

As Passed by the Senate

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Am. Sub. H. B. No. 342

Representatives Widener, Daniels, Flowers, Schaffer, Schmidt, Setzer,

G. Smith, Widowfield

Senators Hottinger, Stivers, Amstutz, Harris, Schuler

A B I L L

To amend section 2505.02 and to enact sections 1
2307.84 to 2307.90, 2307.901, and 2307.902 of the 2
Revised Code to establish minimum medical 3
requirements for filing certain silicosis claims 4
or mixed dust disease claims, to establish 5
premises liability in relation to those claims, to 6
specify a plaintiff's burden of proof in tort 7
actions involving exposure to silica or mixed 8
dust, and to prescribe the requirements for 9
shareholder liability for silicosis claims or 10
mixed dust disease claims under the doctrine of 11
piercing the corporate veil. 12

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

Section 1. That section 2505.02 be amended and sections 13
2307.84, 2307.85, 2307.86, 2307.87, 2307.88, 2307.89, 2307.90, 14
2307.901, and 2307.902 of the Revised Code be enacted to read as 15
follows: 16

Sec. 2307.84. As used in sections 2307.84 to 2307.90 and 17
2307.901 of the Revised Code: 18

(A) "AMA guides to the evaluation of permanent impairment" 19
means the American medical association's guides to the evaluation 20
of permanent impairment (fifth edition 2000) as may be modified by 21
the American medical association. 22

(B) "Board-certified internist" means a medical doctor who is 23
currently certified by the American board of internal medicine. 24

(C) "Board-certified occupational medicine specialist" means 25
a medical doctor who is currently certified by the American board 26
of preventive medicine in the specialty of occupational medicine. 27

(D) "Board-certified oncologist" means a medical doctor who 28
is currently certified by the American board of internal medicine 29
in the subspecialty of medical oncology. 30

(E) "Board-certified pathologist" means a medical doctor who 31
is currently certified by the American board of pathology. 32

(F) "Board-certified pulmonary specialist" means a medical 33
doctor who is currently certified by the American board of 34
internal medicine in the subspecialty of pulmonary medicine. 35

(G) "Certified B-reader" means an individual qualified as a 36
"final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as 37
amended. 38

(H) "Civil action" means all suits or claims of a civil 39
nature in a state or federal court, whether cognizable as cases at 40
law or in equity or admiralty. "Civil action" does not include any 41
of the following: 42

(1) A civil action relating to any workers' compensation law; 43

(2) A civil action alleging any claim or demand made against 44
a trust established pursuant to 11 U.S.C. section 524(q); 45

(3) A civil action alleging any claim or demand made against 46
a trust established pursuant to a plan of reorganization confirmed 47
under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 48

Chapter 11.

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(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:

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

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

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

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(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;

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(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;

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(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

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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.

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

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(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:

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

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

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(O) "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.

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(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.

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(S) "Physical impairment" means any of the following, 140
whichever is applicable: 141

(1) A nonmalignant condition that meets the minimum 142
requirements of division (B) of section 2307.85 of the Revised 143
Code or lung cancer of an exposed person who is a smoker that 144
meets the minimum requirements of division (C) of section 2307.85 145
of the Revised Code; 146

(2) A nonmalignant condition that meets the minimum 147
requirements of division (B) of section 2307.86 of the Revised 148
Code or lung cancer of an exposed person who is a smoker that 149
meets the minimum requirements of division (C) of section 2307.86 150
of the Revised Code. 151

(T) "Premises owner" means a person who owns, in whole or in 152
part, leases, rents, maintains, or controls privately owned lands, 153
ways, or waters, or any buildings and structures on those lands, 154
ways, or waters, and all privately owned and state-owned lands, 155
ways, or waters leased to a private person, firm, or organization, 156
including any buildings and structures on those lands, ways, or 157
waters. 158

(U) "Radiological evidence of mixed dust pneumoconiosis" 159
means a chest x-ray showing bilateral rounded or irregular 160
opacities in the upper lung fields graded by a certified B-reader 161
as at least 1/1 on the ILO scale. 162

(V) "Radiological evidence of silicosis" means a chest x-ray 163
showing bilateral small rounded opacities (p, q, or r) in the 164
upper lung fields graded by a certified B-reader as at least 1/1 165
on the ILO scale. 166

(W) "Regular basis" means on a frequent or recurring basis. 167

(X) "Silica" means a respirable crystalline form of silicon 168
dioxide, including, but not limited to, alpha quartz, 169

cristobalite, and trydymite.

