

As Reported by the House Civil and Commercial Law Committee

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 342

Representative Widener

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
the American medical association.

21
22

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

23
24

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

25
26
27

(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.

28
29
30

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

31
32

(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.

33
34
35

(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.

36
37
38

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

39
40
41
42

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

43

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

44
45

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

46
47
48
49

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

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

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

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

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

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

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

(4) The medical doctor spends not more than twenty-five per cent of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty per cent of its revenues from providing those services. 81
82
83
84
85
86
87

(J) "Exposed person" means either of the following, whichever is applicable: 88
89

(1) A person whose exposure to silica is the basis for a silicosis claim under section 2307.85 of the Revised Code; 90
91

(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. 92
93
94

(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. 95
96
97
98

(L) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs. 99
100

(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. 101
102
103

(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 104
105
106
107
108
109
110

injury, death, or loss to person, risk of disease or other injury, 111
costs of medical monitoring or surveillance, or any other effects 112
on the person's health that are caused by the person's exposure to 113
mixed dust. 114

(O) "Mixed dust pneumoconiosis" means the interstitial lung 115
disease caused by the pulmonary response to inhaled mixed dusts. 116

(P) "Nonmalignant condition" means a condition, other than a 117
diagnosed cancer, that is caused or may be caused by either of the 118
following, whichever is applicable: 119

(1) Silica, as provided in section 2307.85 of the Revised 120
Code; 121

(2) Mixed dust, as provided in section 2307.86 of the Revised 122
Code. 123

(O) "Pathological evidence of mixed dust pneumoconiosis" 124
means a statement by a board-certified pathologist that more than 125
one representative section of lung tissue uninvolved with any 126
other disease process demonstrates a pattern of peribronchiolar 127
and parenchymal stellate (star-shaped) nodular scarring and that 128
there is no other more likely explanation for the presence of the 129
fibrosis. 130

(R) "Pathological evidence of silicosis" means a statement by 131
a board-certified pathologist that more than one representative 132
section of lung tissue uninvolved with any other disease process 133
demonstrates a pattern of round silica nodules and birefringent 134
crystals or other demonstration of crystal structures consistent 135
with silica (well-organized concentric whorls of collagen 136
surrounded by inflammatory cells) in the lung parenchyma and that 137
there is no other more likely explanation for the presence of the 138
fibrosis. 139

(S) "Physical impairment" means any of the following, 140

| | |
|--|---|
| <u>whichever is applicable:</u> | 141 |
| <u>(1) A nonmalignant condition that meets the minimum requirements of division (B) of section 2307.85 of the Revised Code or lung cancer of an exposed person who is a smoker that meets the minimum requirements of division (C) of section 2307.85 of the Revised Code;</u> | 142 143 144 145 146 |
| <u>(2) A nonmalignant condition that meets the minimum requirements of division (B) of section 2307.86 of the Revised Code or lung cancer of an exposed person who is a smoker that meets the minimum requirements of division (C) of section 2307.86 of the Revised Code.</u> | 147 148 149 150 151 |
| <u>(T) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters.</u> | 152 153 154 155 156 157 158 |
| <u>(U) "Radiological evidence of mixed dust pneumoconiosis" means a chest x-ray showing bilateral rounded or irregular opacities in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.</u> | 159 160 161 162 |
| <u>(V) "Radiological evidence of silicosis" means a chest x-ray showing bilateral small rounded opacities (p, q, or r) in the upper lung fields graded by a certified B-reader as at least 1/1 on the ILO scale.</u> | 163 164 165 166 |
| <u>(W) "Regular basis" means on a frequent or recurring basis.</u> | 167 |
| <u>(X) "Silica" means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha quartz, cristobalite, and trydmite.</u> | 168 169 170 |

