>	294
<u>that cancer;</u>	295
<u>(b) Evidence that is sufficient to demonstrate that at least</u>	296
<u>ten years have elapsed from the date of the exposed person's first</u>	297
<u>exposure to silica until the date of diagnosis of the exposed</u>	298
<u>person's primary lung cancer. The ten-year latency period</u>	299
<u>described in this division is a rebuttable presumption and the</u>	300
<u>plaintiff has the burden of proof to rebut the presumption.</u>	301
<u>(c) Both of the following:</u>	302
<u>(i) Radiological or pathological evidence of silicosis;</u>	303
<u>(ii) Evidence of the exposed person's substantial</u>	304
<u>occupational exposure to silica.</u>	305
<u>(2) If a plaintiff files a tort action that alleges a silica</u>	306
<u>claim based upon lung cancer of an exposed person who is a smoker</u>	307
<u>and further alleges in the action that the plaintiff's exposure to</u>	308
<u>silica was the result of living with another person who, if the</u>	309
<u>tort action had been filed by the other person, would have met the</u>	310
<u>requirements specified in division (C)(1)(c) of this section and</u>	311
<u>that the plaintiff lived with the other person for the period of</u>	312
<u>time specified in division (FF) of section 2307.84 of the Revised</u>	313
<u>Code, the plaintiff is considered as having satisfied the</u>	314
<u>requirements specified in division (C)(1)(c) of this section.</u>	315
<u>(D) Evidence relating to physical impairment under this</u>	316
<u>section, including pulmonary function testing and diffusing</u>	317
<u>studies, shall comply with the technical recommendations for</u>	318
<u>examinations, testing procedures, quality assurance, quality</u>	319

control, and equipment incorporated in the AMA guides to the 320  
evaluation of permanent impairment and reported as set forth in 20 321  
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 322  
the interpretive standards set forth in the official statement of 323  
the American thoracic society entitled "lung function testing: 324  
selection of reference values and interpretive strategies" as 325  
published in American review of respiratory disease, 326  
1991:144:1202-1218. 327

(E) All of the following apply to the presentation of 328  
prima-facie evidence that meets the requirements of division (B) 329  
or (C) of this section: 330

(1) It does not result in any presumption at trial that the 331  
exposed person has a physical impairment that is caused by a 332  
silica-related condition. 333

(2) It is not conclusive as to the liability of any defendant 334  
in the case. 335

(3) It is not admissible at trial. 336

**Sec. 2307.86. (A) Physical impairment of the exposed person,** 337  
to which the person's exposure to mixed dust is a substantial 338  
contributing factor, shall be an essential element of a mixed dust 339  
disease claim in any tort action. 340

(B) No person shall bring or maintain a tort action alleging 341  
a mixed dust disease claim based on a nonmalignant condition in 342  
the absence of a prima-facie showing, in the manner described in 343  
division (A) of section 2307.87 of the Revised Code, that the 344  
exposed person has a physical impairment, that the physical 345  
impairment is a result of a medical condition, and that the 346  
person's exposure to mixed dust is a substantial contributing 347  
factor to the medical condition. That prima-facie showing shall 348  
include all of the following minimum requirements: 349

(1) Evidence verifying that a qualified physician has taken a 350  
detailed occupational and exposure history of the exposed person 351  
from the exposed person or, if that person is deceased, from the 352  
person who is most knowledgeable about the exposures that form the 353  
basis of the mixed dust disease claim for a nonmalignant 354  
condition, including all of the following: 355

(a) All of the exposed person's principal places of 356  
employment and exposures to airborne contaminants; 357

(b) Whether each place of employment involved exposures to 358  
airborne contaminants, including, but not limited to, mixed dust, 359  
that can cause pulmonary impairment and, if that type of exposure 360  
is involved, the nature, duration, and level of the exposure; 361

(2) Evidence verifying that a qualified physician has taken a 362  
detailed medical and smoking history of the exposed person, 363  
including a thorough review of the exposed person's past and 364  
present medical problems and the most probable causes of those 365  
medical problems; 366

(3) A diagnosis by a qualified physician, based on a medical 367  
examination and pulmonary function testing of the exposed person, 368  
that all of the following apply to the exposed person: 369

(a) The exposed person has a permanent respiratory impairment 370  
rating of at least class 2 as defined by and evaluated pursuant to 371  
the AMA guides to the evaluation of permanent impairment. 372

