

BILL ANALYSIS

Senate Research Center
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, there is no specific state law relating to personal injury claims for asbestos exposure or silica exposure. It is the purpose of this Act to protect the right of people with asbestos-related and silica-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. The Act also aims to prevent scarce judicial and litigant resources from being misdirected by the claims of individuals who have been exposed to asbestos or silica, but have no functional or physical impairment from asbestos-related or silica-related disease.

As proposed, S.B. 15 creates a new chapter in the Civil Practice and Remedies Code addressing asbestos and silica claims.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court in SECTION 2 (Section 90.010, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. FINDINGS; PURPOSE. Sets forth legislative findings regarding asbestos and silica.

SECTION 2. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, as follows:

CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA

Sec. 90.001. DEFINITIONS. Defines "asbestos," "asbestos-related injury," "asbestosis," "certified B-reader," "chest x-ray," "claimant," "defendant," "exposed person," "FEV1," "FVC," "ILO system of classification," "mesothelioma," "nonmalignant asbestos-related injury," "nonmalignant silica-related injury," "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," "plethysmography," "pulmonary function testing," "report," "serve," "silica," "silica-related injury," and "silicosis."

Sec. 90.002. PULMONARY FUNCTION TESTING. Requires pulmonary function testing required by this chapter be performed under the supervision of and interpreted by a physician with specific qualifications.

Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING ASBESTOS-RELATED INJURY. (a) Requires a claimant asserting an asbestos-related injury to serve on each party certain specific information.

(b) Requires the detailed occupational and exposure history required by Subsection (a)(2)(A)(ii) to include all of the principal employments and other exposures of the exposed person involving exposures to airborne contaminants. Requires the history to indicate whether each employment involved exposure to airborne contaminants, including asbestos fibers and other disease-causing dusts,

that can cause pulmonary impairment and the nature, duration, and level of such exposure.

(c) Authorizes a claimant, if the pulmonary function test results do not meet the requirements of Subsection (a)(2)(D)(i) or (ii), to serve on each party a report by a physician board certified in specific fields and whose license and certification are not on inactive status verifying specific information relating to a physician-patient relationship, examinations and examination results, tests and test results, and diagnoses and conditions.

Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING SILICA-RELATED INJURY. (a) Requires a claimant asserting a silica-related injury to serve on each party certain specific information.

(b) Requires the detailed occupational and exposure history required by Subsection (a)(2)(A)(ii) to include all of the principal employments and other exposures of the exposed person involving exposures to airborne contaminants. Requires the history to indicate whether each employment involved exposure to airborne contaminants, including silica fibers and other disease-causing dusts, that can cause pulmonary impairment and the nature, duration, and level of such exposure. Requires all reports to meet objective criteria for generally accepted medical standards related to exposure to silica fibers.

Sec. 90.005. PROHIBITED BASIS FOR DIAGNOSIS. (a) Prohibits a physician, for purposes of this chapter, as the basis for a diagnosis, from relying on reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted.

(b) Provides that if a physician relies on any information in violation of Subsection (a), the physician's opinion or report does not comply with the requirements of this chapter.

Sec. 90.006. SERVING REPORTS. (a) Requires in a case filed on or after the date this chapter becomes law, except as provided by Subsections (b) and (c), a report prescribed by Section 90.003 or 90.004 to be served on each party no later than the 30th day after the date the party answers or otherwise enters an appearance in the action.

(b) Provides that in a case pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following the motion, appeal, or otherwise, commences on or before the 90th day after the date this chapter becomes law, a claimant is not required to serve a report on any party unless a mistrial, new trial, or retrial is subsequently granted or ordered.

(c) Requires a report to be served on all parties, in a case pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, on or before the 60th day before trial commences or the 180th day after the date this chapter becomes law.

Sec. 90.007. MOTION TO DISMISS. (a) Authorizes the defendant, if a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, to file a motion to dismiss the claimant's asbestos-related claims or silica-related claims, as applicable. Requires the motion to be filed on or before the 30th day after the date the report is served on the defendant. Requires the motion to be filed on or before the date the report was required to be served on the defendant under Section 90.006, if a claimant fails to serve a report on the defendant.

