

**93RD GENERAL ASSEMBLY****State of Illinois****2003 and 2004**

Introduced 2/4/2004, by Denny Jacobs

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. II Pt. 23 heading new
735 ILCS 5/2-2301 new
735 ILCS 5/2-2310 new
735 ILCS 5/2-2315 new
735 ILCS 5/2-2320 new
735 ILCS 5/2-2325 new
735 ILCS 5/2-2330 new
735 ILCS 5/2-2335 new
735 ILCS 5/2-2340 new
735 ILCS 5/2-2345 new
735 ILCS 5/2-2350 new
735 ILCS 5/2-2355 new
735 ILCS 5/2-2360 new
735 ILCS 5/2-2365 new
735 ILCS 5/2-2370 new
735 ILCS 5/2-2375 new
735 ILCS 5/2-2380 new

Amends the Code of Civil Procedure. Provides that no person shall bring or maintain a tort action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima-facie showing 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 asbestos is a substantial contributing factor to the medical condition. Sets out prima-facie requirements for nonmalignant, cancer, and smokers claims. Provides that no prima-facie showing is required in a tort action alleging an asbestos claim based upon mesothelioma. Requires that the plaintiff in any tort action who alleges an asbestos claim file, within 30 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. Limits the liability of successors of a corporation for asbestos-related claims. Effective immediately.

LRB093 17873 LCB 43555 b

1 AN ACT concerning asbestos.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 the heading of Article II Pt. 23 and Sections 2-2301, 2-2310,
6 2-2315, 2-2320, 2-2325, 2-2330, 2-2335, 2-2340, 2-2345,
7 2-2350, 2-2355, 2-2360, 2-2365, 2-2370, 2-2375, and 2-2380 as
8 follows:

9 (735 ILCS 5/Art. II Pt. 23 heading new)

10 PART 23. ASBESTOS ACTIONS

11 (735 ILCS 5/2-2301 new)

12 Sec. 2-2301. Definitions. As used in this Part:

13 "AMA guides to the evaluation of permanent impairment"
14 means the American Medical Association's guides to the
15 evaluation of permanent impairment (fifth edition 2000), as may
16 be modified by the American Medical Association.

17 "Asbestos" means chrysotile, amosite, crocidolite,
18 tremolite asbestos, anthophyllite asbestos, actinolite
19 asbestos, and any of these minerals that have been chemically
20 treated or altered.

21 "Asbestos claim" means any claim for damages, loss,
22 indemnification, contribution, or other relief arising out of,
23 based on, or in any way related to asbestos. "Asbestos claim"
24 includes: (i) a claim made by or on behalf of any person who
25 has been exposed to asbestos, or any representative, spouse,
26 parent, child, or other relative of that person, for injury,
27 including mental or emotional injury, death, or loss to person,
28 risk of disease or other injury, costs of medical monitoring or
29 surveillance, or any other effects on the person's health that
30 are caused by the person's exposure to asbestos; and (ii) a
31 claim for damage or loss to property that is caused by the

1 installation, presence, or removal of asbestos.

2 "Asbestosis" means bilateral diffuse interstitial fibrosis
3 of the lungs caused by inhalation of asbestos fibers.

4 "Board-certified internist" means a physician who is
5 currently certified by the American Board of Internal Medicine.

6 "Board-certified occupational medicine specialist" means a
7 physician who is currently certified by the American Board of
8 Internal Medicine or the American Board of Preventive Medicine
9 in the specialty of occupational medicine.

10 "Board-certified oncologist" means a physician who is
11 currently certified by the American Board of Internal Medicine
12 in the subspecialty of medical oncology.

13 "Board-certified pathologist" means a physician who is
14 currently certified by the American Board of Pathology.

15 "Board-certified pulmonary specialist" means a physician
16 who is currently certified by the American Board of Internal
17 Medicine in the subspecialty of pulmonary medicine.

18 "Bodily injury caused by exposure to asbestos" means
19 physical impairment of the exposed person, to which the
20 person's exposure to asbestos is a substantial contributing
21 factor.

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

25 "Civil action" means a suit or claim of a civil nature in a
26 State or federal court, whether cognizable as a case at law or
27 in equity or admiralty. "Civil action" does not include an
28 action relating to any workers' compensation law.

