

1-1 By: Janek S.B. No. 8
1-2 (In the Senate - Filed June 30, 2003; June 30, 2003, read
1-3 first time and referred to Committee on State Affairs;
1-4 July 10, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 1; July 10, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 8 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to civil claims involving exposure to asbestos or other
1-11 mineral dusts.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 4, Civil Practice and Remedies Code, is
1-14 amended by adding Chapter 90 to read as follows:

1-15 CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS FIBERS OR OTHER
1-16 MINERAL DUSTS

1-17 Sec. 90.001. CLAIMS. In this chapter, claims alleging
1-18 personal injury or death are limited to claims alleging respiratory
1-19 disease unless the basis for the claims is a diagnosis of
1-20 mesothelioma or other malignancy allegedly caused by exposure to
1-21 asbestos fibers or other mineral dusts.

1-22 Sec. 90.002. ADOPTION OF RULES BY SUPREME COURT. (a) The
1-23 supreme court shall adopt rules to provide for the creation of an
1-24 inactive docket for claims alleging personal injury or death caused
1-25 by exposure to asbestos fibers or other mineral dusts.

1-26 (b) The supreme court shall adopt rules under this chapter
1-27 on or before January 1, 2004.

1-28 Sec. 90.003. MANDATORY GUIDELINES. Rules adopted under
1-29 Section 90.002 must comply with the mandatory guidelines
1-30 established by this chapter.

1-31 Sec. 90.004. APPLICABILITY. (a) Rules adopted under this
1-32 chapter must provide that the inactive docket procedure under this
1-33 chapter does not apply to a claim alleging personal injury caused by
1-34 exposure to asbestos fibers or other mineral dusts if the basis for
1-35 the claim is a diagnosis of mesothelioma or other malignancy
1-36 allegedly caused by exposure to asbestos fibers or other mineral
1-37 dusts.

1-38 (b) Rules adopted under this chapter must provide for the
1-39 preferential setting of hearings and trials for claims alleging
1-40 personal injury caused by exposure to asbestos fibers or other
1-41 mineral dusts if the basis for the claim is a diagnosis of
1-42 mesothelioma or other malignancy caused by exposure to asbestos
1-43 fibers or other mineral dusts.

1-44 (c) The inactive docket procedure adopted under this
1-45 chapter must apply to claims alleging personal injury or death
1-46 caused by exposure to asbestos fibers or other mineral dusts that
1-47 are:

1-48 (1) commenced on or after the effective date of this
1-49 chapter; or

1-50 (2) pending on that effective date and in which the
1-51 trial, or any new trial or retrial following motion, appeal, or
1-52 otherwise, begins on or after that effective date.

1-53 Sec. 90.005. PLACEMENT ON THE INACTIVE DOCKET. (a) Rules
1-54 adopted under this chapter must provide that a claim alleging
1-55 personal injury or death caused by exposure to asbestos fibers or
1-56 other mineral dusts other than a claim described by Section
1-57 90.004(a) must be placed on the inactive docket when the claim is
1-58 filed.

1-59 (b) Rules adopted under this chapter must provide that a
1-60 claim may be removed from the inactive docket only if it meets the
1-61 medical criteria for removal established under this chapter.

1-62 Sec. 90.006. LIMITATIONS TOLLED. Rules adopted under this
1-63 chapter must provide that the limitations period for a claim

2-1 assigned to the inactive docket must be tolled as of the original
2-2 date on which the claim was filed.

2-3 Sec. 90.007. DISCOVERY AND OTHER COURT ORDERS. Rules
2-4 adopted under this chapter must provide that a claim on the inactive
2-5 docket is not subject to any order of the trial court in which the
2-6 claim was originally filed affecting active claims involving
2-7 exposure to asbestos fibers or other mineral dusts, including
2-8 discovery orders, and that discovery may not proceed on an inactive
2-9 claim until the claim is removed to the active docket.

