

BILL ANALYSIS

C.S.H.B. 47
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Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law permits an asbestos claim to be placed in the civil court system like any other civil claim. A large number of asbestos claims pending in the United States have been filed in Texas courts.

C.S.H.B. 47 creates a new chapter in the Civil Practices and Remedies Code for civil claims relating to asbestos or other mineral dust exposure. This bill establishes mandatory guidelines and directs the Supreme Court to adopt rules for the creation of an inactive docket for unimpaired asbestos or other mineral dust claims. The primary purpose of the inactive docket is to conserve limited financial resources for the most seriously ill claimants and preserve all exposure claims until such time as the claimant becomes truly impaired. If litigation continues on the current path unchecked, ongoing bankruptcies would mean there may be no financial resources left for impaired claimants in the future.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Section 90.001, Civil Practices and Remedies Code) of this bill.

ANALYSIS

Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, CLAIMS INVOLVING EXPOSURE TO ASBESTOS FIBERS OR OTHER MINERAL DUSTS.

Requires the Supreme Court of Texas to adopt rules to provide for the creation of an inactive docket for claims alleging personal injury or death caused by exposure to asbestos or other mineral dusts. The Supreme Court is required to establish procedures for the administration and implementation of the inactive docket subject to certain mandatory guidelines.

The rules must provide that claimants suffering from mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers, who are still living, would bypass the inactive docket and receive preferential, accelerated trial settings to ensure prompt resolution.

The rules must provide that all claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts (other than a diagnosis of mesothelioma or malignancy allegedly caused by asbestos when the claimant is still living) are placed on the inactive docket when filed.

The rules must provide that a claim may be removed from the inactive docket only if certain medical criteria for nonmalignant claims is met.

Requires that the rules must toll the statute of limitations as of the original date on which the claim was filed. The rules must provide that a claim on the inactive docket is not subject to discovery or other court order of the trial court affecting active claims.

Rules adopted must establish procedures to remove claims from the inactive to the active docket on a showing of certain medical criteria. The rules must assure a reasonable and adequate time for discovery

and trial preparation consistent with Texas Rules of Civil Procedure. The medical criteria for removing a claim alleging exposure to asbestos fibers from the inactive to the active docket must be no less stringent than the impairment standards adopted in February 2003 by the American Bar Association for nonmalignant claims. The medical criteria for claims related to other mineral dusts must be based on objective medical criteria indicating significant respiratory impairment caused to a reasonable degree of medical probability by exposure to the particular dust or dusts in question.

The rules adopted must 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 medical reports, detailed medical and occupational history, and other information and make a recommendation to the trial court.

The rules must provide that the medical criteria required for removal be completed by a physician with the appropriate Texas board certification in occupational disease, oncology, pulmonary medicine, pathology, or internal medicine. The rules must also provide that all x-ray readings necessary be performed by a certified B-reader.

The rules must 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. The rules must ensure that the appropriate filing fee is paid and that a reasonable portion of the fee be used to support the administration of the inactive docket.

The rules must provide that any claimant with a claim on the active or inactive docket is eligible to participate in any bankruptcy trust established to compensate claimants alleging injury from exposure to asbestos fibers or other mineral dusts.

Provides that the Act applies to all actions: (1) commenced on or after the effective date; or (2) 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 the effective date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect November 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by requiring the Texas Supreme Court to promulgate rules for the creation and operation of an inactive docket for claims alleging personal injury or death caused by exposure to asbestos fibers or other mineral dusts. C.S.H.B. 47 establishes certain guidelines including that the medical criteria must be no less stringent than the American Bar Association's February 2003 impairment standards for nonmalignant asbestos claims. Details related to court procedures are left to the court to promulgate, within mandatory guidelines.