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(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.

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

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(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.

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

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(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.

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(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.

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(CC) "Substantial occupational exposure to silica" means
employment for a cumulative period of at least five years in an

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industry and an occupation in which, for a substantial portion of 200
a normal work year for that occupation, the exposed person did any 201
of the following: 202

(1) Handled silica; 203

(2) Fabricated silica-containing products so that the person 204
was exposed to silica in the fabrication process; 205

(3) Altered, repaired, or otherwise worked with a 206
silica-containing product in a manner that exposed the person on a 207
regular basis to silica; 208

(4) Worked in close proximity to other workers engaged in any 209
of the activities described in division (CC)(1), (2), or (3) of 210
this section in a manner that exposed the person on a regular 211
basis to silica. 212

(DD) "Substantial occupational exposure to mixed dust" means 213
employment for a cumulative period of at least five years in an 214
industry and an occupation in which, for a substantial portion of 215
a normal work year for that occupation, the exposed person did any 216
of the following: 217

(1) Handled mixed dust; 218

(2) Fabricated mixed dust-containing products so that the 219
person was exposed to mixed dust in the fabrication process; 220

(3) Altered, repaired, or otherwise worked with a mixed 221
dust-containing product in a manner that exposed the person on a 222
regular basis to mixed dust; 223

(4) Worked in close proximity to other workers engaged in any 224
of the activities described in division (DD)(1), (2), or (3) of 225
this section in a manner that exposed the person on a regular 226
basis to mixed dust. 227

(EE) "Tort action" means a civil action for damages for 228
injury, death, or loss to person. "Tort action" includes a product 229

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 260
exposures to airborne contaminants, including, but not limited to, 261
silica or other disease causing dusts, that can cause pulmonary 262
impairment and, if that type of exposure is involved, the general 263
nature, duration, and general level of exposure. 264

(2) Evidence verifying that a competent medical authority has 265
taken a detailed medical and smoking history of the exposed 266
person, including a thorough review of the exposed person's past 267
and present medical problems and the most probable causes of those 268
medical problems; 269

(3) A diagnosis by a competent medical authority, based on a 270
medical examination and pulmonary function testing of the exposed 271
person, that both of the following apply to the exposed person: 272

(a) The exposed person has a permanent respiratory impairment 273
rating of at least class 2 as defined by and evaluated pursuant to 274
the AMA guides to the evaluation of permanent impairment. 275

(b) The exposed person has silicosis based at a minimum on 276
radiological or pathological evidence of silicosis. 277

(C) No person shall bring or maintain a tort action alleging 278
that silica caused that person to contract lung cancer if the 279
exposed person is or was also a smoker, in the absence of a 280
prima-facie showing, in the manner described in division (A) of 281
section 2307.87 of the Revised Code, that the exposed person has a 282
physical impairment, that the physical impairment is a result of a 283
medical condition, and that the person's exposure to silica is a 284
substantial contributing factor to the medical condition. That 285
prima-facie showing shall include all of the following minimum 286
requirements: 287

(1) A diagnosis by a competent medical authority that the 288
exposed person has primary lung cancer and that exposure to silica 289
is a substantial contributing factor to that cancer; 290

(2) Evidence that is sufficient to demonstrate that at least 291
ten years have elapsed from the date of the exposed person's first 292
exposure to silica until the date of diagnosis of the exposed 293
person's primary lung cancer. The ten-year latency period 294
described in this division is a rebuttable presumption and the 295
plaintiff has the burden of proof to rebut the presumption. 296

