

By: Nixon

H.B. No. 47

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos.

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Active docket" means a trial court's regular trial docket, established in accordance with Chapter 23, Government Code, and other applicable law.

(2) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(3) "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and whose NIOSH certification is current.

(4) "Chest x-ray" means chest films that are taken in accordance with all applicable state and federal regulatory standards and in the following two views: posterior-anterior, and lateral.

(5) "Claim" means a civil action seeking recovery of damages for an alleged personal injury or death caused by exposure to asbestos fibers.

1 (6) "Claimant" means a party seeking recovery of
2 damages for a claim, including a plaintiff, counterclaimant,
3 cross-claimant, or third-party plaintiff. In a suit in which a
4 party seeks recovery of damages for personal injury or death of
5 another person, "claimant" includes both that other person and the
6 party seeking recovery of damages.

7 (7) "Defendant" means a party from whom the claimant
8 seeks recovery of damages.

9 (8) "FEV1" means forced expiratory volume in the first
10 second, which is the maximal volume of air expelled in one second
11 during performance of simple spirometric tests.

12 (9) "FVC" means forced vital capacity, which is the
13 maximal volume of air expired with maximum effort from a position of
14 full inspiration.

15 (10) "Inactive docket" means the docket established
16 under Subchapter B for a claim.

17 (11) "Independent expert" is an expert appointed to
18 examine a contested motion to remove under Section 90.057.

19 (12) "ILO grade" means the radiological ratings of the
20 International Labor Office set forth in "Guidelines for the Use of
21 ILO International Classification of Radiographs of Pneumoconioses"
22 (1980), as amended.

23 (13) "ILO scale" means the system for the
24 classification of chest x-rays set forth in the International Labor
25 Office's "Guidelines for the Use of ILO International
26 Classification of Radiographs of Pneumoconioses" (1980), as
27 amended.

1 (14) "Mesothelioma" means a rare and fatal form of
2 cancer caused by exposure to asbestos in which the cancer invades
3 cells in the membranes lining:

4 (A) the lungs and chest cavity, the pleural
5 region; or

6 (B) the abdominal cavity, the peritoneal region.

7 (15) "Office of court administration" means the Office
8 of Court Administration of the Texas Judicial System.

9 (16) "Physician board-certified in internal medicine"
10 means a physician who is certified by the American Board of Internal
11 Medicine or the American Osteopathic Board of Internal Medicine.

12 (17) "Physician board-certified in occupational
13 medicine" means a physician who is certified in the subspecialty of
14 occupational medicine by the American Board of Internal Medicine or
15 the American Osteopathic Board of Internal Medicine.

16 (18) "Physician board-certified in oncology" means a
17 physician who is certified in the subspecialty of medical oncology
18 by the American Board of Internal Medicine or the American
19 Osteopathic Board of Internal Medicine.

20 (19) "Physician board-certified in pathology" means a
21 physician who holds primary certification in anatomic pathology or
22 clinical pathology from the American Board of Pathology or the
23 American Osteopathic Board of Internal Medicine and whose
24 professional practice:

25 (A) is principally in the field of pathology; and

26 (B) involves regular evaluation of pathology
27 materials obtained from surgical or postmortem specimens.

1 (20) "Physician board-certified in pulmonary
2 medicine" means a physician who is certified in the subspecialty of
3 pulmonary medicine by the American Board of Internal Medicine or
4 the American Osteopathic Board of Internal Medicine.