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

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

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

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

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

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

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

| | |
|--|---------------------------------|
| <u>of the following:</u> | 202 |
| <u>(1) Handled silica;</u> | 203 |
| <u>(2) Fabricated silica-containing products so that the person</u> <u>was exposed to silica in the fabrication process;</u> | 204 205 |
| <u>(3) Altered, repaired, or otherwise worked with a</u> <u>silica-containing product in a manner that exposed the person on a</u> <u>regular basis to silica;</u> | 206 207 208 |
| <u>(4) Worked in close proximity to other workers engaged in any</u> <u>of the activities described in division (CC)(1), (2), or (3) of</u> <u>this section in a manner that exposed the person on a regular</u> <u>basis to silica.</u> | 209 210 211 212 |
| <u>(DD) "Substantial occupational exposure to mixed dust" means</u> <u>employment for a cumulative period of at least five years in an</u> <u>industry and an occupation in which, for a substantial portion of</u> <u>a normal work year for that occupation, the exposed person did any</u> <u>of the following:</u> | 213 214 215 216 217 |
| <u>(1) Handled mixed dust;</u> | 218 |
| <u>(2) Fabricated mixed dust-containing products so that the</u> <u>person was exposed to mixed dust in the fabrication process;</u> | 219 220 |
| <u>(3) Altered, repaired, or otherwise worked with a mixed</u> <u>dust-containing product in a manner that exposed the person on a</u> <u>regular basis to mixed dust;</u> | 221 222 223 |
| <u>(4) Worked in close proximity to other workers engaged in any</u> <u>of the activities described in division (DD)(1), (2), or (3) of</u> <u>this section in a manner that exposed the person on a regular</u> <u>basis to mixed dust.</u> | 224 225 226 227 |
| <u>(EE) "Tort action" means a civil action for damages for</u> <u>injury, death, or loss to person. "Tort action" includes a product</u> <u>liability claim that is subject to sections 2307.71 to 2307.80 of</u> <u>the Revised Code. "Tort action" does not include a civil action</u> | 228 229 230 231 |

for damages for a breach of contract or another agreement between 232
persons. 233

(FF) "Veterans' benefit program" means any program for 234
benefits in connection with military service administered by the 235
veterans' administration under title 38 of the United States Code. 236

(GG) "Workers' compensation law" means Chapters 4121., 4123., 237
4127., and 4131. of the Revised Code. 238

Sec. 2307.85. (A) Physical impairment of the exposed person, 239
to which the person's exposure to silica is a substantial 240
contributing factor, shall be an essential element of a silicosis 241
claim in any tort action. 242

(B) No person shall bring or maintain a tort action alleging 243
a silicosis claim based on a nonmalignant condition in the absence 244
of a prima-facie showing, in the manner described in division (A) 245
of section 2307.87 of the Revised Code, that the exposed person 246
has a physical impairment, that the physical impairment is a 247
result of a medical condition, and that the person's exposure to 248
silica is a substantial contributing factor to the medical 249
condition. That prima-facie showing shall include all of the 250
following minimum requirements: 251

(1) Evidence verifying that a competent medical authority has 252
taken a detailed occupational and exposure history of the exposed 253
person from the exposed person or, if that person is deceased, 254
from the person who is most knowledgeable about the exposures that 255
form the basis of the silicosis claim for a nonmalignant 256
condition, including all of the following: 257

(a) All of the exposed person's principal places of 258
employment and exposures to airborne contaminants; 259

(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 exposure to silica until the date of diagnosis of the exposed person's primary lung cancer. The ten-year latency period described in this division is a rebuttable presumption and the plaintiff has the burden of proof to rebut the presumption. 292
293
294
295
296

(3) Both of the following: 297

(a) Radiological or pathological evidence of silicosis; 298

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

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

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

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

| | |
|---|--|
| <u>(c) Both of the following:</u> | 322 |
| <u>(i) Radiological or pathological evidence of silicosis;</u> | 323 |
| <u>(ii) Evidence of the exposed person's substantial occupational exposure to silica.</u> | 324 325 |
| <u>(2) If a person files a tort action that alleges a silicosis claim based on wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in division (CC) of section 2307.84 of the Revised Code, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.</u> | 326 327 328 329 330 331 332 333 334 335 336 |
| <u>(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.</u> | 337 338 339 340 341 342 343 344 345 346 347 348 |
| <u>(F) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:</u> | 349 350 351 |
| <u>(1) The court's decision does not result in any presumption</u> | 352 |

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

353
354

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

355
356

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

357
358

(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.

359
360
361
362

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.