29 "Corporation" means a corporation for profit, including a
30 domestic corporation that is organized under the laws of this
31 State and a foreign corporation that is organized under laws of
32 another State and that has had a certificate of authority to
33 transact business in this State or has done business in this
34 State.

35 "Exposed person" means any person whose exposure to
36 asbestos or to asbestos-containing products is the basis for an

1 asbestos claim.

2 "FEV1" means forced expiratory volume in the first second,
3 which is the maximal volume of air expelled in one second
4 during performance of simple spirometric tests.

5 "FVC" means forced vital capacity that is maximal volume of
6 air expired with maximum effort from a position of full
7 inspiration.

8 "ILO scale" means the system for the classification of
9 chest x-rays set forth in the International Labour Office's
10 guidelines for the use of ILO International Classification of
11 Radiographs of Pneumoconioses (1980), as amended.

12 "Lung cancer" means a malignant tumor in which the primary
13 site of origin of the cancer is inside the lungs, but that term
14 does not include mesothelioma.

15 "Mesothelioma" means a malignant tumor with a primary site
16 of origin in the pleura or the peritoneum, which has been
17 diagnosed by a board-certified pathologist using standardized
18 and accepted criteria of microscopic morphology and
19 appropriate staining techniques.

20 "Nonmalignant condition" means a condition that is caused
21 or may be caused by asbestos other than a diagnosed cancer.

22 "Non-smoker" means an exposed person who has not smoked
23 cigarettes or used any other tobacco products within the last
24 15 years.

25 "Pathological evidence of asbestosis" means a statement by
26 a board-certified pathologist that more than one
27 representative section of lung tissue uninvolved with any other
28 disease process demonstrates a pattern of peribronchiolar or
29 parenchymal scarring in the presence of characteristic
30 asbestos bodies and that there is no other more likely
31 explanation for the presence of the fibrosis.

32 "Physical impairment" means a nonmalignant condition, lung
33 cancer, or cancer of the colon, rectum, larynx, pharynx,
34 esophagus, or stomach that meets the requirements of this Part.

35 "Predicted lower limit of normal" means the fifth
36 percentile of healthy populations based on age, height, and

1 gender, as referenced in the AMA guides to the evaluation of
2 permanent impairment.

3 "Qualified physician" means a physician who is providing a
4 diagnosis for purposes of constituting prima-facie evidence of
5 an exposed person's physical impairment and who meets the
6 following requirements:

7 (1) The physician is a board-certified internist,
8 pulmonary specialist, oncologist, pathologist, or
9 occupational medicine specialist.

10 (2) The physician is actually treating or has treated
11 the exposed person and has or had a physician-patient
12 relationship with the person.

13 (3) The physician spends not more than 10% of the
14 physician's professional practice time in providing
15 consulting or expert services in connection with actual or
16 potential civil actions and the physician's medical group,
17 professional corporation, clinic, or other affiliated
18 group earns not more than 20% of its revenues from
19 providing those services.

20 (4) The physician is currently licensed to practice and
21 actively practices in the state where the plaintiff's civil
22 action was filed.

23 (5) The physician receives or received payment for the
24 treatment of the exposed person from that person's HMO or
25 other medical provider.

26 "Radiological evidence of asbestosis" means a chest x-ray
27 showing small, irregular opacities (s, t) graded by a certified
28 B-reader as at least 1/1 on the ILO scale.

29 "Radiological evidence of diffuse pleural thickening"
30 means a chest x-ray showing bilateral pleural thickening graded
31 by a certified B-reader as at least B2 on the ILO scale and
32 blunting of at least one costophrenic angle.

33 "Smoker" means a person who has smoked cigarettes or other
34 tobacco products within the last 15 years.

35 "Substantial contributing factor" means all of the
36 following:

1 (1) Exposure to asbestos is the predominate cause of
2 the physical impairment alleged in the asbestos claim.

3 (2) The exposure to asbestos took place on a regular
4 basis over an extended period of time and in close
5 proximity to the exposed person.

6 (3) A qualified physician has determined with a
7 reasonable degree of medical certainty that without the
8 asbestos exposures the physical impairment of the exposed
9 person would not have occurred.