(3) Both of the following: 297

(a) Radiological or pathological evidence of silicosis; 298

(b) Evidence of the exposed person's substantial occupational 299
exposure to silica. 300

(D)(1) No person shall bring or maintain a tort action 301
alleging a silicosis claim based on wrongful death, as described 302
in section 2125.01 of the Revised Code, of an exposed person, in 303
the absence of a prima-facie showing, in the manner described in 304
division (A) of section 2307.87 of the Revised Code, that the 305
death of the exposed person was the result of a physical 306
impairment, that the death and physical impairment were the result 307
of a medical condition, and that the person's exposure to silica 308
was a substantial contributing factor to the medical condition. 309
That prima-facie showing shall include all of the following 310
minimum requirements: 311

(a) A diagnosis by a competent medical authority that 312
exposure to silica was a substantial contributing factor to the 313
death of the exposed person; 314

(b) Evidence that is sufficient to demonstrate that at least 315
ten years have elapsed from the date of the exposed person's first 316
exposure to silica until the date of diagnosis under division 317
(D)(1)(a) of this section or death of the exposed person. The 318
ten-year latency period described in this division is a rebuttable 319
presumption, and the plaintiff has the burden of proof to rebut 320
the presumption. 321

(c) Both of the following: 322

(i) Radiological or pathological evidence of silicosis; 323

(ii) Evidence of the exposed person's substantial 324
occupational exposure to silica. 325

(2) If a person files a tort action that alleges a silicosis 326
claim based on wrongful death, as described in section 2125.01 of 327
the Revised Code, of an exposed person and further alleges in the 328
action that the death of the exposed person was the result of 329
living with another person who, if the tort action had been filed 330
by the other person, would have met the requirements specified in 331
division (D)(1)(c) of this section and that the exposed person 332
lived with the other person for the period of time specified in 333
division (CC) of section 2307.84 of the Revised Code, the exposed 334
person is considered as having satisfied the requirements 335
specified in division (D)(1)(c) of this section. 336

(E) Evidence relating to physical impairment under this 337
section, including pulmonary function testing and diffusing 338
studies, shall comply with the technical recommendations for 339
examinations, testing procedures, quality assurance, quality 340
control, and equipment incorporated in the AMA guides to the 341
evaluation of permanent impairment and reported as set forth in 20 342
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 343
the interpretive standards set forth in the official statement of 344
the American thoracic society entitled "lung function testing: 345
selection of reference values and interpretive strategies" as 346
published in American review of respiratory disease, 347
1991:144:1202-1218. 348

(F) All of the following apply to the court's decision on the 349
prima-facie showing that meets the requirements of division (B), 350
(C), or (D) of this section: 351

(1) The court's decision does not result in any presumption 352

at trial that the exposed person has a physical impairment that is
caused by a silica-related condition.

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

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

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(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.

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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.

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(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:

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(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:

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(a) All of the exposed person's principal places of

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employment and exposures to airborne contaminants;

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(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.

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(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;

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(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:

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(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.

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

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(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:

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(1) A diagnosis by a competent medical authority that the 413
exposed person has primary lung cancer and that exposure to mixed 414
dust is a substantial contributing factor to that cancer; 415

(2) Evidence that is sufficient to demonstrate that at least 416
ten years have elapsed from the date of the exposed person's first 417
exposure to mixed dust until the date of diagnosis of the exposed 418
person's primary lung cancer. The ten-year latency period 419
described in this division is a rebuttable presumption, and the 420
plaintiff has the burden of proof to rebut the presumption. 421

(3) Both of the following: 422

(a) Radiological or pathological evidence of mixed dust 423
pneumoconiosis; 424

(b) Evidence of the exposed person's substantial occupational 425
exposure to mixed dust. 426