363
364
365
366

(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:

367
368
369
370
371
372
373
374
375

(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:

376
377
378
379
380
381

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

382

employment and exposures to airborne contaminants; 383

(b) Whether each principal place of employment involved 384
exposures to airborne contaminants, including, but not limited to, 385
mixed dust, that can cause pulmonary impairment and, if that type 386
of exposure is involved, the general nature, duration, and general 387
level of the exposure. 388

(2) Evidence verifying that a competent medical authority has 389
taken a detailed medical and smoking history of the exposed 390
person, including a thorough review of the exposed person's past 391
and present medical problems and the most probable causes of those 392
medical problems; 393

(3) A diagnosis by a competent medical authority, based on a 394
medical examination and pulmonary function testing of the exposed 395
person, that both of the following apply to the exposed person: 396

(a) The exposed person has a permanent respiratory impairment 397
rating of at least class 2 as defined by and evaluated pursuant to 398
the AMA guides to the evaluation of permanent impairment. 399

(b) The exposed person has mixed dust pneumoconiosis, based 400
at a minimum on radiological or pathological evidence of mixed 401
dust pneumoconiosis. 402

(C) No person shall bring or maintain a tort action alleging 403
that mixed dust caused that person to contract lung cancer if the 404
exposed person is or was also a smoker, in the absence of a 405
prima-facie showing, in the manner described in division (A) of 406
section 2307.87 of the Revised Code, that the exposed person has a 407
physical impairment, that the physical impairment is a result of a 408
medical condition, and that the person's exposure to mixed dust is 409
a substantial contributing factor to the medical condition. That 410
prima-facie showing shall include all of the following minimum 411
requirements: 412

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

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

(3) Both of the following: 422

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

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

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

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

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

exposure to mixed dust until the date of diagnosis under division 443
(D)(1)(a) of this section or death of the exposed person. The 444
ten-year latency period described in this division is a rebuttable 445
presumption, and the plaintiff has the burden of proof to rebut 446
the presumption. 447

(c) Both of the following: 448

(i) Radiological or pathological evidence of mixed dust 449
pneumoconiosis; 450

(ii) Evidence of the exposed person's substantial 451
occupational exposure to mixed dust. 452

(2) If a person files a tort action that alleges a mixed dust 453
disease claim based on wrongful death, as defined in section 454
2125.01 of the Revised Code, of an exposed person and further 455
alleges in the action that the death of the exposed person was the 456
result of living with another person who, if the tort action had 457
been filed by the other person, would have met the requirements 458
specified in division (D)(1)(c) of this section and that the 459
exposed person lived with the other person for the period of time 460
specified in division (DD) of section 2307.84 of the Revised Code, 461
the exposed person is considered as having satisfied the 462
requirements specified in division (D)(1)(c) of this section. 463

(E) Evidence relating to physical impairment under this 464
section, including pulmonary function testing and diffusing 465
studies, shall comply with the technical recommendations for 466
examinations, testing procedures, quality assurance, quality 467
control, and equipment incorporated in the AMA guides to the 468
evaluation of permanent impairment and reported as set forth in 20 469
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 470
the interpretive standards set forth in the official statement of 471
the American thoracic society entitled "lung function testing: 472
selection of reference values and interpretive strategies" as 473

published in American review of respiratory disease,
1991:144:1202-1218.

474
475

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

476
477
478

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

479
480
481

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

482
483

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

484
485

(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.

486
487
488
489

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

490
491
492
493
494
495
496
497
498
499
500
501
502
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.

504
505
506
507
508
509
510

(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.

511
512
513
514
515
516
517
518
519
520
521

(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.

522
523
524
525
526
527
528
529
530
531
532

(D) This section applies only to tort actions that allege a silicosis claim or a mixed dust disease claim and that are filed

533
534

on or after the effective date of this section.

535

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.

536

537

538

539

540

541

542

543

544

545

546

(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.

547

548

549

550

551

552

553

554

(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.

555

556

557

558

559

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:

560

561

562

563

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

564

individual resulting from silica or mixed dust exposure unless 565
that individual's alleged exposure occurred while the individual 566
was at the premises owner's property. 567

(B) If exposure to silica or mixed dust is alleged to have 568
occurred before January 1, 1972, it is presumed that a premises 569
owner knew that this state had adopted safe levels of exposure for 570
silica or mixed dust and that products containing silica or mixed 571
dust were used on its property only at levels below those safe 572
levels of exposure. To rebut this presumption, the plaintiff must 573
prove by a preponderance of the evidence that the premises owner 574
knew or should have known that the levels of silica or mixed dust 575
in the immediate breathing zone of the plaintiff regularly 576
exceeded the threshold limit values adopted by this state and that 577
the premises owner allowed that condition to persist. 578

