



# State of Tennessee

## PUBLIC CHAPTER NO. 635

### SENATE BILL NO. 2062

By Stevens

Substituted for: House Bill No. 2234

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 28 and Title 29, Chapter 34, relative to asbestos-related liability.

WHEREAS, the United States Supreme Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 598 (1997), described asbestos litigation as a crisis; and

WHEREAS, approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability; and

WHEREAS, these bankruptcies have resulted in a search for more solvent companies, resulting in over ten thousand companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy; and

WHEREAS, scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed; and

WHEREAS, asbestos claimants often seek compensation for alleged asbestos-related conditions from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos-related bankruptcy proceedings; and

WHEREAS, there is limited coordination and transparency between these two paths to recovery; and

WHEREAS, an absence of transparency between the asbestos bankruptcy trust claim system and the civil court systems has resulted in the suppression of evidence in asbestos actions and potential fraud; and

WHEREAS, it is in the interest of justice that there be transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation; and

WHEREAS, with the Asbestos Bankruptcy Trust Claims Transparency Act, it is the intent of the General Assembly to provide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation and to reduce the opportunity for fraud or suppression of evidence in asbestos actions; and

WHEREAS, asbestos is a mineral that was widely used prior to the 1980s for insulation, fireproofing, and other purposes; and

WHEREAS, millions of American workers and others were exposed to asbestos, especially during and after World War II and before the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s; and

WHEREAS, exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening; and

WHEREAS, diseases caused by asbestos often have long latency periods; and

WHEREAS, although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure; and

WHEREAS, lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs; and

WHEREAS, the cost of compensating plaintiffs who have no present asbestos-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies; and

WHEREAS, concerns about statutes of limitations and available funds can prompt unimpaired asbestos plaintiffs to bring lawsuits in order to protect against losing their rights to future compensation should they become impaired; and

WHEREAS, trial consolidations, joinders, and similar trial procedures used by some courts to handle asbestos cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants, and encourage the filing of cases by unimpaired asbestos plaintiffs; and

WHEREAS, the public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related diseases and to safeguard the jobs, benefits, and savings of workers in Tennessee and the well-being of Tennessee's economy; and

WHEREAS, with the Asbestos Claims Priorities Act, it is the intent of the General Assembly to give priority to asbestos claimants who can demonstrate actual physical impairment caused by exposure to asbestos; toll the running of statutes of limitations for persons who have been exposed to asbestos, but who have no present physical impairment caused by such exposure; enhance the ability of the courts to supervise and manage asbestos cases; reduce the opportunity for fraud in asbestos litigation; and conserve the defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following language as a new part:

**29-34-601.** This part shall be known and may be cited as the "Asbestos Bankruptcy Trust Claims Transparency Act".

**29-34-602.** As used in this part:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 CFR 1910 at the time the asbestos action is filed;

(2) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person. "Asbestos action" does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits;

(3) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. § 524(g) or 11 U.S.C. § 1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos;

(4) "Plaintiff" means a person asserting an asbestos action, a decedent if the action is brought through or on behalf of an estate, or a parent or guardian if the action is brought through or on behalf of a minor or an incompetent person;

(5) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the asbestos trust claim has settled, all documents relating to the settlement of the asbestos trust claim;

(6) "Trust governance documents" means all documents that relate to eligibility and payment levels for an asbestos trust, including claims payment matrices, trust distribution procedures, or plans for reorganization;

(7) "Veterans' benefits" means a program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code; and

(8) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 et seq., and Federal Employees' Compensation Act, 5 U.S. Code chapter 81. "Workers' compensation" does not include the Federal Employers' Liability Act of April 22, 1908, 45 U.S.C. §§ 51 et seq.

**29-34-603.**

(a) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust. The sworn statement shall be provided no later than one hundred twenty (120) days prior to the date set for trial for the asbestos action. For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include:

- (1) The name, address, and contact information for the asbestos trust;
- (2) The amount claimed or to be claimed by the plaintiff;
- (3) The date the plaintiff filed the claim;
- (4) The disposition of the claim;
- (5) Whether there has been a request to defer, delay, suspend, or toll the claim; and
- (6) An attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and is based on a good faith investigation of all potential claims against asbestos trusts.

(b) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.

