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HOUSE BILL NO. 1285

Offered January 11, 2006

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A BILL to amend and reenact §§ 8.01-249 and 8.01-374.1 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 8.01-249.1 through 8.01-249.5, relating to litigation involving claims of injury arising from exposure to asbestos, silica, or products containing asbestos or silica.

Patron—Fralin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-249 and 8.01-374.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-249.1 through 8.01-249.5 as follows:

§ 8.01-249. When cause of action shall be deemed to accrue in certain personal actions.

The cause of action in the actions herein listed shall be deemed to accrue as follows:

1. In actions for fraud or mistake, in actions for violations of the Consumer Protection Act (§ 59.1-196 et seq.) based upon any misrepresentation, deception, or fraud, and in actions for rescission of contract for undue influence, when such fraud, mistake, misrepresentation, deception, or undue influence is discovered or by the exercise of due diligence reasonably should have been discovered;

2. In actions or other proceedings for money on deposit with a bank or any person or corporation doing a banking business, when a request in writing be made therefor by check, order, or otherwise;

3. In actions for malicious prosecution or abuse of process, when the relevant criminal or civil action is terminated;

4. *a.* In actions for injury to the person resulting from exposure to asbestos, silica, or products containing asbestos or silica, and subject to the provisions of § 8.01-249.1, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or other a disabling asbestos-related or silica-related injury or disease is first communicated to the person or his agent by a physician. ~~However, no such action~~

b. An asbestos or silica claim arising out of a nonmalignant condition shall be a distinct cause of action from an asbestos or silica claim relating to the same exposed person arising out of asbestos or silica-related cancer. No damages shall be awarded for fear or risk of cancer in any civil action asserting an asbestos or silica claim.

c. No settlement of a nonmalignant asbestos or silica claim concluded after the date of enactment shall require, as a condition of settlement, release of any future claim for asbestos or silica-related cancer.

d. No claim of injury resulting from exposure to asbestos or silica may be brought more than two years after the death of such person;

5. In actions for contribution or for indemnification, when the contributee or the indemnitee has paid or discharged the obligation. A third-party claim permitted by subsection A of § 8.01-281 and the Rules of Court may be asserted before such cause of action is deemed to accrue hereunder;

6. In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person, upon removal of the disability of infancy or incapacity as provided in § 8.01-229 or, if the fact of the injury and its causal connection to the sexual abuse is not then known, when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist. As used in this subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

7. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any prosthetic device for breast augmentation or reconstruction, when the fact of the injury and its causal connection to the implantation is first communicated to the person by a physician;

8. In actions on an open account, from the later of the last payment or last charge for goods or services rendered on the account.

§ 8.01-249.1. *Impairment essential element of claim.*

A. Physical impairment of the exposed person, to which asbestos or silica exposure was a substantial contributing factor, shall be an essential element of an asbestos or silica claim.

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59 *B. No person shall bring or maintain a civil action alleging a nonmalignant asbestos claim in the*
60 *absence of a prima facie showing of physical impairment as a result of a medical condition to which*
61 *exposure to asbestos was a substantial contributing factor. Such a prima facie showing shall include all*
62 *of the following minimum requirements:*

63 *1. Evidence verifying that a qualified physician has taken a detailed occupational and exposure*
64 *history of the exposed person or, if such person is deceased, from a person who is knowledgeable about*
65 *the exposures that form the basis of the nonmalignant asbestos claim, including:*

66 *a. Identification of all of the exposed person's principal places of employment and exposures to*
67 *airborne contaminants; and*

68 *b. Whether each place of employment involved exposures to airborne contaminants (including but not*
69 *limited to asbestos fibers or other disease-causing dusts) that can cause pulmonary impairment and the*
70 *nature, duration, and level of any such exposure.*

71 *2. Evidence verifying that a qualified physician has taken detailed medical and smoking history,*
72 *including a thorough review of the exposed person's past and present medical problems and their most*
73 *probable cause.*

74 *3. Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first*
75 *exposure to asbestos and the date of diagnosis of the nonmalignant asbestos-related impairment.*

