

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2495**

BY DELEGATES WESTFALL, KESSINGER, L. PACK AND

KEATON

[Passed March 31, 2021; in effect ninety days from passage.]

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1 AN ACT to amend and reenact §55-7G-4 of the Code of West Virginia, 1931, as amended, relating  
2 to the filing of asbestos and silica claims; providing that plaintiffs shall include a sworn  
3 information form with any asbestos or silica action filed after the effective date of the  
4 amendments to the Code; specifying the information to be included in a sworn information  
5 form; providing for the dismissal without prejudice of asbestos or silica actions filed against  
6 defendants whose product or premises have not been identified; and providing for the  
7 dismissal without prejudice of asbestos or silica actions for failure to comply with sworn  
8 information filing requirements.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 7G. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.**

**§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for claims; individual actions to be filed.**

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

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

12 (c) A plaintiff in an asbestos or silica action filed prior to the effective date of the  
13 amendments to this article enacted during the 2021 regular session of the Legislature shall also

14 include an information form with the complaint for nonmalignant conditions containing all of the  
15 following:

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

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

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

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

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

28 (6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this  
29 subsection.

30 (d) For any asbestos or silica action filed on or after the amendments to this article enacted  
31 during the 2021 regular session of the Legislature, a plaintiff shall file within 60 days of filing any  
32 complaint a sworn information form that specifies the evidence that provides the basis for each  
33 claim against each defendant. The sworn information form shall include all of the following with  
34 specificity:

35 (1) The name, address, date of birth, marital status, occupation, smoking history, current  
36 and past worksites, and current and past employers of the exposed person, and any person  
37 through which the exposed person alleges exposure;

38 (2) Each person through whom the exposed person was exposed to asbestos or silica and  
39 the exposed person's relationship to each such person;

40 (3) Each asbestos-containing or silica-containing product to which the person was  
41 exposed and each physical location at which the person was exposed to asbestos or silica, or the  
42 other person was exposed if exposure was through another person;

43 (4) The identity of the manufacturer or seller of the specific asbestos or silica product for  
44 each exposure;

45 (5) The specific location and manner of each exposure, including for any person through  
46 whom the exposed person was exposed;

47 (6) The beginning and ending dates of each exposure and the frequency of the exposure,  
48 including for any person through whom the exposed person was exposed;

49 (7) The specific asbestos-related or silica-related disease claimed to exist; and

50 (8) Any supporting documentation relating to the information required under this section.

51 (e) Plaintiffs have a continuing duty to supplement the information that is required to be  
52 disclosed in this section.

53 (f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action  
54 without prejudice as to any defendant whose product or premises is not identified in the required  
55 disclosures set forth in subsection (d) of this section.

56 (g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action  
57 without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection  
58 (d) this section.

59 (h) Asbestos and silica actions must be individually filed. No asbestos or silica action filed  
60 on or after the effective date of this article shall be permitted on behalf of a group or class of  
61 plaintiffs.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

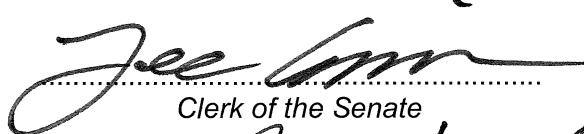
  
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Chairman, House Committee

  
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Chairman, Senate Committee

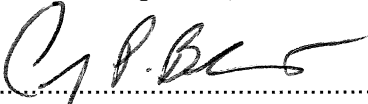
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

The within is approved this the 15<sup>th</sup>  
day of April, 2021.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 07 2021

Time 10:13am