10 "Substantial occupational exposure to asbestos" means
11 employment for a cumulative period of at least 5 years in an
12 industry and an occupation in which, for a substantial portion
13 of a normal work year for that occupation, the exposed person
14 did any of the following:

15 (1) handled raw asbestos fibers;

16 (2) fabricated asbestos-containing products so that
17 the person was exposed to raw asbestos fibers in the
18 fabrication process;

19 (3) altered, repaired, or otherwise worked with an
20 asbestos-containing product in a manner that exposed the
21 person on a regular basis to asbestos fibers; or

22 (4) worked in close proximity to other workers engaged
23 in any of the activities described in items (1), (2), or
24 (3) above in a manner that exposed the person on a regular
25 basis to asbestos fibers.

26 "Successor corporation" means a corporation or a
27 subsidiary of a corporation that assumes or incurs, or had
28 assumed or incurred, successor asbestos-related liabilities or
29 had successor asbestos-related liabilities imposed on it by
30 court order.

31 "Successor asbestos-related liabilities" means any
32 liabilities, whether known or unknown, asserted or unasserted,
33 absolute or contingent, accrued or unaccrued, liquidated or
34 unliquidated, or due or to become due, if the liabilities are
35 related in any way to asbestos claims and the liabilities are
36 assumed or incurred by a successor as a result of or in

1 connection with an asset purchase, stock purchase, merger,
2 consolidation, or agreement providing for an asset purchase,
3 stock purchase, merger, or consolidation or the agreement of
4 the asset purchase or stock purchase. "Successor
5 asbestos-related liabilities" include any liabilities that,
6 after the effective date of the asset purchase, stock purchase,
7 merger, or consolidation, are paid, otherwise discharged,
8 committed to be paid, or committed to be otherwise discharged
9 by or on behalf of the successor, or by or on behalf of a
10 transferor, in connection with any judgment, settlement, or
11 other discharge of those liabilities in this State or another
12 jurisdiction.

13 "Tort action" means a civil action for damages for injury,
14 death, or loss to person. "Tort action" includes a product
15 liability claim that is subject to Part 21 of this Article II
16 or an asbestos claim that is subject to this Part. "Tort
17 action" does not include a civil action for damages for a
18 breach of contract or another agreement between persons.

19 "Total lung capacity" means the volume of air contained in
20 the lungs at the end of a maximal inspiration.

21 "Transferor" means a corporation or its shareholders from
22 which successor asbestos-related liabilities are or were
23 assumed or incurred by a successor or were imposed by court
24 order on a successor.

25 "Veterans' benefit program" means any program for benefits
26 in connection with military service administered by the
27 veterans' administration under Title 38 of the United States
28 Code.

29 "Workers' compensation law" means the Workers'
30 Compensation Act, Workers' Occupational Diseases Act, and any
31 federal law dealing with workers' compensation.

32 (735 ILCS 5/2-2310 new)

33 Sec. 2-2310. Physical impairment. Physical impairment of
34 the exposed person, to which the person's exposure to asbestos
35 is a substantial contributing factor, shall be an essential

1 element of an asbestos claim.

2 (735 ILCS 5/2-2315 new)

3 Sec. 2-2315. Nonmalignant condition; prima-facie showing.

4 Except as provided in this Part 23, no person shall bring or
5 maintain a tort action alleging an asbestos claim based on a
6 nonmalignant condition in the absence of a prima-facie showing
7 that the exposed person has a physical impairment, that the
8 physical impairment is a result of a medical condition, and
9 that the person's exposure to asbestos is a substantial
10 contributing factor to the medical condition.

11 (735 ILCS 5/2-2320 new)

12 Sec. 2-2320. Requirements; nonmalignant; prima-facie
13 showing. A prima-facie showing shall include all of the
14 following requirements:

15 (1) Evidence verifying that a qualified physician has taken
16 a detailed occupational and exposure history of the exposed
17 person from the exposed person or, if that person is deceased,
18 from the person who is most knowledgeable about the exposures
19 that form the basis of the asbestos claim for a nonmalignant
20 condition, including all of the following:

21 (A) all of the exposed person's principal places of
22 employment and exposures to airborne contaminants; and

23 (B) whether each principal place of employment
24 involved exposures to airborne contaminants including, but
25 not limited to, asbestos fibers or other disease causing
26 dusts that can cause pulmonary impairment and, if that type
27 of exposure is involved, the general nature, duration, and
28 general level of the exposure.