76 *4. A determination by a qualified physician, on the basis of a medical examination and pulmonary*
77 *function testing, that the exposed person has a permanent respiratory impairment rating of at least*
78 *Class 2 as defined by and evaluated pursuant to the AMA Guides to the Evaluation of Permanent*
79 *Impairment.*

80 *5. A diagnosis by a qualified physician of asbestosis or diffuse pleural thickening, based at a*
81 *minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse*
82 *pleural thickening.*

83 *6. A determination by a qualified physician that asbestosis or diffuse pleural thickening (rather than*
84 *chronic obstructive pulmonary disease) is a substantial contributing factor to the exposed person's*
85 *physical impairment, based at a minimum on a determination that the exposed person has:*

86 *a. Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of*
87 *normal;*

88 *b. Forced vital capacity below the lower limit of normal and a ratio of FEV 1 to FVC that is equal*
89 *to or greater than the predicted lower limit of normal; or*

90 *c. A chest x-ray showing small, irregular opacities (s, t, u) graded by a certified B-reader as at least*
91 *2/1 on the ILO scale.*

92 *7. A conclusion by a qualified physician that the exposed person's medical findings and impairment*
93 *were not more probably the result of causes other than the asbestos exposure revealed by the exposed*
94 *person's employment and medical history. A conclusion that the exposed person's medical findings are*
95 *"consistent with" or "compatible with" exposure to asbestos does not meet the requirements of this*
96 *subsection.*

97 *C. No person shall bring or maintain a civil action alleging an asbestos claim, which is based upon*
98 *lung cancer, in the absence of a prima facie showing that shall include the following minimum*
99 *requirements:*

100 *1. Diagnosis by a qualified physician who is Board-certified in pathology, pulmonary medicine, or*
101 *oncology of a primary lung cancer and that exposure to asbestos was a substantial contributing factor*
102 *to the condition.*

103 *2. Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first*
104 *exposure to asbestos and the date of diagnosis of the lung cancer.*

105 *3. Depending on whether the exposed person has a history of smoking, the requirements of either*
106 *subdivision a or b below:*

107 *a. In the case of an exposed person who is a nonsmoker, either:*

108 *(1) Radiological or pathological evidence of asbestosis; or*

109 *(2) Evidence of occupational exposure to asbestos for the following minimum exposure periods in the*
110 *specified occupations:*

111 *(a) Five exposure years for insulators, shipyard workers, workers in manufacturing plants handling*
112 *raw asbestos, boilermakers, ship fitters, steamfitters, or other trades performing similar functions;*

113 *(b) Ten exposure years for utility and power house workers, secondary manufacturing workers, or*
114 *other trades performing similar functions; or*

115 *(c) Fifteen exposure years for general construction, maintenance workers, chemical and refinery*
116 *workers, marine engine room personnel and other personnel on vessels, stationary engineers, firemen,*
117 *railroad engine repair workers, or other trades performing similar functions;*

118 *b. In the case of an exposed person who is a smoker, the criteria contained in both subdivisions a*
119 *(1) and a (2) must be met.*

120 *4. A conclusion by a qualified physician that the exposed person's medical findings and impairment*

were not more probably the result of causes other than the asbestos exposure revealed by the exposed person's employment and medical history. A conclusion that the exposed person's medical findings are "consistent with" or "compatible with" exposure to asbestos does not meet the requirements of this subsection.

D. No person shall bring or maintain a civil action alleging an asbestos claim, which is based upon cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach, in the absence of a prima facie showing that shall include the following minimum requirements:

1. A diagnosis by a qualified physician who is Board-certified in pathology, pulmonary medicine or oncology (as appropriate for the type of cancer claimed) of primary cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach, and that exposure to asbestos was a substantial contributing factor to the condition.

2. Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to asbestos and the date of diagnosis of the cancer.

