

BILL ANALYSIS

Senate Research Center

S.B. 8
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DIGEST AND PURPOSE

Current law permits an asbestos claim to be placed in the civil court system like any other civil claim. It is estimated that over half of the 200,000 asbestos claims pending in the United States have been filed in Texas courts.

S.B. 8 creates a new chapter in the Civil Practices and Remedies Code for civil claims relating to asbestos litigation. This bill establishes an inactive docket for unimpaired claims, establishes objective medical criteria for determining actual impairment, and gives trial preference to asbestos claims involving malignant conditions caused by asbestos exposure.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Sections 90.051 and 90.058, Civil Practices and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Civil Practices and Remedies Code, by adding Chapter 90, as follows:

CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. Defines "active docket," "asbestosis," "certified B-reader," "chest x-ray," "claim," "claimant," "defendant," "FEV1," "FVC," "inactive docket," "independent expert," "ILO grade," "ILO scale," "mesothelioma," "office of court administration," "physician board-certified in internal medicine," "physician board-certified in occupational medicine," "physician board-certified in oncology," "physician board-certified in pathology," "physician board-certified in pulmonary medicine," and "pulmonary function testing."

Sec. 90.002. APPLICABILITY. Provides that this chapter applies to any claim alleging personal injury or death caused by exposure to asbestos fibers.

Sec. 90.003. NO CAUSE OF ACTION CREATED. Provides that this chapter does not create a cause of action.

[Reserves Sections 90.004-90.050 for expansion.]

SUBCHAPTER B. INACTIVE DOCKET

Sec. 90.051. INACTIVE DOCKET ESTABLISHED. (a) Requires the supreme court to establish an inactive docket for claims under this chapter. Requires the inactive docket to be administered by the office of court administration.

(b) Requires the supreme court, by rule, to establish procedures to implement the inactive docket according to this chapter.

Sec. 90.052. **LIMITATIONS TOLLED.** Provides that the limitations period for a claim assigned to the inactive docket under this subchapter is tolled as of the original date on which the petition and information form against each defendant named in the petition are filed under Section 90.054.

Sec. 90.053. **INACTIVE CLAIMS NOT SUBJECT TO DISCOVERY AND OTHER COURT ORDERS.** Provides that a claim on the inactive docket is not subject to any order of the trial court in which the claim was originally filed affecting active claims involving exposure to asbestos fibers, including discovery orders. Prohibits discovery from proceeding on an inactive claim until the claim is removed to the active docket as provided by this subchapter.

Sec. 90.054. **FILING A CLAIM; FILING FEE.** (a) Requires a claimant seeking recovery of damages for personal injury or death caused by exposure to asbestos fibers to file, in addition to the petition, an information form containing certain information.

(b) Requires each claimant to take certain actions.

(c) Prohibits a claim from being brought on behalf of a group or class of persons, and prohibits multiple claims from being joined unless each claimant files a petition and information form and pays the applicable filing fee.

(d) Requires the trial court, except as provided by Subsection (e), as soon as possible after the claim is filed, to send the appropriate cause number and a copy of the claimant's information form to the office of court administration for listing on the inactive docket.

(e) Requires the trial court to place a claim on the active docket if the claimant's petition and information form are accompanied by certain items.

(f) Requires the clerk of the court in which the claim is filed to forward one-half of the filing fee paid under this section to the comptroller of public accounts for deposit to the asbestos claims inactive docket account established under Subchapter C.

Sec. 90.055. **MOTION FOR REMOVAL TO ACTIVE DOCKET.** (a) Requires a claimant seeking to remove a claim from the inactive docket for placement on the active docket to file with the trial court in which the claim was originally filed a motion for removal.

(b) Requires the motion for removal to be accompanied by the documentation necessary to satisfy the criteria specified by Section 90.056.

(c) Requires the claimant, at the time of filing with the trial court, to serve the motion for removal and supporting documentation on each defendant named in the claimant's original petition.

(d) Requires a defendant who objects to the removal of the claim, not later than the 14th day after the date of service of the motion for removal and supporting documentation, to file an objection to removal with the trial court stating the reasons for the objection. Requires the objection to be served on the claimant and each other defendant.