29 (2) Evidence verifying that a qualified physician has taken
30 a detailed medical and smoking history of the exposed person,
31 including a thorough review of the exposed person's past and
32 present medical problems and the most probable causes of those
33 medical problems.

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

1 medical examination and pulmonary function testing of the
2 exposed person, that all of the following apply to the exposed
3 person:

4 (A) the exposed person has a permanent respiratory
5 impairment rating of at least class 2 as defined by and
6 evaluated pursuant to the AMA guides to the evaluation of
7 permanent impairment;

8 (B) the exposed person has asbestosis or diffuse
9 pleural thickening, based at a minimum on radiological or
10 pathological evidence of asbestosis or radiological
11 evidence of diffuse pleural thickening and that this
12 asbestosis or diffuse pleural thickening, rather than
13 solely chronic obstructive pulmonary disease, is a
14 substantial contributing factor to the exposed person's
15 physical impairment, based at a minimum on a determination
16 that the exposed person has any of the following:

17 (1) a forced vital capacity below the predicted
18 lower limit of normal and a ratio of FEV1 to FVC that
19 is equal to or greater than the predicted lower limit
20 of normal; or

21 (2) a chest x-ray showing small, irregular
22 opacities (s, t) graded by a certified B-reader at
23 least 2/1 on the ILO scale.

24 (735 ILCS 5/2-2325 new)

25 Sec. 2-2325. Lung cancer; smokers. No person shall bring or
26 maintain a tort action alleging an asbestos claim based upon
27 lung cancer of an exposed person who is a smoker, in the
28 absence of a prima-facie showing of all of the following
29 minimum requirements:

30 (1) A diagnosis by a board-certified internist,
31 board-certified pathologist, board-certified pulmonary
32 specialist, board-certified oncologist, or board-certified
33 occupational medicine specialist that the exposed person has
34 primary lung cancer and that exposure to asbestos is a
35 substantial contributing factor to that cancer.

1 (2) Evidence that is sufficient to demonstrate that at
2 least 10 years have elapsed from the date of the exposed
3 person's first exposure to asbestos until the date of diagnosis
4 of the exposed person's primary lung cancer.

5 (3) Either of the following:

6 (A) In the case of an exposed person who is a
7 non-smoker: (i) radiological or pathological evidence of
8 asbestosis or radiological evidence of diffuse pleural
9 thickening; or (ii) evidence of the exposed person's
10 occupational exposure to asbestos for an applicable
11 minimum exposure period as provided in item (3)(B) of
12 Section 2-2330 of this Part.

13 (B) In the case of an exposed person who is a smoker:
14 (i) radiological or pathological evidence of asbestosis or
15 radiological evidence of diffuse pleural thickening; and
16 (ii) evidence of the exposed person's occupational
17 exposure to asbestos for an applicable minimum exposure
18 period as provided in subdivision (3)(B) of Section 2-2330
19 of this Part.

20 (735 ILCS 5/2-2330 new)

21 Sec. 2-2330. Cancer claims. No person shall bring or
22 maintain a civil action alleging an asbestos claim based upon
23 cancer of the colon, rectum, larynx, pharynx, esophagus, or
24 stomach, in the absence of a prima-facie showing of all of the
25 following minimum requirements:

26 (1) A diagnosis by a board-certified internist,
27 board-certified pathologist, board-certified pulmonary
28 specialist, or board-certified oncologist, whichever is
29 appropriate for the type of cancer claimed, that the exposed
30 person has primary colon, rectum, larynx, pharynx, esophagus,
31 or stomach cancer and that exposure to asbestos is a
32 substantial contributing factor to that particular cancer.

33 (2) Evidence that is sufficient to demonstrate that at
34 least 10 years have elapsed from the date of the exposed
35 person's first exposure to asbestos until the date of diagnosis

1 of the exposed person's particular cancer.