5 (21) "Pulmonary function testing" means spirometry,
6 lung volume testing, and diffusing capacity testing, performed
7 using equipment, methods of calibration, and technique that meet:

8 (A) the criteria incorporated in the American
9 Medical Association Guides to the Evaluation of Permanent
10 Impairment (5th Ed.) and reported as set forth in 20 C.F.R. Part
11 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F); and

12 (B) the interpretative standards set forth in the
13 Official Statement of the American Thoracic Society entitled "Lung
14 Function Testing: Selection of Reference Values and Interpretative
15 Strategies," as published in 144 American Review of Respiratory
16 Disease 1202-1218 (1991) and 152 American Journal of Respiratory
17 and Critical Care Medicine 1107-1136; 2185-2198 (1995). Pulmonary
18 function testing must be performed under the supervision of and
19 interpreted by a physician who is licensed in this state and
20 board-certified in pulmonary medicine. Each subject must be tested
21 with and without inhaled bronchodilators, with the best values
22 taken. Predicted values for spirometry and lung volume shall be
23 those published by Morris, Clinical Pulmonary Function Testing, 2nd
24 Edition, Intermountain Thoracic Society (1984). Predicted values
25 for diffusing capacity shall be those published by Miller et al.,
26 127 American Review of Respiratory Disease 270-277 (1983), and
27 shall take appropriate account of smoking history or exposure to

1 silica.

2 Sec. 90.002. APPLICABILITY. This chapter applies to any
3 claim alleging personal injury or death caused by exposure to
4 asbestos fibers.

5 Sec. 90.003. NO CAUSE OF ACTION CREATED. This chapter does
6 not create a cause of action.

7 [Sections 90.004-90.050 reserved for expansion]

8 SUBCHAPTER B. INACTIVE DOCKET

9 Sec. 90.051. INACTIVE DOCKET ESTABLISHED. (a) The supreme
10 court shall establish an inactive docket for claims under this
11 chapter. The inactive docket shall be administered by the office of
12 court administration.

13 (b) The supreme court by rule shall establish procedures to
14 implement the inactive docket according to this chapter.

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

20 Sec. 90.053. INACTIVE CLAIMS NOT SUBJECT TO DISCOVERY AND
21 OTHER COURT ORDERS. A claim on the inactive docket is not subject
22 to any order of the trial court in which the claim was originally
23 filed affecting active claims involving exposure to asbestos
24 fibers, including discovery orders. Discovery may not proceed on
25 an inactive claim until the claim is removed to the active docket as
26 provided by this subchapter.

27 Sec. 90.054. FILING A CLAIM; FILING FEE. (a) A claimant

1 seeking recovery of damages for personal injury or death caused by
2 exposure to asbestos fibers shall file, in addition to the
3 petition, an information form containing the following
4 information:

5 (1) the claimant's name, address, date of birth,
6 social security number, and marital status;

7 (2) if the claimant is not the person whose alleged
8 exposure to asbestos fibers gave rise to the claim, the person's
9 name, address, date of birth, social security number, and marital
10 status, the claimant's relationship to the person, and, if the
11 person is deceased, the names of any survivors of the person;

12 (3) the beginning and ending dates of the alleged
13 exposure to asbestos products; and

14 (4) the specific asbestos-related condition claimed
15 to exist.

16 (b) Each claimant shall:

17 (1) file a petition and information form required by
18 this section; and

19 (2) pay the filing fee required by Section
20 51.317(b)(1), Government Code.

21 (c) A claim may not be brought on behalf of a group or class
22 of persons, and multiple claims may not be joined unless each
23 claimant files a petition and information form and pays the
24 applicable filing fee.

25 (d) Except as provided by Subsection (e), as soon as
26 possible after the claim is filed, the trial court shall send the
27 appropriate cause number and a copy of the claimant's information

1 form to the office of court administration for listing on the
2 inactive docket.

3 (e) The trial court shall place a claim on the active docket
4 if the claimant's petition and information form are accompanied by:

5 (1) a statement by a physician board-certified in
6 internal medicine, oncology, pulmonary medicine, or pathology
7 indicating a diagnosis of pleural or peritoneal mesothelioma; or

8 (2) a written diagnosis of cancer demonstrated by:

9 (A) a medical report showing the diagnosis as a
10 primary cancer; and

11 (B) a signed report:

12 (i) certified by a physician
13 board-certified in internal medicine, oncology, pulmonary
14 medicine, or pathology; and

15 (ii) stating to a reasonable degree of
16 medical probability that exposure to asbestos fibers was a
17 producing cause of the diagnosed cancer.

