

By: Nixon

H.B. No. 47

Substitute the following for H.B. No. 47:

By: Hartnett

C.S.H.B. No. 47

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos or other mineral dusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 90 to read as follows:

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

Sec. 90.001. ADOPTION OF RULES BY SUPREME COURT. (a) The supreme court shall 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) The supreme court shall adopt rules under this chapter on or before November 1, 2003.

Sec. 90.002. MANDATORY GUIDELINES. Rules adopted under Section 90.001 must comply with the mandatory guidelines established by this chapter.

Sec. 90.003. APPLICABILITY. (a) Rules adopted under this chapter must provide that the inactive docket procedure under this chapter does not apply to 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.

(b) Rules adopted under this chapter must provide for the

1 preferential setting of hearings and trials for claims alleging
2 personal injury caused by exposure to asbestos fibers if the basis
3 for the claim is a diagnosis of mesothelioma or other malignancy
4 caused by exposure to asbestos fibers and the exposed person is
5 still living.

6 (c) The inactive docket procedure adopted under this
7 chapter must apply to claims alleging personal injury or death
8 caused by exposure to asbestos fibers or other mineral dusts that
9 are:

10 (1) commenced on or after the effective date of this
11 chapter; or

12 (2) pending on that effective date and in which the
13 trial, or any new trial or retrial following motion, appeal, or
14 otherwise, begins on or after that effective date.

15 Sec. 90.004. PLACEMENT ON THE INACTIVE DOCKET. (a) Rules
16 adopted under this chapter must provide that a claim alleging
17 personal injury or death caused by exposure to asbestos fibers or
18 other mineral dusts other than a claim described by Section
19 90.003(a) must be placed on the inactive docket when the claim is
20 filed.

21 (b) Rules adopted under this chapter must provide that a
22 claim may be removed from the inactive docket only if it meets the
23 medical criteria for nonmalignant claims established under this
24 chapter.

25 Sec. 90.005. LIMITATIONS TOLLED. Rules adopted under this
26 chapter must provide that the limitations period for a claim
27 assigned to the inactive docket must be tolled as of the original

1 date on which the claim was filed.

2 Sec. 90.006. DISCOVERY AND OTHER COURT ORDERS. Rules
3 adopted under this chapter must provide that a claim on the inactive
4 docket is not subject to any order of the trial court in which the
5 claim was originally filed affecting active claims involving
6 exposure to asbestos fibers or other mineral dusts, including
7 discovery orders, and that discovery may not proceed on an inactive
8 claim until the claim is removed to the active docket.

9 Sec. 90.007. REMOVAL TO ACTIVE DOCKET. (a) Rules adopted
10 under this chapter must provide procedures for the removal of a
11 claim from the inactive to the active docket on a showing that the
12 claimant meets the medical criteria for removal established under
13 this chapter. The rules must assure a reasonable and adequate time
14 for discovery and trial preparation consistent with the Texas Rules
15 of Civil Procedure.

16 (b) Rules adopted under this chapter must provide that the
17 medical criteria for removing a claim alleging exposure to asbestos
18 fibers from the inactive to the active docket shall be no less
19 stringent than the impairment standards adopted in February 2003 by
20 the American Bar Association for nonmalignant claims.

21 (c) Rules adopted under this chapter must establish medical
22 criteria for removing a claim alleging exposure to other mineral
23 dusts from the inactive to the active docket. The rules must provide
24 that a claim may only be removed based on objective medical criteria
25 indicating significant respiratory impairment caused to a
26 reasonable degree of medical probability by exposure to the
27 particular dust or dusts in question.

1 (d) Rules adopted under this chapter must provide that in
2 the event a defendant controverts the claimant's showing that the
3 medical criteria for removal of a claim have been satisfied, an
4 independent medical expert may be appointed by the trial court to
5 review the claimant's chest x-rays, pulmonary function testing,
6 medical reports, detailed medical history, occupational history,
7 and history of exposure, diagnosis, and other information and make
8 a recommendation to the trial court.

9 (e) Rules adopted under this chapter must provide that a
10 physician with the appropriate Texas board certification in
11 occupational disease, oncology, pulmonary medicine, pathology, or
12 internal medicine must perform the appropriate testing and physical
13 examination and render the diagnosis necessary to support removal
14 of a claim from the inactive to the active docket.

15 (f) Rules adopted under this chapter must provide that a
16 currently certified B-reader shall perform all x-ray readings
17 necessary to support removal of a claim from the inactive to the
18 active docket.

19 Sec. 90.008. INACTIVE DOCKET INFORMATION. (a) Rules
20 adopted under this chapter must provide for the collection and
21 dissemination of information regarding all claims assigned to and
22 removed from the inactive docket in each trial court in this state.

23 (b) Rules adopted under this chapter must provide that the
24 information collected contain basic information about the claim,
25 including the name of the claimant and the cause number.

26 (c) Rules adopted under this chapter must assure that the
27 appropriate filing fee is or has been paid with respect to each

1 individual claim to which this chapter applies. The rules must also
2 provide that a reasonable portion of the fee be used to support the
3 administration of the inactive docket created by this chapter.

4 Sec. 90.009. BANKRUPTCY TRUSTS. Rules adopted under this
5 chapter must provide that any claimant with a claim on an active or
6 inactive docket in a trial court in this state shall be eligible to
7 participate in any bankruptcy trust established to compensate
8 claimants alleging injury from exposure to asbestos fibers or other
9 mineral dusts.

10 SECTION 2. (a) This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect November 1, 2003.

15 (b) This Act applies to all actions:

16 (1) commenced on or after the effective date of this
17 Act; or

18 (2) pending on that effective date and in which the
19 trial, or any new trial or retrial following motion, appeal, or
20 otherwise, begins on or after that effective date.