2-10 Sec. 90.008. REMOVAL TO ACTIVE DOCKET. (a) Rules adopted
2-11 under this chapter must provide procedures for the removal of a
2-12 claim from the inactive to the active docket on a showing that the
2-13 claimant meets the medical criteria for removal established under
2-14 this chapter. The rules must assure a reasonable and adequate time
2-15 for discovery and trial preparation consistent with the Texas Rules
2-16 of Civil Procedure.

2-17 (b) Rules adopted under this chapter must establish medical
2-18 criteria for removing a claim alleging exposure to asbestos fibers
2-19 or other mineral dusts from the inactive to the active docket. The
2-20 rules must provide that a claim may only be removed based on
2-21 objective medical criteria indicating significant respiratory
2-22 impairment caused to a reasonable degree of medical probability by
2-23 exposure to the asbestos fiber, particular dust, or dusts in
2-24 question. The rules must provide that a claim shall be removed
2-25 based on a diagnosis of mesothelioma or other malignancy allegedly
2-26 caused by exposure to asbestos fibers or other mineral dusts.

2-27 (c) Rules adopted under this chapter must provide that in
2-28 the event a defendant controverts the claimant's showing that the
2-29 medical criteria for removal of a claim have been satisfied, an
2-30 independent medical expert may be appointed by the trial court to
2-31 review the claimant's chest x-rays, pulmonary function testing,
2-32 medical reports, detailed medical history, occupational history,
2-33 and history of exposure, diagnosis, and other information and make
2-34 a recommendation to the trial court. The rules must provide that
2-35 the defendant bears the costs of the independent medical expert
2-36 appointed under this subsection.

2-37 (d) Rules adopted under this chapter must provide that a
2-38 physician who is currently licensed in this state and currently
2-39 board certified in occupational disease, oncology, pulmonary
2-40 medicine, pathology, or internal medicine, and whose license or
2-41 certification is not on inactive status, must perform the
2-42 appropriate testing and physical examination and render the
2-43 diagnosis necessary to support removal of a claim from the inactive
2-44 to the active docket.

2-45 (e) Rules adopted under this chapter must provide that a
2-46 currently certified B-reader shall perform all x-ray readings
2-47 necessary to support removal of a claim from the inactive to the
2-48 active docket.

2-49 Sec. 90.009. INACTIVE DOCKET INFORMATION. (a) Rules
2-50 adopted under this chapter must provide for the collection and
2-51 dissemination of information regarding all claims assigned to and
2-52 removed from the inactive docket in each trial court in this state.

2-53 (b) Rules adopted under this chapter must provide that the
2-54 information collected contain basic information about the claim,
2-55 including the name of the claimant and the cause number.

2-56 (c) Rules adopted under this chapter must assure that the
2-57 appropriate filing fee is or has been paid with respect to each
2-58 individual claim to which this chapter applies. The rules must also
2-59 provide that a reasonable portion of the fee be used to support the
2-60 administration of the inactive docket created by this chapter.

2-61 Sec. 90.010. BANKRUPTCY TRUSTS. Rules adopted under this
2-62 chapter must provide that any claimant with a claim on an active or
2-63 inactive docket in a trial court in this state shall be eligible to
2-64 participate in any bankruptcy trust established to compensate
2-65 claimants alleging injury from exposure to asbestos fibers or other
2-66 mineral dusts.

2-67 SECTION 2. (a) This Act takes effect immediately if it
2-68 receives a vote of two-thirds of all the members elected to each
2-69 house, as provided by Section 39, Article III, Texas Constitution.

3-1 If this Act does not receive the vote necessary for immediate
3-2 effect, this Act takes effect November 1, 2003.

3-3 (b) This Act applies to all actions:

3-4 (1) commenced on or after the effective date of this
3-5 Act; or

3-6 (2) pending on that effective date and in which the
3-7 trial, or any new trial or retrial following motion, appeal, or
3-8 otherwise, begins on or after that effective date.

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