18 (f) The clerk of the court in which the claim is filed shall
19 forward one-half of the filing fee paid under this section to the
20 comptroller for deposit to the asbestos claims inactive docket
21 account established under Subchapter C.

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

26 (b) The motion for removal must be accompanied by the
27 documentation necessary to satisfy the criteria specified by

1 Section 90.056.

2 (c) At the time of filing with the trial court, the claimant
3 shall serve the motion for removal and supporting documentation on
4 each defendant named in the claimant's original petition.

5 (d) Not later than the 14th day after the date of service of
6 the motion for removal and supporting documentation, a defendant
7 who objects to the removal of the claim must file an objection to
8 removal with the trial court stating the reasons for the objection.
9 The objection shall be served on the claimant and each other
10 defendant.

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

17 (f) Not later than the 10th day after the date of service of
18 the objection to removal, the claimant may file a response with the
19 trial court. The response must be served on each defendant.

20 (g) A motion for removal may be filed simultaneously with
21 the original petition and information form under Section 90.054.

22 Sec. 90.056. CRITERIA FOR REMOVAL FOR NONMALIGNANCY.

23 (a) A judge reviewing a motion for removal may remove a claim from
24 the inactive docket and place it on the active docket of the trial
25 court in which it was originally filed if the claimant shows by a
26 preponderance of the evidence a diagnosis of impaired asbestosis or
27 other specific, nonmalignant asbestos-related condition

1 accompanied by a verifiable physical impairment substantially
2 caused by the asbestos-related condition.

3 (b) An impairment diagnosis under Subsection (a) must:

4 (1) be demonstrated by a medical report certified by a
5 physician licensed in this state and board-certified in internal,
6 occupational, or pulmonary medicine;

7 (2) be based on objective criteria of generally
8 accepted medical standards related to impairment due to a reliable
9 history of exposure to asbestos fibers; and

10 (3) include a physical examination of the claimant by
11 the physician rendering the diagnosis that sets forth:

12 (A) a detailed medical history that includes a
13 thorough review of the claimant's past and present medical status
14 and nonoccupational causes of lung and pleural changes and that
15 documents the claimant's smoking history; and

16 (B) a reliable history of exposure:

17 (i) that includes a detailed occupational
18 and exposure history taken from the claimant by the physician
19 rendering the diagnosis, or, if the claimant is deceased, by the
20 person most knowledgeable about those histories, including all
21 known trades and all principal places of employment for the
22 claimant involving airborne contaminants; and

23 (ii) that indicates whether each employment
24 involved exposures to airborne contaminants, including asbestos
25 fibers and other disease-causing dusts, that can cause pulmonary
26 impairment, and indicates the nature, duration, and level of any
27 such exposure.

1 (c) For purposes of this section, meeting the objective
2 criteria for generally accepted medical standards of impairment
3 related to a reliable history of exposure to asbestos fibers
4 requires at a minimum:

5 (1)(A) a quality 1 chest x-ray that, in the opinion of
6 a certified B-reader, shows bilateral small irregular opacities (s,
7 t, or u) graded 1/0 or higher or bilateral diffuse pleural
8 thickening graded b2 or higher including blunting of the
9 costophrenic angle; or

10 (B) pathological asbestosis graded 1(B) or
11 higher under the criteria published in "Asbestos-Associated
12 Diseases," 106 Archive of Pathology and Laboratory Medicine 11,
13 Appendix 3 (October 8, 1982); and

14 (2) pulmonary function testing that demonstrates
15 either:

16 (A) forced vital capacity (FVC) below the lower
17 limit of normal and FEV1/FVC ratio (using actual values) at or above
18 the lower limit of normal; or

19 (B) total lung capacity, by plethysmography or
20 timed gas dilution, below the lower limit of normal.