(b) The exposed person has mixed dust pneumoconiosis, based 373  
at a minimum on radiological or pathological evidence of mixed 374  
dust pneumoconiosis. In the case of death of an exposed person, if 375  
no pulmonary function testing results are available, the 376  
pathological or radiological evidence of mixed dust pneumoconiosis 377  
and evidence from a qualified physician who treated the exposed 378  
person showing that the mixed dust pneumoconiosis was a 379  
substantial contributing factor of the exposed person's physical 380

impairment prior to death or a substantial contributing factor of 381  
the exposed person's death are sufficient to satisfy the minimum 382  
requirements for a prima-facie showing under division (B) of this 383  
section. 384

(c) The mixed dust pneumoconiosis described in division 385  
(B)(3)(b) of this section is a substantial contributing factor to 386  
the exposed person's physical impairment or death, based at a 387  
minimum on a determination that the exposed person has any of the 388  
following: 389

(i) A forced vital capacity below the predicted lower limit 390  
of normal; 391

(ii) A total lung capacity, by plethysmography or timed gas 392  
dilution, below the predicted lower limit of normal; 393

(iii) A chest x-ray showing irregular stellate (star-shaped) 394  
opacities in the upper lung field graded by a certified B-reader 395  
at least 1/1 on the ILO scale. 396

(C)(1) No person shall bring or maintain a tort action 397  
alleging a mixed dust disease claim based upon lung cancer of an 398  
exposed person who is a smoker, in the absence of a prima-facie 399  
showing, in the manner described in division (A) of section 400  
2307.87 of the Revised Code, of all of the following minimum 401  
requirements: 402

(a) A diagnosis by a board-certified pathologist, 403  
board-certified pulmonary specialist, or board-certified 404  
oncologist that the exposed person has primary lung cancer and 405  
that exposure to mixed dust is a substantial contributing factor 406  
to that cancer; 407

(b) Evidence that is sufficient to demonstrate that at least 408  
ten years have elapsed from the date of the exposed person's first 409  
exposure to mixed dust until the date of diagnosis of the exposed 410

person's primary lung cancer. The ten-year latency period 411  
described in this division is a rebuttable presumption, and the 412  
plaintiff has the burden of proof to rebut the presumption. 413

(c) Both of the following: 414

(i) Radiological or pathological evidence of mixed dust 415  
pneumoconiosis; 416

(ii) Evidence of the exposed person's substantial 417  
occupational exposure to mixed dust. 418

(2) If a plaintiff files a tort action that alleges a mixed 419  
dust disease claim based upon lung cancer of an exposed person who 420  
is a smoker and further alleges in the action that the plaintiff's 421  
exposure to mixed dust was the result of living with another 422  
person who, if the tort action had been filed by the other person, 423  
would have met the requirements specified in division (C)(1)(c) of 424  
this section and that the plaintiff lived with the other person 425  
for the period of time specified in division (GG) of section 426  
2307.84 of the Revised Code, the plaintiff is considered as having 427  
satisfied the requirements specified in division (C)(1)(c) of this 428  
section. 429

(D) Evidence relating to physical impairment under this 430  
section, including pulmonary function testing and diffusing 431  
studies, shall comply with the technical recommendations for 432  
examinations, testing procedures, quality assurance, quality 433  
control, and equipment incorporated in the AMA guides to the 434  
evaluation of permanent impairment and reported as set forth in 20 435  
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 436  
the interpretive standards set forth in the official statement of 437  
the American thoracic society entitled "lung function testing: 438  
selection of reference values and interpretive strategies" as 439  
published in American review of respiratory disease, 440  
1991:144:1202-1218. 441

(E) All of the following apply to the presentation of 442  
prima-facie evidence that meets the requirements of division (B) 443  
or (C) of this section: 444

(1) It does not result in any presumption at trial that the 445  
exposed person has a physical impairment that is caused by a mixed 446  
dust-related condition. 447

(2) It is not conclusive as to the liability of any defendant 448  
in the case. 449