3. The requirements of either subdivision 3 a or 3 b.

a. Radiological or pathological evidence of asbestosis;

b. Evidence of occupational exposure to asbestos for the following minimum exposure periods in the specified occupations:

(1) Five exposure years for insulators, shipyard workers, workers in manufacturing plants handling raw asbestos, boilermakers, ship fitters, steamfitters, or other trades performing similar functions;

(2) Ten exposure years for utility and power house workers, secondary manufacturing workers, or other trades performing similar functions; or

(3) Fifteen exposure years for general construction, maintenance workers, chemical and refinery workers, marine engine room personnel and other personnel on vessels, stationary engineers, firemen, railroad engine repair workers, or other trades performing similar functions.

4. A conclusion by a qualified physician that the exposed person's medical findings and impairment were not more probably the result of causes other than the asbestos exposure revealed by the exposed person's employment and medical history. A conclusion that the exposed person's medical findings are "consistent with" or "compatible with" exposure to asbestos does not meet the requirements of this subsection.

E. In a civil action alleging an asbestos claim based upon mesothelioma, no prima facie showing is required.

F. No person shall bring or maintain a civil action alleging a silicosis claim in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor. Such a prima facie showing shall include all of the following minimum requirements:

1. Evidence verifying that a qualified physician has taken a detailed occupational and exposure history of the exposed person or, if such person is deceased, from a person who is knowledgeable about the exposures that form the basis of the nonmalignant silica claim, including:

a. All of the exposed person's principal places of employment and exposures to airborne contaminants; and

b. Whether each place of employment involved exposures to airborne contaminants (including but not limited to silica particles or other disease-causing dusts) that can cause pulmonary impairment and the nature, duration, and level of any such exposure.

2. Evidence verifying that a qualified physician has taken a detailed medical and smoking history, including a thorough review of the exposed person's past and present medical problems and their most probable cause, and verifying a sufficient latency period for the applicable state of silicosis.

3. A determination by a qualified physician, on the basis of a medical examination and pulmonary function testing, that the exposed person has a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA Guides to the Evaluation of Permanent Impairment.

4. A determination by a qualified physician that the exposed person has:

a. A quality 1 chest x-ray under the ILO System of classification (in a death case where no pathology is available, the necessary radiologic findings may be made with a quality 2 film if a quality 1 film is not available), and that the x-ray has been read by a certified B-reader as showing, according to the ILO System of classification, bilateral nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher; or

b. Pathological demonstration of classic silicotic nodules exceeding one centimeter in diameter as published in 112 Archive of Pathology and Laboratory Medicine 7 (July 1988).

5. A conclusion by a qualified physician that the exposed person's medical findings and impairment were not more probably the result of causes other than silica exposure revealed by the exposed person's employment and medical history. A conclusion that the exposed person's medical findings are "consistent

182 with" or "compatible with" exposure to silica does not meet the requirements of this subsection.

183 G. No person shall bring or maintain a civil action alleging any silica claim other than as provided
184 in subsection F in the absence of a prima facie showing, which shall include the following minimum
185 requirements:

186 1. A report by a qualified physician who is:

187 a. Board-certified in pulmonary medicine, internal medicine, oncology, or pathology stating a
188 diagnosis of the exposed person of silica-related lung cancer and stating that, to a reasonable degree of
189 medical probability, exposure to silica was a substantial contributing factor to the diagnosed lung
190 cancer; or

191 b. Board-certified in pulmonary medicine, internal medicine, or pathology stating a diagnosis of the
192 exposed person of silica-related progressive massive fibrosis or acute silicoproteinosis, or silicosis
193 complicated by documented tuberculosis;

194 2. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
195 history of the exposed person or, if such person is deceased, from a person who is knowledgeable about
196 the exposures that form the basis of the nonmalignant silica claim, including:

197 a. All of the exposed person's principal places of employment and exposures to airborne
198 contaminants; and

199 b. Whether each place of employment involved exposures to airborne contaminants (including but not
200 limited to silica particles or other disease causing dusts) that can cause pulmonary impairment and the
201 nature, duration, and level of any such exposure.