(e) Provides that the filing by a defendant of an objection to removal and any documentation supporting the objection, or the defendant's appearance at a hearing ordered by the court in connection with an objection for removal, is not considered an appearance for purposes of establishing the court's jurisdiction over the defendant in the event the claim is removed to the active docket.

(f) Authorizes the claimant, not later than the 10th day after the date of service of the objection to removal, to file a response with the trial court. Requires the response to be served on each defendant.

(g) Authorizes a motion for removal to be filed simultaneously with the original petition and information form under Section 90.054.

Sec. 90.056. **CRITERIA FOR REMOVAL FOR NONMALIGNANCY.** (a) Authorizes a judge reviewing a motion for removal to remove a claim from the inactive docket and place it on the active docket of the trial court in which it was originally filed if the claimant shows by a preponderance of the evidence a diagnosis of impaired asbestosis or other specific, nonmalignant asbestos-related condition accompanied by a verifiable physical impairment substantially caused by the asbestos-related condition.

(b) Requires an impairment diagnosis under Subsection (a) to meet certain conditions.

(c) Provides for purposes of this section, meeting the objective criteria for generally accepted medical standards of impairment related to a reliable history of exposure to asbestos fibers requires at a minimum certain findings.

(d) Authorizes a claimant, if the pulmonary function testing results do not meet the requirements of Subsection (c)(2), to submit an additional report, by a physician licensed in this state and board-certified in pulmonary, internal, or occupational medicine, that states certain information.

(e) Authorizes the radiologic findings required by this section may be made with a quality 2 chest x-ray if a quality 1 chest x-ray is not available, if a claimant is deceased and no pathology is available.

Sec. 90.057. **REVIEW BY INDEPENDENT EXPERT.** (a) Requires the trial court, if a defendant objects to the motion for removal, to, not later than the 45th day after the date the motion for removal is filed, refer the medical report, test results, and other documentation submitted by the claimant, the defendant's objection to removal, and any other information directed by the court to an independent expert randomly selected from a list of experts published by the supreme court according to Section 90.058.

(b) Requires the costs of the expert to be paid by the objecting defendant if the expert determines the medical criteria for removal have been met or by the claimant if the expert determines the medical criteria for removal have not been met.

(c) Requires the independent experts to submit a report and recommendation to the court not later than the 10th day after the date the expert receives the information from the court. Authorizes the independent expert to perform pulmonary function testing to verify the information submitted by the claimant.

Sec. 90.058. **LIST OF INDEPENDENT EXPERTS.** (a) Requires the supreme court to publish a list of independent experts for the purpose of reviewing motions for removal filed under this subchapter.

(b) Requires a person, to be eligible for placement on the list of independent experts, to meet certain conditions.

(c) Requires the supreme court to distribute the list of independent experts to each district court in the state. Requires the supreme court to update the list at least annually.

(d) Requires the supreme court, by rule, to adopt a system for the random

selection of independent experts from the list.

Sec. 90.059. ORDER GRANTING OR DENYING MOTION FOR REMOVAL. (a) Requires the trial court, not later than the seventh day after the date the expert's report and recommendation are received, to issue an order granting or denying the motion for removal based on the opinion of the independent expert and the submissions of the parties.

(b) Authorizes the court, before issuing the order, to hold a hearing on its own motion or, in its discretion, on the motion of a party. Prohibits the decision of the court not to grant a request for a hearing from being appealed and does not constitute reversible error.

(c) Provides that if the court orders a claim removed from the inactive docket and placed on the active docket, any date, deadline, or other provision in a court order relating to claims on the active docket or in the Texas Rules of Civil Procedure applies as if the claim had been filed on the date of the court's order granting the motion for removal.

(d) Requires the court, if the trial court orders a claim removed from the inactive docket and placed on the court's active docket, to notify the office of court administration. Requires the office of court administration to remove the claim from its list of inactive claims upon receipt of such notification.

Sec. 90.060. ADMISSIBILITY OF CERTAIN INFORMATION. (a) Provides that the existence of an inactive docket, or the fact that a claim is or is not on an inactive docket, is not admissible in any proceeding for any purpose, except for a proceeding concerned with the removal of a claim from the inactive docket.