(3) It is not admissible at trial. 450

**Sec. 2307.87.** (A) The plaintiff in any tort action who 451  
alleges a silica claim or a mixed dust disease claim shall file, 452  
within thirty days after filing the complaint or other initial 453  
pleading, a written report and supporting test results 454  
constituting prima-facie evidence of the exposed person's physical 455  
impairment that meets the minimum requirements specified in 456  
division (B) or (C) of section 2307.85 or division (B) or (C) of 457  
section 2307.86 of the Revised Code, whichever is applicable. With 458  
respect to any silica claim or mixed dust disease claim that is 459  
pending on the effective date of this section, the plaintiff shall 460  
file the written report and supporting test results described in 461  
this division within one hundred twenty days following the 462  
effective date of this section. The defendant in the case shall be 463  
afforded a reasonable opportunity, upon the defendant's motion, to 464  
challenge the adequacy of the proffered prima-facie evidence of 465  
the physical impairment for failure to comply with the minimum 466  
requirements specified in division (B) or (C) of section 2307.85 467  
or division (B) or (C) of section 2307.86 of the Revised Code, 468  
whichever is applicable. The defendant has one hundred twenty days 469  
from the date the prima-facie evidence of the exposed person's 470  
physical impairment is proffered to challenge the adequacy of that 471  
prima-facie evidence. If the defendant makes that challenge and 472



uses a physician to do so, the physician must meet the 473  
requirements specified in divisions (V)(1) and (3) of section 474  
2307.84 of the Revised Code. 475

(B) If the defendant challenges the adequacy of the 476  
prima-facie evidence of the exposed person's physical impairment 477  
as provided in division (A) of this section, the court shall 478  
determine from all of the evidence submitted whether the proffered 479  
prima-facie evidence meets the minimum requirements specified in 480  
division (B) or (C) of section 2307.85 or division (B) or (C) of 481  
section 2307.86 of the Revised Code, whichever is applicable. The 482  
court shall resolve the issue of whether the plaintiff has made 483  
the prima-facie showing required by any of those divisions as 484  
applicable, by applying the standard for resolving a motion for 485  
summary judgment. 486

(C) The court shall administratively dismiss the plaintiff's 487  
claim without prejudice upon a finding of failure to make the 488  
prima-facie showing required by division (B) or (C) of section 489  
2307.85 or division (B) or (C) of section 2307.86 of the Revised 490  
Code, whichever is applicable. The court shall maintain its 491  
jurisdiction over any case that is administratively dismissed 492  
under this division. Any plaintiff whose case has been 493  
administratively dismissed may move to reinstate the plaintiff's 494  
case if the plaintiff makes a prima-facie showing that meets the 495  
minimum requirements specified in any of those divisions as 496  
applicable. 497

**Sec. 2307.88.** (A) Notwithstanding any other provision of the 498  
Revised Code, with respect to any silica claim or mixed dust 499  
disease claim based upon a nonmalignant condition that is not 500  
barred as of the effective date of this section, the period of 501  
limitations shall not begin to run until the exposed person 502

discovers, or through the exercise of reasonable diligence should 503  
have discovered, that the person has a physical impairment due to 504  
a nonmalignant condition. 505

(B) A silica claim or a mixed dust disease claim that arises 506  
out of a nonmalignant condition shall be a distinct cause of 507  
action from a silica claim or a mixed dust disease claim, as the 508  
case may be, relating to the same exposed person that arises out 509  
of silica-related cancer or mixed dust-related cancer. No damages 510  
shall be awarded for fear or risk of cancer in any tort action 511  
asserting only a silica claim or a mixed dust disease claim for a 512  
nonmalignant condition. 513

(C) No settlement of a silica claim or a mixed dust disease 514  
claim for a nonmalignant condition that is concluded after the 515  
effective date of this section shall require, as a condition of 516  
settlement, the release of any future claim for silica-related 517  
cancer or mixed dust-related cancer. 518

**Sec. 2307.89.** The following apply to all tort actions for 519  
silica or mixed dust disease claims brought against a premises 520  
owner to recover damages or other relief for exposure to silica or 521  
mixed dust on the premises owner's property: 522

(A) A premises owner is not liable for any injury to any 523  
individual resulting from silica or mixed dust exposure unless 524  
that individual's alleged exposure occurred while the individual 525  
was at the premises owner's property. 526