2 (3) Either of the following requirements:

3 (A) Radiological or pathological evidence of
4 asbestosis or radiological evidence of diffuse pleural
5 thickening;

6 (B) Evidence of the exposed person's occupational
7 exposure to asbestos for any of the following applicable
8 minimum exposure periods in the specified occupations:

9 (i) 5 exposure years for insulators, shipyard
10 workers, workers in manufacturing plants handling raw
11 asbestos, boilermakers, shipfitters, steamfitters, or
12 other trades performing similar functions;

13 (ii) 10 exposure years for utility and power house
14 workers, secondary manufacturing workers, or other
15 trades performing similar functions; or

16 (iii) 15 exposure years for general construction,
17 maintenance workers, chemical and refinery workers,
18 marine engine room personnel and other personnel on
19 vessels, stationary engineers and firefighters,
20 railroad engine repair workers, or other trades
21 performing similar functions.

22 (735 ILCS 5/2-2335 new)

23 Sec. 2-2335. Mesothelioma. No prima-facie showing is
24 required in a tort action alleging an asbestos claim based upon
25 mesothelioma.

26 (735 ILCS 5/2-2340 new)

27 Sec. 2-2340. Evidence; physical impairment. Evidence
28 relating to physical impairment under this Section, including
29 pulmonary function testing and diffusing studies, shall comply
30 with the technical recommendations for examinations, testing
31 procedures, quality assurance, quality control, and equipment
32 incorporated in the AMA guides to the evaluation of permanent
33 impairment and reported as set forth in 20 C.F.R. Pt. 404,
34 Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the

1 interpretive standards set forth in the official statement of
2 the American Thoracic Society entitled "Lung Function Testing:
3 Selection of Reference Values and Interpretive Strategies" as
4 published in American Review of Respiratory Disease,
5 1991:144:1202-1218.

6 (735 ILCS 5/2-2345 new)

7 Sec. 2-2345. Court decision; prima-facie showing.

8 (a) The court shall dismiss the plaintiff's claim without
9 prejudice upon a finding of failure to meet the prima-facie
10 showing requirements of Section 2-2315, 2-2320, 2-2325, or
11 2-2330 of this Part.

12 (b) All of the following apply to the court's decision on
13 the prima-facie showing that meets the requirements of Section
14 2-2315, 2-2320, 2-2325, or 2-2330 of this Part:

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

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

21 (3) The court's decision is not binding at trial.

22 (735 ILCS 5/2-2350 new)

23 Sec. 2-2350. Written report; test results.

24 (a) The plaintiff in any tort action who alleges an
25 asbestos claim shall file, within 30 days after filing the
26 complaint or other initial pleading, a written report and
27 supporting test results constituting prima-facie evidence of
28 the exposed person's physical impairment that meets the minimum
29 requirements.

30 (b) The defendant in the case shall be afforded a
31 reasonable opportunity, upon the defendant's motion, to
32 challenge the adequacy of the proffered prima-facie evidence of
33 the physical impairment for failure to comply with the minimum
34 requirements. The defendant has 120 days from the date the

1 prima-facie evidence of the exposed person's physical
2 impairment is proffered to challenge the adequacy of that
3 prima-facie evidence. If the defendant makes that challenge and
4 uses a physician to do so, the physician must be a qualified
5 physician.

6 (c) For any asbestos claim that is pending on the effective
7 date of this amendatory Act of the 93rd General Assembly, the
8 plaintiff shall file the written report and supporting test
9 results described in subsection (a) of this Section within 120
10 days following the effective date of this Section. Upon motion
11 and for good cause shown, the court may extend the 120-day
12 period.

13 (735 ILCS 5/2-2355 new)

14 Sec. 2-2355. Statute of limitations; settlement;
15 nonmalignant condition.

16 (a) Notwithstanding the provisions of any other Act, with
17 respect to any asbestos claim based upon a nonmalignant
18 condition that is not barred as of the effective date of this
19 amendatory Act of the 93rd General Assembly, the period of
20 limitations shall not begin to run until the exposed person
21 knows or, through the exercise of reasonable diligence, should
22 have known that the person has a physical impairment due to a
23 nonmalignant condition.