(D)(1) No person shall bring or maintain a tort action 427
alleging a mixed dust disease claim based on wrongful death, as 428
described in section 2125.01 of the Revised Code, of an exposed 429
person, in the absence of a prima-facie showing, in the manner 430
described in division (A) of section 2307.87 of the Revised Code, 431
that the death of the exposed person was the result of a physical 432
impairment, that the death and physical impairment were the result 433
of a medical condition, and that the person's exposure to mixed 434
dust was a substantial contributing factor to the medical 435
condition. That prima-facie showing shall include all of the 436
following minimum requirements: 437

(a) A diagnosis by a competent medical authority that 438
exposure to mixed dust was a substantial contributing factor to 439
the death of the exposed person; 440

(b) Evidence that is sufficient to demonstrate that at least 441
ten years have elapsed from the date of the exposed person's first 442

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, 474
1991:144:1202-1218. 475

(F) All of the following apply to the court's decision on the 476
prima-facie showing that meets the requirements of division (B), 477
(C), or (D) of this section: 478

(1) The court's decision does not result in any presumption 479
at trial that the exposed person has a physical impairment that is 480
caused by a mixed dust-related condition. 481

(2) The court's decision is not conclusive as to the 482
liability of any defendant in the case. 483

(3) The court's findings and decision are not admissible at 484
trial. 485

(4) If the trier of fact is a jury, the court shall not 486
instruct the jury with respect to the court's decision on the 487
prima-facie showing, and neither counsel for any party nor a 488
witness shall inform the jury or potential jurors of that showing. 489

Sec. 2307.87. (A) The plaintiff in any tort action who 490
alleges a silicosis claim or a mixed dust disease claim shall 491
file, within thirty days after filing the complaint or other 492
initial pleading, a written report and supporting test results 493
constituting prima-facie evidence of the exposed person's physical 494
impairment that meets the minimum requirements specified in 495
division (B), (C), or (D) of section 2307.85 or division (B), (C), 496
or (D) of section 2307.86 of the Revised Code, whichever is 497
applicable. The defendant in the case shall be afforded a 498
reasonable opportunity, upon the defendant's motion, to challenge 499
the adequacy of the proffered prima-facie evidence of the physical 500
impairment for failure to comply with the minimum requirements 501
specified in division (B), (C), or (D) of section 2307.85 or 502
division (B), (C), or (D) of section 2307.86 of the Revised Code, 503

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.

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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.

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(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.

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(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.

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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:

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(A) A premises owner is not liable for any injury to any

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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.

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(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.

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(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.

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(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

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individual's injury.

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(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.

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(D) As used in this section:

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(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.

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(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.

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(3) "Employee" means an individual who performs labor or
provides construction services pursuant to a construction

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contract, as defined in section 4123.79 of the Revised Code, or a 628
remodeling or repair contract, whether written or oral, if at 629
least ten of the following criteria apply: 630

(a) The individual is required to comply with instructions 631
from the other contracting party regarding the manner or method of 632
performing services. 633

(b) The individual is required by the other contracting party 634
to have particular training. 635

(c) The individual's services are integrated into the regular 636
functioning of the other contracting party. 637

(d) The individual is required to perform the work 638
personally. 639

(e) The individual is hired, supervised, or paid by the other 640
contracting party. 641

(f) A continuing relationship exists between the individual 642
and the other contracting party that contemplates continuing or 643
recurring work even if the work is not full time. 644

(g) The individual's hours of work are established by the 645
other contracting party. 646

(h) The individual is required to devote full time to the 647
business of the other contracting party. 648

(i) The individual is required to perform the work on the 649
premises of the other contracting party. 650

(j) The individual is required to follow the order of work 651
set by the other contracting party. 652

(k) The individual is required to make oral or written 653
reports of progress to the other contracting party. 654

(l) The individual is paid for services on a regular basis, 655
including hourly, weekly, or monthly. 656

(m) The individual's expenses are paid for by the other 657
contracting party. 658

(n) The individual's tools and materials are furnished by the 659
other contracting party. 660

(o) The individual is provided with the facilities used to 661
perform services. 662

(p) The individual does not realize a profit or suffer a loss 663
as a result of the services provided. 664

(q) The individual is not performing services for a number of 665
employers at the same time. 666