202 3. Evidence verifying that a qualified physician has taken a detailed medical and smoking history,
203 including a thorough review of the exposed person's past and present medical problems and their most
204 probable cause, and verifying a sufficient latency period for the applicable silica-related impairment
205 diagnosed in subdivision G 1.

206 4. A determination by a qualified physician that the exposed person has:

207 a. A quality 1 chest x-ray under the ILO System of classification (in a death case where no
208 pathology is available, the necessary radiologic findings may be made with a quality 2 film if a quality
209 1 film is not available), and that the x-ray has been read by a certified B-reader as showing, according
210 to the ILO System of classification, bilateral nodular opacities (p, q, or r) occurring primarily in the
211 upper lung fields, graded 1/1 or higher; or

212 b. Pathological demonstration of classic silicotic nodules exceeding one centimeter in diameter as
213 published in 112 Archive of Pathology and Laboratory Medicine 7 (July 1988).

214 5. A conclusion by a qualified physician that the exposed person's medical findings and impairment
215 were not more probably the result of causes other than silica exposure revealed by the exposed person's
216 employment and medical history. A conclusion that the exposed person's medical findings are "consistent
217 with" or "compatible with" exposure to silica does not meet the requirements of this subsection.

218 H. Evidence relating to physical impairment under this section, including pulmonary function testing
219 and diffusing studies, shall:

220 1. Comply with the technical recommendations for examinations, testing procedures, quality
221 assurance, quality control, and equipment of the AMA Guides to the Evaluation of Permanent
222 Impairment, as set forth in 2d C.F.R. Pt. 404, Subpt. P. Appl., Part A, Sec. 3.00 E. and F., and the
223 interpretive standards, set forth in the official statement of the American Thoracic Society entitled "lung
224 function testing: selection of reference values and interpretive strategies" as published in American
225 Review of Respiratory Disease. 1991: 144:1202-1218;

226 2. Not be obtained through testing or examinations that violate any applicable law, regulation,
227 licensing requirement, or medical code of practice; and

228 3. Not be obtained under the condition that the exposed person retain legal services in exchange for
229 the examination, test, or screening.

230 I. Presentation of prima facie evidence meeting the requirements of subsections B, C, D, F, or G
231 shall not:

232 1. Result in any presumption at trial that the exposed person is impaired by an asbestos or
233 silica-related condition;

234 2. Be conclusive as to the liability of any defendant; and

235 3. Be admissible at trial.

236 § 8.01-249.2. Written report required with complaint.

237 The plaintiff in any civil action alleging an asbestos or silica claim shall file together with the
238 complaint or other initial pleading a written report and supporting test results constituting prima facie
239 evidence of the exposed person's asbestos or silica-related physical impairment meeting the requirements
240 of subsections B through G of § 8.01-249.1. For any asbestos or silica claim pending on the effective
241 date of this act, the plaintiff shall file such a written report and supporting test results no later than 60
242 days following the effective date, or no later than 30 days prior to the commencement of trial. The
243 defendant shall be afforded a reasonable opportunity to challenge the adequacy of the proffered prima

facie evidence of asbestos-related impairment. The plaintiff's claim shall be dismissed without prejudice upon a finding of failure to make the required prima facie showing.

§ 8.01-249.3. Scope of liability; damages.

A. A defendant against whom a final judgment is entered in a civil action alleging an asbestos or silica claim shall be liable only for that portion of the judgment that corresponds to the percentage of responsibility of such defendant. For the purposes of determining the percentage of responsibility of a defendant, the trier-of-fact shall determine that percentage as a percentage of the total fault of all persons (including the plaintiff and those who have filed for bankruptcy protection) who are responsible for the harm to the plaintiff, regardless of whether or not such person is a part to the action. This provision shall apply only to a defendant that is found to be less than 51% responsible for the harm to the plaintiff. The court shall render a separate judgment against each defendant in an amount determined pursuant to this subsection.