(B) If exposure to silica or mixed dust is alleged to have 527  
occurred before January 1, 1972, it is presumed that a premises 528  
owner knew that this state had adopted safe levels of exposure for 529  
silica or mixed dust and that products containing silica or mixed 530  
dust were used on its property only at levels below those safe 531  
levels of exposure. To rebut this presumption, the plaintiff must 532

prove by a preponderance of the evidence that the premises owner 533  
knew or should have known that the levels of silica or mixed dust 534  
in the immediate breathing zone of the plaintiff regularly 535  
exceeded the threshold limit values adopted by this state and that 536  
the premises owner allowed that condition to persist. 537

(C)(1) A premises owner is presumed to be not liable for any 538  
injury to any invitee who is engaged to work with, install, or 539  
remove products containing silica or mixed dust on the premises 540  
owner's property if the invitee's employer holds itself out as 541  
qualified to perform the work. To rebut this presumption, the 542  
plaintiff must demonstrate by a preponderance of the evidence that 543  
the premises owner has actual knowledge of the potential dangers 544  
of the products containing silica or mixed dust that is superior 545  
to the knowledge of both the invitee and the invitee's employer. 546

(2) A premises owner that hired a contractor before January 547  
1, 1972, to perform the type of work at the premises owner's 548  
property that the contractor was qualified to perform is not 549  
liable for any injury to any individual resulting from silica or 550  
mixed dust exposure caused by any of the contractor's employees or 551  
agents on the premises owner's property unless the premises owner 552  
directed the activity that resulted in the injury or gave or 553  
denied permission for the critical acts that led to the 554  
individual's injury. 555

(3) If exposure to silica or mixed dust is alleged to have 556  
occurred after January 1, 1972, a premises owner is not liable for 557  
any injury to any individual resulting from that exposure caused 558  
by a contractor's employee or agent on the premises owner's 559  
property unless the plaintiff establishes the premises owner's 560  
intentional violation of an established safety standard that is in 561  
effect at the time of the exposure and that the alleged violation 562  
was in the plaintiff's breathing zone and was the proximate cause 563  
of the plaintiff's medical condition. 564

(D) As used in this section: 565

(1) "Threshold limit values" means that, for the years 1946 566  
through 1971, the concentration of silica or mixed dust in the 567  
worker's breathing zone did not exceed the following maximum 568  
allowable exposure limits for an eight-hour time-weighted average 569  
airborne concentration: 570

(a) Silica, free or uncombined, over forty per cent: five 571  
million particles per cubic foot. For purposes of the maximum 572  
allowable concentrations for silica, the free silica content is 573  
the per cent of free silica in the fraction of the airborne dust 574  
in the breathing zone of the worker that is smaller than five 575  
microns in maximum diameter. 576

(b) Silica, free or uncombined, between twenty and forty per 577  
cent: ten million particles per cubic foot. For purposes of the 578  
maximum allowable concentrations for silica, the free silica 579  
content is the per cent of free silica in the fraction of the 580  
airborne dust in the breathing zone of the worker that is smaller 581  
than five microns in maximum diameter. 582

(c) Silica, free or uncombined, between ten and twenty per 583  
cent: twenty million particles per cubic foot. For purposes of the 584  
maximum allowable concentrations for silica, the free silica 585  
content is the per cent of free silica in the fraction of the 586  
airborne dust in the breathing zone of the worker that is smaller 587  
than five microns in maximum diameter. 588

(2) "Established safety standard" means that, for the years 589  
after 1971, the concentration of silica or mixed dust in the 590  
breathing zone of the worker does not exceed the maximum allowable 591  
exposure limits for the eight-hour time-weighted average airborne 592  
concentration as promulgated by the occupational safety and health 593  
administration (OSHA) in effect at the time of the alleged 594  
exposure. 595

(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: 596  
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(i) The individual is required to comply with instructions from the other contracting party regarding the manner or method of performing services. 601  
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(ii) The individual is required by the other contracting party to have particular training. 604  
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(iii) The individual's services are integrated into the regular functioning of the other contracting party. 606  
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(iv) The individual is required to perform the work personally. 608  
609

(v) The individual is hired, supervised, or paid by the other contracting party. 610  
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(vi) 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. 612  
613  
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(vii) The individual's hours of work are established by the other contracting party. 615  
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(viii) The individual is required to devote full time to the business of the other contracting party. 617  
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(ix) The individual is required to perform the work on the premises of the other contracting party. 619  
620

(x) The individual is required to follow the order of work set by the other contracting party. 621  
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(xi) The individual is required to make oral or written reports of progress to the other contracting party. 623  
624