24 (b) An asbestos claim that arises out of a nonmalignant
25 condition shall be a distinct cause of action from an asbestos
26 claim relating to the same exposed person that arises out of
27 asbestos-related cancer. No damages shall be awarded for fear
28 or risk of cancer in any tort action asserting only an asbestos
29 claim for a nonmalignant condition.

30 (c) No settlement of an asbestos claim for a nonmalignant
31 condition that is concluded after the effective date of this
32 amendatory Act of the 93rd General Assembly shall require, as a
33 condition of settlement, the release of any future claim for
34 asbestos-related cancer.

1 (735 ILCS 5/2-2360 new)

2 Sec. 2-2360. Limited liability of successor
3 asbestos-related liability.

4 (a) Except as otherwise provided in subsection (b) of this
5 Section, the cumulative successor asbestos-related liabilities
6 of a corporation shall be limited to the fair market value of
7 the acquired assets or stock of the transferor, as determined
8 on the effective date of the asset or stock purchase, merger,
9 or acquisition.

10 (b) If a transferor had assumed or incurred successor
11 asbestos-related liabilities in connection with a prior asset
12 purchase, stock purchase, merger, or consolidation involving a
13 prior transferor, the successor asbestos-related liabilities
14 of the successor covered in subsection (a) of this Section
15 shall be limited to the fair market value of the previously
16 acquired assets or stock as determined on the effective date of
17 the prior asset purchase, stock purchase, merger, or
18 consolidation. The successor shall have no responsibility for
19 any successor asbestos-related liabilities in excess of the
20 limitation of those liabilities established in this Section.

21 (c) Except as provided for in subsection (d) of this
22 Section, the assets of a successor shall be exempt from
23 restraint, attachment, or execution on any judgment entered in
24 this State or another jurisdiction related to any claim for
25 successor asbestos-related liabilities if the cumulative
26 amounts of those liabilities that, after the effective date of
27 the asset purchase or stock purchase that is covered in
28 subsections (a) and (b) of this Section, are paid or committed
29 to be paid by or on behalf of the successor or by or on behalf
30 of the transferor, in connection with any judgment, settlement,
31 or other discharge of claims of asbestos-related liabilities,
32 exceed the fair market value of the assets or stock as
33 determined on the effective date of the asset purchase or stock
34 purchase, merger, or consolidation.

35 (d) If the transferor had assumed or incurred successor
36 asbestos-related liabilities in connection with a prior asset

1 purchase, stock purchase, merger or consolidation involving a
2 prior transferor, the assets of the successor as described in
3 subsection (c) of this Section shall be exempt from restraint,
4 attachment, or execution on any judgment entered in this State
5 or another jurisdiction related to any claim for successor
6 asbestos-related liabilities if the cumulative amounts of
7 those liabilities that after the effective date of the prior
8 asset purchase or stock purchase, merger, or consolidation, are
9 paid or committed to be paid by or on behalf of the successor,
10 or by or on behalf of the prior transferor, in connection with
11 any judgment, settlement, or other discharge of claims of
12 asbestos-related liabilities, exceed the fair market value of
13 the previously acquired assets or stock as determined on the
14 effective date of the prior asset purchase, stock purchase,
15 merger, or consolidation.

16 (e) A successor may establish the fair market value of
17 total assets by means of any method that is reasonable under
18 the circumstances, including by reference to the going-concern
19 value of those assets, to the purchase price attributable to or
20 paid for the assets in an arm's length transaction, or, in the
21 absence of other readily available information from which the
22 fair market value can be determined, to the value of those
23 assets recorded on a balance sheet. Total assets shall include
24 intangible assets. A showing by the successor of a reasonable
25 determination of the fair market value of total assets is
26 prima-facie evidence of the fair market value of those assets.

27 (f) After a successor has established a reasonable
28 determination of the fair market value of total assets, a
29 claimant that disputes that determination of the fair market
30 value has the burden of establishing a different fair market
31 value of those assets.