B. In any civil action alleging an asbestos or silica claim, the total amount of damages that may be awarded for noneconomic loss shall not exceed \$250,000 or three times economic loss, whichever is greater, regardless of the number of parties against whom the action is brought. However, in actions involving an asbestos claim based upon mesothelioma the total amount of damages that may be awarded for noneconomic loss shall not exceed \$500,000 or three times economic loss, whichever is greater.

C. At the time a complaint is filed in a civil action alleging an asbestos or silica claim, the plaintiff must file a verified written report with the court that discloses the total amount of any collateral source payments received, including payments that the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim. For any asbestos or silica claim pending on the date of enactment of this act, the plaintiff shall file such verified written report no later than 60 days after the date of enactment, or no later than 30 days prior to trial. Further, the plaintiff shall be required to update such reports on a regular basis during the course of the proceeding until a final judgment is entered in the case. The court shall ensure that the information contained in the initial and updated reports is treated as privileged and confidential and that the contents of the verified written reports shall not be disclosed to anyone except the other parties to the action.

§ 8.01-249.4. Definitions.

In this article:

"AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition 2000) as may be modified from time to time by the American Medical Association.

"Asbestos" includes all minerals defined as 'asbestos' in 29 C.F.R. 1910 as amended from time to time.

"Asbestos claim" means any 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 and any derivative claim made by or on behalf of any exposed person or any representative, spouse, parent, child or other relative of any exposed person. The term does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law.

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

"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.

"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.

"Board-certified in oncology" means a physician who is certified in the subspecialty of medical oncology by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

"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 Internal Medicine and whose professional practice:

1. Is principally in the field of pathology; and
2. Involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

"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.

"Certified B-reader" means an individual qualified as a "final" or "B-reader" under 42 C.F.R.

37.51(b) as amended.

"Economic loss" means any pecuniary loss resulting from physical impairment, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities.

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

"Exposure years" means:

1. Each single year of exposure prior to 1972 will be counted as one year;

2. Each single year of exposure from 1972 through 1979 will be counted as one-half year;

3. Exposure after 1979 will not be counted, except that each year from 1972 forward for which the plaintiff can establish exposure exceeding the OSHA limit for eight-hour time-weighted average airborne concentration for a substantial portion of the year will count as one year.

"FEV 1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

"FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

"ILO Scale" means the system for the classification of chest x-rays set forth in the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses (1980) as amended from time to time by the International Labour Office.

"Lung cancer" means a malignant tumor located inside of the lungs, but such term does not include an asbestos claim based upon mesothelioma.

"Mesothelioma" means a malignant tumor with a primary site in the pleura or the peritoneum, which has been diagnosed by a Board-certified pathologist using standardized and accepted criteria of microscopic morphology and/or appropriate staining techniques.

"Noneconomic loss" means subjective, non-monetary loss resulting from physical impairment, including pain, suffering, inconvenience, mental anguish, emotional distress, disfigurement, loss of society and companionship, loss of consortium, injury to reputation, or any other nonpecuniary loss of any kind or nature.

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

"Nonsmoker" means the exposed person has not smoked cigarettes or used any other tobacco products within the last 15 years.

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

"Predicted lower limit of normal" for any test means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA Guides to the Evaluation of Permanent Impairment.

"Qualified physician" means a medical doctor who:

1. Is a Board-certified internist, oncologist, pathologist, pulmonary specialist, radiologist, or specialist in occupational and environmental medicine;

2. Has conducted a physical examination of the exposed person;

3. Is actually treating or treated the exposed person, and has or had a doctor-patient relationship with such person;

4. Spends no more than 10% of his 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 20% of their revenues from providing such services;

5. Is currently licensed to practice and actively practices in the state where the plaintiff resides or where the plaintiff's civil action was filed; and

6. Receives or received payment for the treatment of the exposed person from that person, that person's health maintenance organization or other medical provider.

"Radiological evidence of asbestosis" means a quality 1 chest x-ray under the ILO System of classification (in a death case where no pathology is available, the necessary radiologic findings may be made with a quality 2 film if a quality 1 film is not available) showing small, irregular opacities (s, t, u) graded by a certified B-reader as at least 1/1 on the ILO scale.