21 (d) If the pulmonary function testing results do not meet
22 the requirements of Subsection (c)(2), a claimant may submit an
23 additional report, by a physician licensed in this state and
24 board-certified in pulmonary, internal, or occupational medicine,
25 that states that:

26 (1) the physician has a physician-patient
27 relationship with the claimant;

1 (2) the claimant has a quality 1 chest x-ray that has
2 been read by a certified B-reader according to the ILO system of
3 classification as showing bilateral small irregular opacities (s,
4 t, or u) graded 2/1 or higher;

5 (3) the claimant has restrictive impairment from
6 asbestosis and sets forth in detail the specific pulmonary function
7 test findings that the physician is relying upon to establish that
8 the claimant has restrictive impairment;

9 (4) the physician shall submit the reports and
10 readouts from all pulmonary function, lung volume, diffusing
11 capacity, or other testing relied upon for the report's
12 conclusions, provided that such tests comply with equipment,
13 quality, and reporting standards established by this chapter; and

14 (5) the physician's conclusion that the claimant's
15 medical findings and impairment were not more probably the result
16 of other causes revealed by the claimant's employment and medical
17 history.

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

21 Sec. 90.057. REVIEW BY INDEPENDENT EXPERT. (a) If a
22 defendant objects to the motion for removal, the trial court, not
23 later than the 45th day after the date the motion for removal is
24 filed, shall refer the medical report, test results, and other
25 documentation submitted by the claimant, the defendant's objection
26 to removal, and any other information directed by the court to an
27 independent expert randomly selected from a list of experts

1 published by the supreme court according to Section 90.058.

2 (b) The costs of the expert shall be paid:

3 (1) by the objecting defendant if the expert
4 determines the medical criteria for removal have been met; or

5 (2) by the claimant if the expert determines the
6 medical criteria for removal have not been met.

7 (c) The independent experts shall submit a report and
8 recommendation to the court not later than the 10th day after the
9 date the expert receives the information from the court. The
10 independent expert may perform pulmonary function testing to verify
11 the information submitted by the claimant.

12 Sec. 90.058. LIST OF INDEPENDENT EXPERTS. (a) The supreme
13 court shall publish a list of independent experts for the purpose of
14 reviewing motions for removal filed under this subchapter.

15 (b) To be eligible for placement on the list of independent
16 experts, a person must:

17 (1) be a physician licensed in this state;
18 (2) be board-certified in internal medicine,
19 occupational medicine, or pulmonary medicine; and
20 (3) be actively and primarily practicing medicine in a
21 field directly related to the physician's board certification.

22 (c) The supreme court shall distribute the list of
23 independent experts to each district court in the state. The
24 supreme court shall update the list at least annually.

25 (d) The supreme court by rule shall adopt a system for the
26 random selection of independent experts from the list.

27 Sec. 90.059. ORDER GRANTING OR DENYING MOTION FOR REMOVAL.

1 (a) Not later than the seventh day after the date the expert's
2 report and recommendation are received, the trial court shall issue
3 an order granting or denying the motion for removal based on the
4 opinion of the independent expert and the submissions of the
5 parties.

6 (b) Before issuing the order, the court may hold a hearing
7 on its own motion or, in its discretion, on the motion of a party.
8 The decision of the court not to grant a request for a hearing may
9 not be appealed and does not constitute reversible error.

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

16 (d) If the trial court orders a claim removed from the
17 inactive docket and placed on the court's active docket, the court
18 shall notify the office of court administration. Upon receipt of
19 such notification, the office of court administration shall remove
20 the claim from its list of inactive claims.

21 Sec. 90.060. ADMISSIBILITY OF CERTAIN INFORMATION.

22 (a) The existence of an inactive docket, or the fact that a claim
23 is or is not on an inactive docket, is not admissible in any
24 proceeding for any purpose, except for a proceeding concerned with
25 the removal of a claim from the inactive docket.

26 (b) The medical criteria established by this subchapter for
27 removal of a claim from the inactive docket are established solely

1 for the purpose of determining whether a claim may be removed to the
2 active docket. The fact that a claimant satisfies the medical
3 criteria for removal of a claim from the inactive docket may not be
4 construed as an admission or determination that a person has a
5 condition related to exposure to asbestos fibers. The criteria
6 used to determine whether a claim should be removed may not be
7 cited, referred to, or otherwise used in the trial of a claim for
8 the purpose of determining whether a person has a condition related
9 to exposure to asbestos fibers.