<u>(xii) The individual is paid for services on a regular basis,</u>	625
<u>including hourly, weekly, or monthly.</u>	626
<u>(xiii) The individual's expenses are paid for by the other</u>	627
<u>contracting party.</u>	628
<u>(xiv) The individual's tools and materials are furnished by</u>	629
<u>the other contracting party.</u>	630
<u>(xv) The individual is provided with the facilities used to</u>	631
<u>perform services.</u>	632
<u>(xvi) The individual does not realize a profit or suffer a</u>	633
<u>loss as a result of the services provided.</u>	634
<u>(xvii) The individual is not performing services for a number</u>	635
<u>of employers at the same time.</u>	636
<u>(xviii) The individual does not make the same services</u>	637
<u>available to the general public.</u>	638
<u>(xix) The other contracting party has a right to discharge</u>	639
<u>the individual.</u>	640
<u>(xx) The individual has the right to end the relationship</u>	641
<u>with the other contracting party without incurring liability</u>	642
<u>pursuant to an employment contract or agreement.</u>	643
<b><u>Sec. 2307.90. (A) Nothing in sections 2307.84 to 2307.90 of</u></b>	644
<b><u>the Revised Code is intended to do, and nothing in any of those</u></b>	645
<b><u>sections is interpreted to do, either of the following:</u></b>	646
<u>(1) Affect the rights of any party in bankruptcy proceedings;</u>	647
<u>(2) Affect the ability of any person who is able to make a</u>	648
<u>showing that the person satisfies the claim criteria for</u>	649
<u>compensable claims or demands under a trust established pursuant</u>	650
<u>to a plan of reorganization under Chapter 11 of the United States</u>	651
<u>Bankruptcy Code, to make a claim or demand against that trust.</u>	652

(B) Sections 2307.84 to 2307.90 of the Revised Code shall not 653  
affect the scope or operation of any workers' compensation law or 654  
veterans' benefit program or the exclusive remedy of subrogation 655  
under the provisions of that law or program and shall not 656  
authorize any lawsuit that is barred by any provision of any 657  
workers' compensation law. 658

**Sec. 2307.901.** (A) A holder has no obligation to, and has no 659  
liability to, the covered entity or to any person with respect to 660  
any obligation or liability of the covered entity in a silica 661  
claim or a mixed dust disease claim under the doctrine of piercing 662  
the corporate veil unless the person seeking to pierce the 663  
corporate veil demonstrates all of the following: 664

(1) The holder exerted such control over the covered entity 665  
that the covered entity had no separate mind, will, or existence 666  
of its own. 667

(2) The holder caused the covered entity to be used for the 668  
purpose of perpetrating, and the covered entity perpetrated an 669  
actual fraud on the person seeking to pierce the corporate veil 670  
primarily for the direct pecuniary benefit of the holder. 671

(3) The person seeking to pierce the corporate veil sustained 672  
an injury or unjust loss as a direct result of the control 673  
described in division (A)(1) of this section and the fraud 674  
described in division (A)(2) of this section. 675

(B) A court shall not find that the holder exerted such 676  
control over the covered entity that the covered entity did not 677  
have a separate mind, will, or existence of its own or to have 678  
caused the covered entity to be used for the purpose of 679  
perpetrating a fraud solely as a result of any of the following 680  
actions, events, or relationships: 681

(1) The holder is an affiliate of the covered entity and 682

provides legal, accounting, treasury, cash management, human 683  
resources, administrative, or other similar services to the 684  
covered entity, leases assets to the covered entity, or makes its 685  
employees available to the covered entity. 686

(2) The holder loans funds to the covered entity or 687  
guarantees the obligations of the covered entity. 688

(3) The officers and directors of the holder are also 689  
officers and directors of the covered entity. 690

(4) The covered entity makes payments of dividends or other 691  
distributions to the holder or repays loans owed to the holder. 692

(5) In the case of a covered entity that is a limited 693  
liability company, the holder or its employees or agents serve as 694  
the manager of the covered entity. 695

(C) The person seeking to pierce the corporate veil has the 696  
burden of proof on each and every element of the person's claim 697  
and must prove each element by a preponderance of the evidence. 698

(D) Any liability of the holder described in division (A) of 699  
this section for an obligation or liability that is limited by 700  
that division is exclusive and preempts any other obligation or 701  
liability imposed upon that holder for that obligation or 702  
liability under common law or otherwise. 703