(b) Authorizes a claimant to file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. Authorizes a report required by Section 90.003 or 90.004, to be filed, amended, or supplemented within the time required for responding to a motion to dismiss. Provides that the service of an amended or supplemental report does not require the filing of an additional motion to dismiss if the reasons stated in the original motion to dismiss are sufficient to require dismissal under this chapter.

(c) Requires the court, if the trial court is of the opinion that a motion to dismiss is meritorious, to by written order, grant the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims against the defendant. Provides that a dismissal under this section is without prejudice to the claimant's right, if any, to assert claims for an asbestos-related injury or a silica-related injury in a subsequent action.

(d) Provides that all further proceedings in the case are stayed until the motion is heard and determined by the trial court, on the filing of a motion to dismiss under this section.

(e) Authorizes the trial court to extend the time limits provided in this section for filing or serving motions, responses, or reports, on the motion of a party showing good cause.

Sec. 90.008. VOLUNTARY DISMISSAL. Authorizes a claimant seeking damages arising from an asbestos-related injury or silica-related injury, before serving a report required by Section 90.003 or 90.004, to voluntarily dismiss the claimant's action. Provides that if a claimant files a voluntary dismissal under this section, the claimant's voluntary dismissal is without prejudice to the claimant's right to file subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

Sec. 90.009. JOINDER OF CLAIMANTS. Prohibits claims relating to more than one exposed person, from being joined for a single trial, unless all parties agree otherwise.

Sec. 90.010. SUPREME COURT RULEMAKING. Authorizes the supreme court to promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related actions or silica-related actions if the rules are consistent with Section 90.009.

SECTION 3. Amends Section 16.003(a), Civil Practice and Remedies Code, to require a person to bring suit for trespass for injury to the estate, except as provided by Section 16.0031.

SECTION 4. Amends Subchapter A, Chapter 16, Civil Practice and Remedies Code, by adding Section 16.0031, as follows:

Sec. 16.0031. ASBESTOS-RELATED OR SILICA-RELATED INJURIES. (a) Provides that in an action for personal injury or death resulting from an asbestos-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the date of the exposed person's death or the date that the claimant serves a report complying with Section 90.003.

(b) Provides that in an action for personal injury or death resulting from a silica-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the date of the exposed person's death or the date that the claimant serves a report complying with Section 90.004.

SECTION 5. Amends Section 51.014(a), Civil Practice and Remedies Code, to authorize a person to appeal from an interlocutory order of a district court, county court at law, or county court that denies a motion to dismiss filed under Section 90.007.

SECTION 6. Amends Section 22.225(d), Government Code, to provide that a petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(11), Civil Practice and Remedies Code.

SECTION 7. Amends Subchapter E, Chapter 21, Insurance Code, by adding Article 21.53X, as follows:

Art. 21.53X. PROHIBITED PRACTICES RELATED TO EXPOSURE TO ASBESTOS OR SILICA. (a) Defines "health benefit plan."

(b) Provides that this article applies to any entity that offers a health benefit plan or an annuity or life insurance policy or contract.

(c) Prohibits an entity that offers a health benefit plan or an annuity or life insurance policy or contract from using the fact of a person's exposure to asbestos fibers or silica or the person's filing of a claim governed by Chapter 90, Civil Practice and Remedies Code, as the basis for certain punitive actions, that adversely affect the person's eligibility for or coverage under the health benefit plan.

SECTION 8. (a) Makes application of rules adopted by the supreme court under Subchapter H, Chapter 74, Government Code, prospective.

(b) Makes application of Sections 90.009 and 16.0031, Civil Practice and Remedies Code, as added by this Act, prospective.

(c) Makes application of Article 21.53X, Insurance Code, as added by this Act, prospective.

SECTION 9. Effective date: upon passage or September 1, 2005.