(c) The plaintiff shall supplement the information and materials provided pursuant to this section within ninety (90) days after the plaintiff:

- (1) Files an additional asbestos trust claim;
- (2) Supplements an existing asbestos trust claim; or
- (3) Receives additional information or materials related to any claim or potential claim against an asbestos trust.

(d) Failure by the plaintiff to make available to all parties all trust claims materials as required by this part shall constitute grounds for the court to extend the trial date in an asbestos action.

**29-34-604.**

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. No claims of privilege apply to any trust claims materials or trust governance documents.

(b) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

**29-34-605.**

(a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under § 29-34-603 within one hundred twenty (120) days prior to the trial date.

(b) If, in the disclosures required by § 29-34-603, a plaintiff identifies a potential asbestos trust claim, the judge shall have the discretion to stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

**29-34-606.**

(a) Not less than ninety (90) days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional asbestos trust claim, and thereafter the defendant may move the court for an order to require the plaintiff to file the asbestos trust claim. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.

(b) Within ten (10) days of receiving the defendant's motion pursuant to subsection (a), the plaintiff shall, for each asbestos trust claim identified by the defendant, make one (1) of the following responses:

(1) File the asbestos trust claim;

(2) File a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

(3) File a written response with the court requesting a determination that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.

(c)(1) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by a defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than thirty (30) days before trial.

(2) If the court determines that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the asbestos trust.

(d) Not less than thirty (30) days prior to trial in an asbestos action, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

**29-34-607.**

(a) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

(b) Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the asbestos trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the asbestos action.

**29-34-608.**

A plaintiff who fails to provide all of the information required under this part is subject to sanctions as provided in the Tennessee Rules of Civil Procedure and any other relief for the defendant, or defendants, that the court considers just and proper.

**29-34-609.**

This part shall apply to all asbestos actions that are filed on or after July 1, 2016.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 34, is further amended by adding the following as a new part:

**29-34-701.** This part shall be known and may be cited as the "Asbestos Claims Priorities Act".

**29-34-702.** As used in this part:

(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this part;

(2) "Asbestos" has the same meaning as defined in § 29-34-602;

(3) "Asbestos action" has the same meaning as defined in § 29-34-602;

(4) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers;

(5) "Board-certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this part;

(6) "Board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this part;

(7) "Board-certified in pathology" means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of an examination and rendition of a report required by this part, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens;

(8) "Board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of an examination and rendition of a report required by this part;

(9) "Certified B-reader" means an individual who has qualified as a national institute for occupational safety and health (NIOSH) "final" or "B-reader" of x-rays under 42 CFR 37.51(b), whose certification was current at the time of any readings required under this part, and whose B-reads comply with the NIOSH B-Reader's Code of Ethics, Issues in Classification of Chest Radiographs, and Classification of Chest Radiographs in Contested Proceedings;

(10) "Chest x-ray" means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view;

(11) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood;

(12) "Exposed person" means a person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos action;

(13) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one (1) second during performance of simple spirometric tests;

(14) "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC;

(15) "Forced vital capacity" or "FVC" means the maximal volume of air expired with maximum effort from a position of full inspiration;

(16) "ILO system and ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the International Labour Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader;

(17) "Nonmalignant condition" means any condition that can be caused by asbestos other than a diagnosed cancer;

(18) "Official statements of the American Thoracic Society" means lung function testing standards set forth in statements from the American Thoracic Society, including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung, and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person;

(19) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one (1) representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one (1) or higher in pathology of asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis;

(20) "Plaintiff" has the same meaning as defined in § 29-34-602;

(21) "Plethysmography or body (box) plethysmography" means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow, or volume change;

(22) "Predicted lower limit of normal" means the test value that is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent (95%) of the reference population, based on age, height, and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended;

(23) "Pulmonary function test" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the official statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted;

(24) "Qualified physician" means a board-certified internist, pathologist, pulmonary specialist, or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, who:

(A) Has conducted a physical examination of the exposed person and has taken or has directed to be taken under the physician's supervision, direction and control, a detailed occupational, exposure, medical, smoking, and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under the physician's supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos action;

(B) Spends no more than thirty-five percent (35%) of the physician's professional practice time in providing consulting or expert services in connection with actual or potential civil actions, and whose medical group, professional corporation, clinic, or other affiliated group earns not more than fifty percent (50%) of its revenues from providing such services;