(E) This section is intended to codify the elements of the 704  
common law cause of action for piercing the corporate veil and to 705  
abrogate the common law cause of action and remedies relating to 706  
piercing the corporate veil in silica claims and mixed dust 707  
disease claims. Nothing in this section shall be construed as 708  
creating a right or cause of action that did not exist under the 709  
common law as it existed on the effective date of this section. 710

(F) This section applies to all silica claims and mixed dust 711  
disease claims commenced on or after the effective date of this 712



section or commenced prior to and pending on the effective date of 713  
this section. 714

(G) This section applies to all actions asserting the 715  
doctrine of piercing the corporate veil brought against a holder 716  
if any of the following apply: 717

(1) The holder is an individual and resides in this state. 718

(2) The holder is a corporation organized under the laws of 719  
this state. 720

(3) The holder is a corporation with its principal place of 721  
business in this state. 722

(4) The holder is a foreign corporation that is authorized to 723  
conduct or has conducted business in this state. 724

(5) The holder is a foreign corporation the parent 725  
corporation of which is authorized to conduct business in this 726  
state. 727

(6) The person seeking to pierce the corporate veil is a 728  
resident of this state. 729

(H) As used in this section, unless the context otherwise 730  
requires: 731

(1) "Affiliate" and "beneficial owner" have the same meanings 732  
as in section 1704.01 of the Revised Code. 733

(2) "Mixed dust," "mixed dust disease claim," "silica," and 734  
"silica claim" have the same meanings as in section 2307.84 of the 735  
Revised Code. 736

(3) "Covered entity" means a corporation, limited liability 737  
company, limited partnership, or any other entity organized under 738  
the laws of any jurisdiction, domestic or foreign, in which the 739  
shareholders, owners, or members are generally not responsible for 740  
the debts and obligations of the entity. Nothing in this section 741

limits or otherwise affects the liabilities imposed on a general partner of a limited partnership. 742  
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(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. 744  
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(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. 749  
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(6) "Person" has the same meaning as in section 1701.01 of the Revised Code. 758  
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**Section 2.** (A) As used in this section, "exposed person," "mixed dust," "mixed dust disease claim," "silica," "silica claim," and "substantial contributing factor" have the same meanings as in section 2307.84 of the Revised Code. 760  
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(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. 764  
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(C) The General Assembly hereby requests the Supreme Court to adopt rules to specify procedures for venue and consolidation of silica claims or mixed dust disease claims brought pursuant to sections 2307.84 to 2307.90 of the Revised Code. 768  
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(D) With respect to procedures for venue in regard to silica 772  
claims or mixed dust disease claims, the General Assembly hereby 773  
requests the Supreme Court to adopt a rule that requires that a 774  
silica claim or a mixed dust disease claim meet specific nexus 775  
requirements, including the requirement that the plaintiff be 776  
domiciled in Ohio or that Ohio is the state in which the 777  
plaintiff's exposure to silica or mixed dust is a substantial 778  
contributing factor. 779

(E) With respect to procedures for consolidation of silica 780  
claims or mixed dust disease claims, the General Assembly hereby 781  
requests the Supreme Court to adopt a rule that permits 782  
consolidation of silica claims or mixed dust disease claims only 783  
with the consent of all parties, and in absence of that consent, 784  
permits a court to consolidate for trial only those silica claims 785  
or mixed dust disease claims that relate to the same exposed 786  
person and members of the exposed person's household. 787

**Section 3.** If any item of law that constitutes the whole or 788  
part of a section of law contained in this act, or if any 789  
application of any item of law that constitutes the whole or part 790  
of a section of law contained in this act, is held invalid, the 791  
invalidity does not affect other items of law or applications of 792  
items of law that can be given effect without the invalid item of 793  
law or application. To this end, the items of law of which the 794  
sections contained in this act are composed, and their 795  
applications, are independent and severable. 796

**Section 4.** If any item of law that constitutes the whole or 797  
part of a section of law contained in this act, or if any 798  
application of any item of law contained in this act, is held to 799  
be preempted by federal law, the preemption of the item of law or 800  
its application does not affect other items of law or applications 801  
that can be given affect. The items of law of which the sections 802

of this act are composed, and their applications, are independent 803  
and severable. 804