"Radiological evidence of diffuse pleural thickening" means a quality 1 chest x-ray under the ILO System of classification (in a death case where no pathology is available, the necessary radiologic findings may be made with a quality 2 film if a quality 1 film is not available) showing bilateral pleural thickening of at least B2 on the ILO scale and blunting of at least one costophrenic angle.

"Silica" means a respirable crystalline form of silicon dioxide, including, but not limited to, alpha,

quartz, cristobalite, and trydinite.

"Silica-claim" means any 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 silica and any derivative claim made by or on behalf of any exposed person or any representative, spouse, parent, child or other relative of any exposed person. The term does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law.

"Silicosis" means nodular interstitial fibrosis of the lungs caused by inhalation of silica.

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

"State" means any state of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of the foregoing.

"Substantial contributing factor" means:

1. Exposure to asbestos or silica is the predominate cause of the physical impairment alleged in the claim;

2. The exposure to asbestos or silica took place on a regular basis over an extended period of time and in close proximity to the exposed person; and

3. A qualified physician has determined with a reasonable degree of medical certainty that the physical impairment of the exposed person would not have occurred but for the asbestos or silica exposures.

"Veterans' benefits program" means any program for benefits in connection with military service administered by the Veterans' Administration under Title 38, United States Code.

"Workers' compensation law" means a law respecting a program administered by a state or the United States 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. The term includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-944, 948-950), and Chapter 81 of Title 5, United States Code (known as the Federal Employees Compensation Act), but does not include the Act of April 22, 1908 (45 U.S.C. § 51 et seq.), popularly referred to as the "Federal Employers' Liability Act".

§ 8.01-249.5. Construction with other laws.

This act shall not be construed to affect the scope or operation of any workers' compensation law or veterans' benefit program, to affect the exclusive remedy or subrogation provisions of any such law, or to authorize any lawsuit that is barred by any such provision of law.

§ 8.01-374.1. Consolidation or bifurcation of issues or claims in certain cases; appeal.

A. In any circuit court in which there are pending more than forty civil actions against manufacturers or suppliers of asbestos or products for industrial use that contain asbestos in which recovery is sought for personal injury or wrongful death alleged to have been caused by exposure to asbestos or products for industrial use that contain asbestos, the court may order a joint hearing or trial by jury of any or all common questions of law or fact which are at issue in those actions. The court may order any or all the actions consolidated, unless the court finds consolidation would adversely affect the rights of the parties to a fair trial. The court may submit special interrogatories to the jury to resolve specific issues of fact, and may make such orders concerning proceedings therein consistent with the right of each of the parties to a fair trial as may be appropriate to avoid unnecessary costs, duplicative litigation or delay. A court may consolidate for trial any number and type of asbestos or silica claims with consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos or silica claims relating to the same exposed person and members of his or her household.

B. To further convenience or avoid prejudice in such consolidated hearings, when separate or bifurcated trials will be conducive to judicial economy, the court may order a separate or bifurcated trial of any claim, or any number of claims, cross-claims, counterclaims, third-party claims, or separate issues, always preserving the right of trial by jury. However, in any such bifurcated proceeding, the entitlement of an individual plaintiff to an award of punitive damages against any defendant shall not be determined unless compensatory damages have been awarded to that individual.

C. Any order entered pursuant to this section shall, for purposes of appeal, be an interlocutory order. Any findings of the court or jury in any bifurcated trial shall not be appealable until a final order adjudicating all issues on a specific claim or consolidated group of claims has been entered.

D. This section shall not apply to actions arising under Article 6 (§ 8.01-57 et seq.) of Chapter 3 of this title or the Federal Employers Liability Act (45 U.S.C. § 51 et seq.). In addition, this section shall not apply to any party defendant unless that defendant was a manufacturer of, or a supplier of, asbestos or products for industrial use that contain asbestos, at any of the times alleged in the motion for judgment.

428 2. This act shall apply to any civil action asserting an asbestos claim in which trial has not
429 commenced as of the date of the enactment of this act.