10 (c) An expert report submitted under Section 90.057 is
11 solely for the purpose of determining whether a claim may be removed
12 to the active docket and is inadmissible for any other purpose. An
13 independent expert may not be compelled to testify at any hearing or
14 trial for which the expert submitted a report under Section 90.057.

15 (d) Listing of a claim on an inactive docket may not be
16 construed as an admission by a claimant or person allegedly exposed
17 to asbestos fibers that the claimant or person has not developed a
18 condition related to exposure to asbestos fibers.

19 [Sections 90.061-90.100 reserved for expansion]

20 SUBCHAPTER C. FINANCIAL PROVISIONS

21 Sec. 90.101. ASBESTOS CLAIMS INACTIVE DOCKET ACCOUNT.

22 (a) The asbestos claims inactive docket account is an account in
23 the general revenue fund.

24 (b) The account consists of money deposited to the account
25 under Section 90.054, grants, gifts, and donations to the account,
26 and interest earned on money in the account.

27 (c) The account may be appropriated only for purposes of

1 administering this chapter.

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

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

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

11 (a) The trial courts of this state shall regularly and
12 frequently set hearings and trials of pending matters, giving
13 preference to hearings and trials of the following:

14 (1) temporary injunctions;

15 (2) criminal actions, with the following actions given
16 preference over other criminal actions:

17 (A) criminal actions against defendants who are
18 detained in jail pending trial;

19 (B) criminal actions involving a charge that a
20 person committed an act of family violence, as defined by Section
21 71.004, Family Code; and

22 (C) an offense under:

23 (i) Section 21.11, Penal Code;

24 (ii) Chapter 22, Penal Code, if the victim
25 of the alleged offense is younger than 17 years of age;

26 (iii) Section 25.02, Penal Code, if the
27 victim of the alleged offense is younger than 17 years of age; or

- (iv) Section 25.06, Penal Code;
- (3) election contests and suits under the Election Code;
- (4) orders for the protection of the family under Subtitle B, Title 4, Family Code;
- (5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission and claims under the Federal Employers' Liability Act and the Jones Act; ~~and~~
- (6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code; and
- (7) 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) Except as otherwise provided by this section, Chapter 90, Civil Practice and Remedies Code, as added by this Act, applies to all actions:

- (1) commenced on or after the effective date of this Act; 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 that effective date.

(b) Sections 90.057 and 90.058, as added by this Act, apply only to an action commenced on or after April 1, 2003. If a defendant objects to a motion for removal in an action commenced

1 before that date, the trial court shall issue an order granting or
2 denying the motion based on the evidence presented by the parties.

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

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

12 (e) The Supreme Court of Texas shall publish the list of
13 independent experts and adopt a system for the random selection of
14 independent experts, as required by Subchapter B, Chapter 90, Civil
15 Practice and Remedies Code, as added by this Act, not later than the
16 60th day after the effective date of this Act.

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

25 (b) The notice of claim required under Subsection (a) of
26 this section shall identify the claimant, each defendant named in
27 the original petition, and the cause number of the original claim.

1 The clerk of the court shall send a copy of the notice of claim to
2 the Office of Court Administration of the Texas Judicial System and
3 the claim shall be treated in all respects as any other claim placed
4 on the inactive docket established under Subchapter B, Chapter 90,
5 Civil Practice and Remedies Code, as added by this Act.

6 (c) If a claimant to which this section applies did not pay
7 the applicable filing fee when the claim was originally filed, the
8 claimant shall pay the filing fee required by Section 51.317(b)(1),
9 Government Code, with the notice of claim required under Subsection
10 (a) of this section. The clerk of the court shall forward one-half
11 of the fee to the comptroller of public accounts in accordance with
12 Section 90.054(f), Civil Practice and Remedies Code, as added by
13 this Act.

14 SECTION 5. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect November 1, 2003.