(C) Does not require as a condition of diagnosing, examining, testing, screening, or treating the exposed person that legal services be retained by the exposed person or any other person pursuing an asbestos action based on the exposed person's exposure to asbestos;

(D) Prepared or directly supervised the preparation and final review of any medical report under this part; and

(E) Has not relied on any examinations, tests, radiographs, reports, or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed person in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted;

(25) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t, or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale;

(26) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one (1) costophrenic angle as classified by a certified B-reader;

(27) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired;

(28) "Supporting test results" means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data, and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards set forth in this part;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions;

(29) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and

insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer;

(30) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration;

(31) "Veterans' benefits" has the same meaning as defined in § 29-34-602; and

(32) "Workers' compensation" has the same meaning as defined in § 29-34-602.

**29-34-703.**

(a) A plaintiff in an asbestos action alleging a nonmalignant condition shall file within ninety (90) days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this part. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this part. An asbestos action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this part.

(c) A plaintiff in an asbestos action filed on or after the effective date of this part shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation, and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (c)(3)-(5).

(d) Asbestos actions must be individually filed. No asbestos action filed on or after July 1, 2016, shall be permitted on behalf of a group or class of plaintiffs.

**29-34-704.**

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen (15) years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, from the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1, or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person's physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, does not satisfy the requirements of this subdivision (7).

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements of subdivision (a)(2), and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a), except that the exposure history required under subdivision (a)(2) shall describe the exposed person's history of exposure to the other exposed person.

**29-34-705.**

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this part, shall:

(1) Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the

American Thoracic Society that are in effect on the date of any examination or pulmonary function testing of the exposed person required by this part;

(2) Not be obtained or based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state; and

(3) Not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney or law firm sponsoring the examination, test, or screening.

**29-34-706.**

(a) Evidence relating to the prima facie showings required under this part shall not create any presumption that the exposed person has an asbestos-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial regarding, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos action under this part; or

(2) The provisions of this part with respect to what constitutes a prima facie showing of asbestos-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one (1) of the parties and for good cause shown.

(d)(1) A court may consolidate for trial any number and type of nonmalignant asbestos actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one (1) exposed person and members of that person's household shall be permitted.

(3) This subsection (d) does not preclude consolidation of cases by court order for pretrial or discovery purposes.

**29-34-707.**

(a) With respect to an asbestos action not barred by limitations as of July 1, 2016, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an asbestos-related impairment;

(2) The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment; or

(3) The date of death of the exposed person having an asbestos-related impairment.

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment that was otherwise time-barred on the effective date of this part.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement or other agreements with respect to an asbestos action entered into prior to the effective date of this part.

(d) An asbestos action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related cancer.

Notwithstanding any law of this state to the contrary, no damages shall be awarded for fear or increased risk of future disease in an asbestos action.

**29-34-708.**

(a)(1) The trial court, in its discretion, may allow a physician who meets the other requirements of this part but does not meet the time and revenue requirements under § 29-34-702(24)(B) to be considered a qualified physician and submit a report required by this part if the trial court makes an evidentiary finding, after all parties have had a reasonable opportunity to present evidence, that it would be manifestly unjust not to allow the physician at issue to submit the report.

(2) For subsection (a) to apply, the trial court also must make specific and detailed findings, setting forth the bases of such findings, that the physician's opinions appear to be reliable medical opinions in that they are supported by documented, reliable medical evidence obtained through testing or examinations that comply with and do not violate any applicable law, regulation, licensing requirement, or medical code of practice and that the opinions are not the product of bias or the result of financial influence due to the physician's role as a paid expert.

(3) The cost of retaining another physician who is qualified pursuant to § 29-34-702(24)(B) for the purpose of submitting a report required by this part shall not be considered in determining manifest injustice, but the availability or unavailability of other physicians who meet such time and revenue requirements shall be considered as a relevant factor.

(b) A physician who submits a report under this part may be an expert witness retained by counsel for the exposed person or claimant; provided, that the physician otherwise meets the requirements of this part, § 24-7-115, and the Tennessee Rules of Evidence governing the qualifications of expert witnesses.

**29-34-709.**

This part shall apply to all asbestos actions that are filed on or after July 1, 2016.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to all asbestos actions filed on or after such date.

SENATE BILL NO. 2062

PASSED: March 10, 2016



RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 23<sup>rd</sup> day of March 2016



BILL HASLAM, GOVERNOR