(r) The individual does not make the same services available 667
to the general public. 668

(s) The other contracting party has a right to discharge the 669
individual. 670

(t) The individual has the right to end the relationship with 671
the other contracting party without incurring liability pursuant 672
to an employment contract or agreement. 673

Sec. 2307.90. (A) Nothing in sections 2307.84 to 2307.90 of 674
the Revised Code is intended to do, and nothing in any of those 675
sections is interpreted to do, either of the following: 676

(1) Affect the rights of any party in bankruptcy proceedings; 677

(2) Affect the ability of any person who is able to make a 678
showing that the person satisfies the claim criteria for 679
compensable claims or demands under a trust established pursuant 680
to a plan of reorganization under Chapter 11 of the United States 681
Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand 682
against that trust. 683

(B) Sections 2307.84 to 2307.90 of the Revised Code shall not 684
affect the scope or operation of any workers' compensation law or 685

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.

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(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.

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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.

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(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:

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

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(2) The proximity of the defendant's silica or mixed dust to 717
the plaintiff when the exposure to the defendant's silica or mixed 718
dust occurred; 719

(3) The frequency and length of the plaintiff's exposure to 720
the defendant's silica or mixed dust; 721

(4) Any factors that mitigated or enhanced the plaintiff's 722
exposure to silica or mixed dust. 723

(C) This section applies only to tort actions that allege any 724
injury or loss to person resulting from exposure to silica or 725
mixed dust and that are brought on or after the effective date of 726
this section. 727

Sec. 2307.902. (A) A holder has no obligation to, and has no 728
liability to, the covered entity or to any person with respect to 729
any obligation or liability of the covered entity in a silicosis 730
claim or a mixed dust disease claim under the doctrine of piercing 731
the corporate veil unless the person seeking to pierce the 732
corporate veil demonstrates all of the following: 733

(1) The holder exerted such control over the covered entity 734
that the covered entity had no separate mind, will, or existence 735
of its own. 736

(2) The holder caused the covered entity to be used for the 737
purpose of perpetrating, and the covered entity perpetrated, an 738
actual fraud on the person seeking to pierce the corporate veil 739
primarily for the direct pecuniary benefit of the holder. 740

(3) The person seeking to pierce the corporate veil sustained 741
an injury or unjust loss as a direct result of the control 742
described in division (A)(1) of this section and the fraud 743
described in division (A)(2) of this section. 744

(B) A court shall not find that the holder exerted such 745
control over the covered entity that the covered entity did not 746

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.

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(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.

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(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:

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

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

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

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

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

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

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

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

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

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(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 866
an appeal, that is pending in any court on ~~the effective date of~~ 867
~~this amendment~~ July 22, 1998, and all claims filed or actions 868
commenced on or after ~~the effective date of this amendment~~ July 869
22, 1998, notwithstanding any provision of any prior statute or 870
rule of law of this state. 871

Section 2. That existing section 2505.02 of the Revised Code 872
is hereby repealed. 873

Section 3. (A) As used in this section, "exposed person," 874
"mixed dust," "mixed dust disease claim," "silica," "silicosis 875
claim," and "substantial contributing factor" have the same 876
meanings as in section 2307.84 of the Revised Code. 877

(B) The General Assembly acknowledges the Court's authority 878
in prescribing rules governing practice and procedure in the 879
courts of this state, as provided by Section 5 of Article IV of 880
the Ohio Constitution. 881

(C) The General Assembly hereby requests the Supreme Court to 882
adopt rules to specify procedures for venue and consolidation of 883
silicosis claims or mixed dust disease claims brought pursuant to 884
sections 2307.84 to 2307.90 of the Revised Code. 885

(D) With respect to procedures for venue in regard to 886
silicosis claims or mixed dust disease claims, the General 887
Assembly hereby requests the Supreme Court to adopt a rule that 888
requires that a silicosis claim or a mixed dust disease claim meet 889
specific nexus requirements, including the requirement that the 890
plaintiff be domiciled in Ohio or that Ohio is the state in which 891
the plaintiff's exposure to silica or mixed dust is a substantial 892
contributing factor. 893