32 (g) For the purpose of adjusting the limitations set forth
33 in this Section to account for the passage of time, the fair
34 market value of total assets on the effective date of the
35 applicable asset purchase or stock purchase shall be increased
36 annually, at the rate equal to the prime rate as listed in the

1 first edition of the Wall Street Journal published for each
2 calendar year since the asset purchase or stock purchase plus
3 1%, not compounded, until the earlier of: (i) the date of the
4 judgment, settlement, or other discharge of claims of successor
5 asbestos-related liabilities to which the limitations in this
6 Section are being applied; or (ii) the date on which the
7 adjusted fair market value of the total assets established
8 under subsection (e) of this Section is first exceeded by the
9 cumulative amounts of successor asbestos-related liabilities
10 that are paid or committed to by paid by or on behalf of the
11 successor, or by or on behalf of the transferor, after the
12 effective date of the asset purchase or stock purchase in
13 connection with any judgment, settlement, or other discharge of
14 successor asbestos-related liabilities.

15 (h) The limitations set forth in this Section shall apply
16 to the following:

17 (1) All asbestos claims, including asbestos claims or
18 litigation that is pending on the effective date of this
19 amendatory Act of the 93rd General Assembly.

20 (2) Successors of a successor to which this Section
21 applies.

22 (i) The limitations set forth in this Section do not apply
23 to any of the following:

24 (1) Workers' compensation benefits that are paid by or
25 on behalf of an employer to an employee.

26 (2) Any claim against a successor that does not
27 constitute a claim for a successor asbestos-related
28 liability.

29 (3) An insurance corporation.

30 (4) Any obligation arising under the National Labor
31 Relations Act (49 Stat. 449, 29 U.S.C. 151 et seq.), as
32 amended, or under any collective bargaining agreement.

33 (735 ILCS 5/2-2365 new)

34 Sec. 2-2365. Shareholder, subscriber, share owner of
35 beneficial interest liability.

1 (a) A shareholder, owner of any beneficial interest in
2 shares, or a subscriber for shares whose subscription has been
3 accepted and any affiliate or holding company of that holder,
4 owner, or subscriber shall be under no obligation to, and shall
5 have no liability to, the corporation or to any person with
6 respect to any obligation or liability of the corporation in
7 asbestos claims on the basis that the holder, owner,
8 subscriber, affiliate, or holding company controlled the
9 corporation or is or was the alter ego of the corporation, or
10 on the basis of actual fraud or constructive fraud, a sham to
11 perpetrate a fraud, a fraudulent conveyance, piercing the
12 corporate veil, or any other similar theory, unless the person
13 demonstrates that the holder, owner, subscriber, affiliate, or
14 holding company caused the covered corporation to be used for
15 the purpose of perpetrating, and the corporation did
16 perpetrate, an actual fraud on the person seeking to pierce the
17 corporate veil primarily for the direct pecuniary benefit of
18 the holder, owner, subscriber, affiliate, or holding company,
19 and then only to the extent of that direct benefit.

20 (b) Any liability of a holder, owner, subscriber,
21 affiliate, or holding company having an obligation or liability
22 that is limited by subsection (a) of this Section is exclusive
23 and preempts any other obligation or liability imposed upon
24 that holder, owner, subscriber, affiliate, or holding company
25 for that obligation or liability under common law or otherwise.

26 (735 ILCS 5/2-2370 new)

27 Sec. 2-2370. Venue.

28 (a) Venue for civil actions arising under this Part of
29 which the circuit court has original jurisdiction shall be in
30 the county where the first act or omission giving rise to the
31 cause of action occurred, or, in instances where more than one
32 act or omission gives rise to the cause of action, venue shall
33 be proper in the county where the most significant action
34 occurred.

35 (b) In any civil action arising under this Part where more

1 than one plaintiff is joined, each plaintiff shall
2 independently establish proper venue and it is not sufficient
3 that venue is proper for other plaintiffs joined in the civil
4 action.

5 (c) In any civil action arising under this Part where more
6 than one defendant is named, venue must be proper as to each
7 and every defendant and it is not sufficient that venue is
8 proper for other defendants joined in the civil action.

9 (d) Where multiple claims or causes of action arising under
10 this Part are combined into one lawsuit, venue must be proper
11 as to each separate claim or cause of action.