(C)(1) A premises owner is presumed to be not liable for any 579
injury to any invitee who was engaged to work with, install, or 580
remove products containing silica or mixed dust on the premises 581
owner's property if the invitee's employer held itself out as 582
qualified to perform the work. To rebut this presumption, the 583
plaintiff must demonstrate by a preponderance of the evidence that 584
the premises owner had actual knowledge of the potential dangers 585
of the products containing silica or mixed dust at the time of the 586
alleged exposure that was superior to the knowledge of both the 587
invitee and the invitee's employer. 588

(2) A premises owner that hired a contractor before January 589
1, 1972, to perform the type of work at the premises owner's 590
property that the contractor was qualified to perform cannot be 591
liable for any injury to any individual resulting from silica or 592
mixed dust exposure caused by any of the contractor's employees or 593
agents on the premises owner's property unless the premises owner 594
directed the activity that resulted in the injury or gave or 595
denied permission for the critical acts that led to the 596

individual's injury.

597

(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.

598

599

600

601

602

603

604

605

606

(D) As used in this section:

607

(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.

608

609

610

611

612

613

614

615

616

617

618

(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.

619

620

621

622

623

624

625

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

626

627

| | |
|---|-----|
| <u>contract, as defined in section 4123.79 of the Revised Code, or a</u> | 628 |
| <u>remodeling or repair contract, whether written or oral, if at</u> | 629 |
| <u>least ten of the following criteria apply:</u> | 630 |
| <u>(a) The individual is required to comply with instructions</u> | 631 |
| <u>from the other contracting party regarding the manner or method of</u> | 632 |
| <u>performing services.</u> | 633 |
| <u>(b) The individual is required by the other contracting party</u> | 634 |
| <u>to have particular training.</u> | 635 |
| <u>(c) The individual's services are integrated into the regular</u> | 636 |
| <u>functioning of the other contracting party.</u> | 637 |
| <u>(d) The individual is required to perform the work</u> | 638 |
| <u>personally.</u> | 639 |
| <u>(e) The individual is hired, supervised, or paid by the other</u> | 640 |
| <u>contracting party.</u> | 641 |
| <u>(f) A continuing relationship exists between the individual</u> | 642 |
| <u>and the other contracting party that contemplates continuing or</u> | 643 |
| <u>recurring work even if the work is not full time.</u> | 644 |
| <u>(g) The individual's hours of work are established by the</u> | 645 |
| <u>other contracting party.</u> | 646 |
| <u>(h) The individual is required to devote full time to the</u> | 647 |
| <u>business of the other contracting party.</u> | 648 |
| <u>(i) The individual is required to perform the work on the</u> | 649 |
| <u>premises of the other contracting party.</u> | 650 |
| <u>(j) The individual is required to follow the order of work</u> | 651 |
| <u>set by the other contracting party.</u> | 652 |
| <u>(k) The individual is required to make oral or written</u> | 653 |
| <u>reports of progress to the other contracting party.</u> | 654 |
| <u>(l) The individual is paid for services on a regular basis,</u> | 655 |
| <u>including hourly, weekly, or monthly.</u> | 656 |

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

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

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

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

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

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

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

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

Sec. 2307.90. (A) Nothing in sections 2307.84 to 2307.90 of the Revised Code is intended to do, and nothing in any of those sections is interpreted to do, either of the following: 674
675
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 showing that the person satisfies the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand against that trust. 678
679
680
681
682
683

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

veterans' benefit program or the exclusive remedy of subrogation 686
under the provisions of that law or program and shall not 687
authorize any lawsuit that is barred by any provision of any 688
workers' compensation law. 689

(C) Nothing in sections 2307.85, 2307.86, 2307.87, and 690
2307.88 of the Revised Code shall require or permit the exhumation 691
of bodies in making the prima-facie showing as required by section 692
2307.85 or 2307.86 of the Revised Code or rebutting the 693
presumption as provided in section 2307.85 or 2307.86 of the 694
Revised Code. 695

Sec. 2307.901. (A) If a plaintiff in a tort action alleges 696
any injury or loss to person resulting from exposure to silica or 697
mixed dust as a result of the tortious act of one or more 698
defendants, in order to maintain a cause of action against any of 699
those defendants based on that injury or loss, the plaintiff must 700
prove that the conduct of that particular defendant was a 701
substantial factor in causing the injury or loss on which the 702
cause of action is based. 703