(E) With respect to procedures for consolidation of silicosis 894
claims or mixed dust disease claims, the General Assembly hereby 895

requests the Supreme Court to adopt a rule that permits 896
consolidation of silicosis claims or mixed dust disease claims 897
only with the consent of all parties, and in absence of that 898
consent, permits a court to consolidate for trial only those 899
silicosis claims or mixed dust disease claims that relate to the 900
same exposed person and members of the exposed person's household. 901

Section 4. It is the intent of the General Assembly in 902
enacting section 2307.901 of the Revised Code in this act to 903
establish specific factors to be considered when determining 904
whether a particular plaintiff's exposure to a particular 905
defendant's silica or mixed dust was a substantial factor in 906
causing the plaintiff's injury or loss. The consideration of these 907
factors, involving the plaintiff's proximity to the dust exposure, 908
frequency of the exposure, or regularity of the exposure in tort 909
actions involving exposure to silica or mixed dust is consistent 910
with the factors listed by the court in *Lohrmann v. Pittsburgh* 911
Corning Cor. (4th Cir. 1986), 782 F.2d 1156. The General Assembly, 912
by its enactment of these factors, intends to clarify and define 913
for judges and juries the evidence that is relevant to the common 914
law requirement that the plaintiff must prove proximate causation. 915
The General Assembly recognizes that the language in section 916
2307.091 of the Revised Code, as enacted by this act, is contrary 917
to the language contained in paragraph 2 of the Syllabus of the 918
Ohio Supreme Court in *Horton v. Harwick Chemical Corp.* (1995), 73 919
Ohio St.3d 679. However, the General Assembly also recognizes that 920
the courts of Ohio prior to the *Horton* decision generally followed 921
the rationale of the *Lohrmann* decision in determining whether a 922
plaintiff had submitted any evidence that a particular defendant's 923
product was a substantial cause of the plaintiff's injury in tort 924
actions involving exposure to certain hazardous or toxic 925
substances, and that the *Lohrmann* factors were of great assistance 926
to the trial courts in the consideration of motions for summary 927

judgment and to juries when deciding issues of proximate 928
causation. The General Assembly further recognizes that a large 929
number of states have adopted the *Lohrmann* standard. The General 930
Assembly also has held hearings in which medical evidence has been 931
submitted indicating that such a standard is medically appropriate 932
and is scientifically sound public policy. 933

The *Lohrmann* standard provides litigants, juries, and the 934
courts of Ohio an objective and easily applied standard for 935
determining whether a plaintiff has submitted evidence that is 936
sufficient to sustain the plaintiff's burden of proof as to 937
proximate causation. Where specific evidence of frequency of 938
exposure to, or proximity and length of exposure to, a particular 939
defendant's silica or mixed dust is lacking, summary judgment is 940
appropriate in tort actions involving silica or mixed dust because 941
such a plaintiff lacks any evidence of an essential element that 942
is necessary to prevail. To submit the legal concept of 943
"substantial factor" to a jury in these complex cases without 944
those scientifically valid defining factors would be to invite 945
speculation on the part of juries, something that the General 946
Assembly has determined not to be in the best interests of Ohio 947
and its courts. 948

Section 5. If any item of law that constitutes the whole or 949
part of a section of law contained in this act, or if any 950
application of any item of law that constitutes the whole or part 951
of a section of law contained in this act, is held invalid, the 952
invalidity does not affect other items of law or applications of 953
items of law that can be given effect without the invalid item of 954
law or application. To this end, the items of law of which the 955
sections contained in this act are composed, and their 956
applications, are independent and severable. 957

Section 6. If any item of law that constitutes the whole or 958

part of a section of law contained in this act, or if any 959
application of any item of law contained in this act, is held to 960
be preempted by federal law, the preemption of the item of law or 961
its application does not affect other items of law or applications 962
that can be given affect. The items of law of which the sections 963
of this act are composed, and their applications, are independent 964
and severable. 965