(b) Provides that the medical criteria established by this subchapter for removal of a claim from the inactive docket are established solely for the purpose of determining whether a claim may be removed to the active docket. Prohibits the fact that a claimant satisfies the medical criteria for removal of a claim from the inactive docket from being construed as an admission or determination that a person has a condition related to exposure to asbestos fibers. Prohibits the criteria used to determine whether a claim should be removed from being cited, referred to, or otherwise used in the trial of a claim for the purpose of determining whether a person has a condition related to exposure to asbestos fibers.

(c) Provides that an expert report submitted under Section 90.057 is solely for the purpose of determining whether a claim to be removed to the active docket and is inadmissible for any other purpose. Prohibits an independent expert from being compelled to testify at any hearing or trial for which the expert submitted a report under Section 90.057.

(d) Prohibits listing of a claim on an inactive docket from being construed as an admission by a claimant or person allegedly exposed to asbestos fibers that the claimant or person has not developed a condition related to exposure to asbestos fibers.

[Reserves Sections 90.061-90.100 for expansion.]

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 90.101. ASBESTOS CLAIMS INACTIVE DOCKET ACCOUNT. (a) Provides that the asbestos claims inactive docket account is an account in the general revenue fund.

(b) Provides that the account consists of money deposited to the account under Section 90.054, grants, gifts, and donations to the account, and interest earned on

money in the account.

(c) Authorizes the account to be appropriated only for purposes of administering this chapter.

(d) Provides that Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 90.102. DONATIONS. Authorizes the office of court administration to accept for the account established under Section 90.101 a donation, grant, or gift of any kind from any person for a purpose related to the administration of this chapter.

SECTION 2. Amends Section 23.101(a), Government Code, as amended by House Bill No. 3507, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(a) Adds to the list of certain hearings and trials given preference by trial courts of this state, a claim alleging personal injury caused by exposure to asbestos fibers if the basis for the claim is a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers, and the exposed person is still living.

SECTION 3. (a) Provides that, except as otherwise provided by this section, Chapter 90, Civil Practice and Remedies Code, as added by this Act, applies to all actions commenced on or after the effective date of this Act or pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

(b) Provides that Sections 90.057 and 90.058, as added by this Act, apply only to an action commenced on or after April 1, 2003. Requires the trial court, if a defendant objects to a motion for removal in an action commenced before that date, to issue an order granting or denying the motion based on the evidence presented by the parties.

(c) Provides that an action commenced before the effective date of this Act in which a trial, new trial, or retrial is in progress on the day before the effective date is governed by the applicable law in effect immediately before that date, and that law is continued in effect for that purpose.

(d) Requires the Supreme Court of Texas to establish the inactive docket, as required by Subchapter B, Chapter 90, Civil Practice and Remedies Code, as added by this Act, not later than the 60th day after the effective date of this Act.

(e) Requires the Supreme Court of Texas to publish the list of independent experts and adopt a system for the random selection of independent experts, as required by Subchapter B, Chapter 90, Civil Practice and Remedies Code, as added by this Act, not later than the 60th day after the effective date of this Act.

SECTION 4. (a) Requires a claimant, in an action to which Section 3(a)(2) of this Act applies, to file a notice of claim with the trial court in which the claim was originally filed for purposes of placing the claim on the inactive docket established under Subchapter B, Chapter 90, Civil Practice and Remedies Code, as added by this Act, unless the claim qualifies for the active docket as provided by Section 90.054(e), Civil Practice and Remedies Code, as added by this Act.

(b) Requires the notice of claim required under Subsection (a) of this section to identify the claimant, each defendant named in the original petition, and the cause number of the original claim. Requires the clerk of the court to send a copy of the notice of claim to the Office of Court Administration of the Texas Judicial System and to be treated in all respects as any other claim placed on the inactive docket established under Subchapter B, Chapter 90, Civil Practice and Remedies Code, as added by this Act.

(c) Requires the claimant, if a claimant to which this section applies did not pay the

applicable filing fee when the claim was originally filed, to pay the filing fee required by Section 51.317(b)(1), Government Code, with the notice of claim required under Subsection (a) of this section. Requires the clerk of the court to forward one-half of the fee to the comptroller of public accounts in accordance with Section 90.054(f), Civil Practice and Remedies Code, as added by this Act.

SECTION 5. Effective date: upon passage or November 1, 2003.