12 (e) If the venue is improper as to any claim or cause of
13 action arising under this Part by any plaintiff against any
14 defendant, then the claims involving that plaintiff and
15 defendant that are not in the proper venue shall be severed and
16 transferred to the county where venue is proper as to the claim
17 or cause of action. If there is no proper venue for a claim
18 arising under this Part for any reason, including because the
19 first act or omission giving rise to a claim did not occur
20 within an Illinois county, or because the most significant
21 exposure giving rise to a claim under this Part did not occur
22 within Illinois, the claim shall be dismissed without
23 prejudice.

24 (f) A nonresident of the State may not bring an action
25 under this Part in a court of this State unless all or a
26 substantial part of the acts or omissions giving rise to the
27 claim asserted occurred in this State.

28 (g) If a court of this State, on written motion of a party,
29 finds that in the interest of justice and for the convenience
30 of the parties and witnesses a claim or action arising under
31 this Part would be more properly heard in a forum outside this
32 State or in a different county within this State, the court
33 shall decline to exercise jurisdiction under the doctrine of
34 forum non conveniens. As to a claim or action arising under
35 this Part that would be more properly heard in a forum outside
36 this State, the court shall dismiss the claim or action. As to

1 a claim or action arising under this Part that would be more
2 properly heard in a different county within this State, the
3 venue shall be transferred to the appropriate county. In
4 determining whether to grant a motion to dismiss an action or
5 to transfer venue under the doctrine of forum non conveniens,
6 the court shall give consideration to the following factors:

7 (1) relative ease of access to sources of proof;

8 (2) availability and cost of compulsory process for
9 attendance of unwilling witnesses;

10 (3) possibility of viewing of the premises, if viewing
11 would be appropriate to the action;

12 (4) unnecessary expense or trouble to the defendant not
13 necessary to the plaintiff's own right to pursue his or her
14 remedy;

15 (5) administrative difficulties for the forum courts;

16 (6) existence of local interests in deciding the case
17 at home; and

18 (7) plaintiff's choice of forum should rarely be
19 disturbed.

20 (h) A court may not dismiss a claim under subsection (g) of
21 this Section until the defendant files with the court or with
22 the clerk of the court a written stipulation that, with respect
23 to a new action on the claim commenced by the plaintiff, the
24 defendant waives the right to assert a statute of limitations
25 defense in all other states in which the claim was not barred
26 by limitations at the time the claim was filed in this State as
27 necessary to effect a tolling of the limitations periods in
28 those states beginning on the date the claim was filed in this
29 State and ending on the date the claim is dismissed. The court
30 may not dismiss a claim under subsection (g) until the
31 defendant files with the court or with the clerk of the court a
32 written stipulation that, with respect to a new action on the
33 claim commenced by the plaintiff in another state, the
34 plaintiff may elect that the plaintiff and the defendant may
35 rely on responses to discovery already provided under the Code
36 of Civil Procedure, plus any additional discovery that may be

1 conducted under the rules of civil procedure in another state,
2 or use responses to discovery already provided and conduct
3 additional discovery as permitted under the rules of civil
4 procedure in the other state.

5 (i) To comply with subsection (g) of this Section in
6 relation to an action that involves both claims that would and
7 would not be more properly heard in a forum outside this State
8 or in a different county within this State, a court shall
9 consider each claim individually and shall sever those claims
10 from the action as necessary to comply with the provisions of
11 subsection (g).

12 (735 ILCS 5/2-2375 new)

13 Sec. 2-2375. Veterans; workers' compensation. Nothing in
14 this Part shall affect the scope or operation of any veterans'
15 benefit program, any federal workers' compensation law, the
16 Workers' Compensation Act, or the Workers' Occupational
17 Diseases Act or the exclusive remedy of subrogation provided
18 for in those programs or laws. This Part shall not authorize
19 any claim that is barred by any provision of any federal
20 workers' compensation law, the Workers' Compensation Act, or
21 the Workers' Occupational Diseases Act.

22 (735 ILCS 5/2-2380 new)

23 Sec. 2-2380. Severability. If any provision of this Part
24 or its application to any person or circumstance is held
25 invalid, the invalidity of the provision or application does
26 not affect other provisions or applications of this Part that
27 can be given effect without the invalid provision.

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.