(B) A plaintiff in a tort action who alleges any injury or 704
loss to person resulting from exposure to silica or mixed dust has 705
the burden of proving that the plaintiff was exposed to silica or 706
mixed dust that was manufactured, supplied, installed, or used by 707
the defendant in the action and that the plaintiff's exposure to 708
the defendant's silica or mixed dust was a substantial factor in 709
causing the plaintiff's injury or loss. In determining whether 710
exposure to a particular defendant's silica or mixed dust was a 711
substantial factor in causing the plaintiff's injury or loss, the 712
trier of fact in the action shall consider, without limitation, 713
all of the following: 714

(1) The manner in which the plaintiff was exposed to the 715
defendant's silica or mixed dust; 716

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

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

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

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

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

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

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

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

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

have a separate mind, will, or existence of its own or to have 747
caused the covered entity to be used for the purpose of 748
perpetrating a fraud solely as a result of any of the following 749
actions, events, or relationships: 750

(1) The holder is an affiliate of the covered entity and 751
provides legal, accounting, treasury, cash management, human 752
resources, administrative, or other similar services to the 753
covered entity, leases assets to the covered entity, or makes its 754
employees available to the covered entity. 755

(2) The holder loans funds to the covered entity or 756
guarantees the obligations of the covered entity. 757

(3) The officers and directors of the holder are also the 758
officers and directors of the covered entity. 759

(4) The covered entity makes payments of dividends or other 760
distributions to the holder or repays loans owed to the holder. 761

(5) In the case of a covered entity that is a limited 762
liability company, the holder or its employees or agents serve as 763
the manager of the covered entity. 764

(C) The person seeking to pierce the corporate veil has the 765
burden of proof on each and every element of the person's claim 766
and must prove each element by a preponderance of the evidence. 767

(D) Any liability of the holder described in division (A) of 768
this section for an obligation or liability that is limited by 769
that division is exclusive and preempts any other obligation or 770
liability imposed upon that holder for that obligation or 771
liability under common law or otherwise. 772

(E) This section is intended to codify the elements of the 773
common law cause of action for piercing the corporate veil and to 774
abrogate the common law cause of action and remedies relating to 775
piercing the corporate veil in silicosis claims and mixed dust 776

| | |
|--|-----|
| <u>disease claims. Nothing in this section shall be construed as</u> | 777 |
| <u>creating a right or cause of action that did not exist under the</u> | 778 |
| <u>common law as it existed on the effective date of this section.</u> | 779 |
| <u>(F) This section applies to all silicosis claims and mixed</u> | 780 |
| <u>dust disease claims commenced on or after the effective date of</u> | 781 |
| <u>this section or commenced prior to and pending on the effective</u> | 782 |
| <u>date of this section.</u> | 783 |
| <u>(G) This section applies to all actions asserting the</u> | 784 |
| <u>doctrine of piercing the corporate veil brought against a holder</u> | 785 |
| <u>if any of the following apply:</u> | 786 |
| <u>(1) The holder is an individual and resides in this state.</u> | 787 |
| <u>(2) The holder is a corporation organized under the laws of</u> | 788 |
| <u>this state.</u> | 789 |
| <u>(3) The holder is a corporation with its principal place of</u> | 790 |
| <u>business in this state.</u> | 791 |
| <u>(4) The holder is a foreign corporation that is authorized to</u> | 792 |
| <u>conduct or has conducted business in this state.</u> | 793 |
| <u>(5) The holder is a foreign corporation the parent</u> | 794 |
| <u>corporation of which is authorized to conduct business in this</u> | 795 |
| <u>state.</u> | 796 |
| <u>(6) The person seeking to pierce the corporate veil is a</u> | 797 |
| <u>resident of this state.</u> | 798 |
| <u>(H) As used in this section, unless the context otherwise</u> | 799 |
| <u>requires:</u> | 800 |
| <u>(1) "Affiliate" and "beneficial owner" have the same meanings</u> | 801 |
| <u>as in section 1704.01 of the Revised Code.</u> | 802 |
| <u>(2) "Mixed dust," "mixed dust disease claim," "silica," and</u> | 803 |
| <u>"silicosis claim" have the same meanings as in section 2307.84 of</u> | 804 |
| <u>the Revised Code.</u> | 805 |

(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. 806
807
808
809
810
811
812

(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. 813
814
815
816
817

(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. 818
819
820
821
822
823
824
825
826

(6) "Person" has the same meaning as in section 1701.01 of the Revised Code. 827
828

Sec. 2505.02. (A) As used in this section: 829

(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. 830
831
832

(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. 833
834
835

(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 section 2505.02 of the Revised Code is hereby 872
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