

BILL ANALYSIS

Senate Research Center

C.S.S.B. 8
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State Affairs
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Committee Report (Substituted)

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.

C.S.S.B. 8 creates a new chapter in the Civil Practice and Remedies Code for civil claims relating to asbestos litigation. This bill requires the supreme court to adopt rules to provide for the creation of an inactive docket for claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the supreme court in SECTION 1 (Section 90.002, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

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

CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS FIBERS OR OTHER MINERAL DUSTS

Sec. 90.001. CLAIMS. Provides that in this chapter, claims alleging personal injury or death are limited to claims alleging respiratory disease unless the basis for the claims is a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers or other mineral dusts.

Sec. 90.002. ADOPTION OF RULES BY SUPREME COURT. (a) Requires the supreme court to adopt rules to provide for the creation of an inactive docket for claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts.

(b) Requires the supreme court to adopt rules under this chapter on or before January 1, 2004.

Sec. 90.003. MANDATORY GUIDELINES. Requires rules adopted under Section 90.002 to comply with the mandatory guidelines established by this chapter.

Sec. 90.004. APPLICABILITY. (a) Requires rules adopted under this chapter to provide that the inactive docket procedure under this chapter does not apply to a claim alleging personal injury caused by exposure to asbestos fibers or other mineral dusts if the basis for the claim is a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers or other mineral dusts.

(b) Requires rules adopted under this chapter to provide for the preferential setting of hearings and trials for claims alleging personal injury caused by exposure to asbestos fibers or other mineral dusts if the basis for the claim is a diagnosis of

mesothelioma or other malignancy caused by exposure to asbestos fibers or other mineral dusts.

(c) Requires the inactive docket procedure adopted under this chapter to apply to claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts that meet certain conditions.

Sec. 90.005. **PLACEMENT ON THE INACTIVE DOCKET.** (a) Requires rules adopted under this chapter to provide that a claim alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts other than a claim described by Section 90.004(a) must be placed on the inactive docket when the claim is filed.

(b) Requires rules adopted under this chapter to provide that a claim may be removed from the inactive docket only if it meets the medical criteria for removal established under this chapter.

Sec. 90.006. **LIMITATIONS TOLLED.** Requires rules adopted under this chapter to provide that the limitations period for a claim assigned to the inactive docket must be tolled as of the original date on which the claim was filed.

Sec. 90.007. **DISCOVERY AND OTHER COURT ORDERS.** Requires rules adopted under this chapter to provide 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 or other mineral dusts, including discovery orders, and that discovery orders may not proceed on an inactive claim until the claim is removed to the active docket.

Sec. 90.008. **REMOVAL TO ACTIVE DOCKET.** (a) Requires rules adopted under this chapter to provide procedures for the removal of a claim from the inactive to the active docket on a showing that the claimant meets the medical criteria for removal established under this chapter. Requires the rules to assure a reasonable and adequate time for discovery and trial preparation consistent with the Texas Rules of Civil Procedure.

(b) Requires rules adopted under this chapter to establish medical criteria for removing a claim alleging exposure to asbestos fibers or other mineral dusts from the inactive to the active docket. Requires the rules to provide that a claim may only be removed on objective medical criteria indicating significant respiratory impairment caused to a reasonable degree of medical probability by exposure to the asbestos fiber, particular dust, or dusts in question. Requires the rules to provide that a claim shall be removed based on a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers or other mineral dusts.

(c) Requires rules adopted under this chapter to provide that in the event a defendant controverts the claimant's showing that the medical criteria for removal of a claim have been satisfied, an independent medical expert may be appointed by the trial court to review the claimant's chest x-ray, pulmonary function testing, medical reports, detailed medical history, occupational history, and history of exposure, diagnosis, and other information and make a recommendation to the trial court. Requires the rules to provide that the defendant bears the costs of the independent medical expert appointed under this subsection.

(d) Requires rules adopted under this chapter to provide that a physician who is currently licensed in this state and currently board certified in disease, oncology, pulmonary medicine, pathology, or internal medicine, and whose license or certification is not on inactive status, must perform the appropriate testing and physical examination and render the diagnosis necessary to support removal of a claim from the inactive to the active docket.

(e) Requires rules adopted under this chapter to provide that a currently certified B-reader shall perform all x-ray readings necessary to support removal of a claim from the inactive to the active docket.

Sec. 90.009. INACTIVE DOCKET INFORMATION. (a) Requires rules adopted under this chapter to provide for the collection and dissemination of information regarding all claims assigned to and removed from the inactive docket in each trial court in this state.

(b) Requires rules adopted under this chapter to provide that the information collected contain basic information about the claim, including the name of the claimant and the cause number.

(c) Requires rules adopted under this chapter to assure that the appropriate filing fee is or has been paid with respect to each individual claim to which this chapter applies. Requires the rules to also provide that a reasonable portion of the fee be used to support the administration of the inactive docket created by this chapter.

Sec. 90.010. BANKRUPTCY TRUSTS. Requires rules adopted under this chapter to provide that any claimant with a claim on an active or inactive docket in a trial in this state shall be eligible to participate in any bankruptcy trust established to compensate claimants alleging injury from exposure to asbestos fibers or other mineral dusts.

SECTION 2. (a) Effective date: upon passage or November 1, 2003.

(b) Provides that this Act applies to certain actions.