

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos and resulting illnesses.

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

(2) "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 or one whose certification has lapsed but who has not failed a reexamination.

(3) "Chest x-rays," means chest films that are:

(A) taken in the following two views: posterior-anterior and lateral:

(B) graded quality 2 or better for reading in accordance with the radiological standards established by the International Labor Office, as interpreted by a certified B-reader or otherwise determined acceptable by a board certified radiologist.

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

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

10 (6) "Defendant" means a party from whom the claimant
11 seeks recovery of damages.

12 (7) "FEV1" means forced expiratory volume in the first
13 second, which is the maximal volume of air expelled in one second
14 during performance of simple spirometric tests.

15 (8) "FVC" means forced vital capacity, which is the
16 maximal volume of air expired with maximum effort from a position of
17 full inspiration.

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

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

27 (11) "Mesothelioma" means a rare and fatal form of

1 cancer caused by exposure to asbestos in which the cancer invades
2 cells in the membranes lining:

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

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

6 (12) "Physician board-certified in internal medicine"
7 means a physician who is certified by the American Board of Internal
8 Medicine.

9 (13) "Physician board-certified in oncology" means a
10 physician who is certified in the subspecialty of medical oncology
11 by the American Board of Internal Medicine.

12 (14) "Physician board-certified in pathology" means a
13 physician who holds primary certification in anatomic pathology or
14 clinical pathology from the American Board of Pathology and whose
15 professional practice:

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

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

19 (15) "Physician Board Certified in Pulmonary
20 Medicine" means a physician who is certified in the subspecialty of
21 pulmonary medicine by the American Board of Internal Medicine.

22 (16) "Physician Board Certified in Radiology" means a
23 physician who is certified in the subspecialty of radiology by the
24 American Board of Radiology.

25 (17) "Physician Board Certified in Occupational
26 Medicine" means a physician who is certified by the American Board
27 of Preventive Medicine in the sub specialty of Occupational

1 Medicine.

2 (18) "Pulmonary function testing" means spirometry,
3 lung volume testing, and diffusing capacity testing that conform to
4 quality criteria established by the American Thoracic Society (ATS)
5 and are performed on equipment that meets ATS standards for
6 technical quality and calibration, as set forth in 20 C.F.R.
7 Section 718.103 and 20 C.F.R. Part 718, Appendix B, and contained in
8 the ATS guidelines in 144 American Review of Respiratory Disease
9 1202-1218 (1991); 152 American Journal of Respiratory and Critical
10 Care Medicine 1107-1136; 2185-2198 (1995). Predicted values for
11 spirometry and lung volume are to be those routinely utilized and
12 applied by health care institutions and physicians licensed in this
13 state, and shall take appropriate account of smoking history.

14 Sec. 90.002. APPLICABILITY. This chapter applies to any
15 claim alleging personal injury or death caused by exposure to
16 asbestos fibers. No such claim shall arise from exposure alone in
17 the absence of a diagnosis of asbestos related illness consistent
18 with this chapter.

19 Sec. 90.003. STATE OR FEDERAL PROCEEDINGS. This chapter
20 shall not be construed to diminish any substantive rights or
21 obligations of any party to any proceeding in this state or outside
22 this state, including proceedings in the courts of other states or
23 the United States.

24 [Sections 90.004-90.020 reserved for expansion]

25 SUBCHAPTER B. FILING CLAIMS

26 Sec. 90.021. LIMITATIONS. The limitations period for any
27 claimant failing to meet the requirements of this chapter is tolled

1 as to all responsible parties until such time as the claimant meets
2 the requirements of this chapter. No statute of limitation or of
3 repose governing claims under this chapter shall commence as a
4 result of a purported diagnosis or finding of an asbestos-related
5 disease that does not meet the criteria under this chapter. Upon
6 meeting the criteria of this chapter, the claimant's right to file
7 suit shall be governed by Chapter 16 of this code.

8 Sec. 90.022. FILING A CLAIM; FILING FEE. (a) A claimant
9 seeking recovery of damages for personal injury or death caused by
10 exposure to asbestos fibers shall file a petition and information
11 form containing the following information:

12 (1) the claimant's name, social security number and
13 date of birth;

14 (2) if the claimant is not the person whose alleged
15 exposure to asbestos fibers gave rise to the claim, the person's
16 name, social security number, date of birth and the claimant's
17 relationship to the person;

18 (3) the specific asbestos-related condition claimed
19 to exist;

20 (4) a brief statement of facts giving rise to venue and
21 jurisdiction in the county where the petition is filed; and

22 (5) the medical documentation detailed in Section
23 90.054.

24 (b) Each claimant shall pay the applicable filing fee.

25 (c) A claim may not be brought on behalf of a group or class
26 of persons, and multiple claims may not be joined unless each
27 claimant files a complaint and information form and pays the

1 applicable filing fee.

2 (d) The trial court shall dismiss a claim, upon motion of
3 any party, if the complaint and information form are not
4 accompanied by:

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

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

10 (A) a report establishing the diagnosis of a
11 primary cancer; and

12 (B) a report:

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

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

19 (3) a diagnosis of a non-malignant asbestos-related
20 disease based on generally accepted medical standards of diagnostic
21 practice established by:

22 (A) a report by a physician board certified in
23 pathology, internal, pulmonary, radiology or occupational medicine
24 establishing:

25 (i) a physical examination of the claimant
26 by the physician providing the diagnosis of the asbestos related
27 disease which includes a detailed medical history, including the

1 claimant's smoking history and a reliable history of exposure to
2 asbestos; and

3 (ii) pulmonary function testing, including
4 FVC, FEV1, FEV1/FVC ratio and/or diffusing capacity; and one of the
5 following:

6 (a) a chest x-ray that, in the opinion
7 of a certified b-reader, shows bilateral small irregular opacities
8 (s, t, or u) graded 1/0 or higher or bilateral pleural disease
9 graded A1 or higher; or

10 (b) a chest x-ray or CT scan that, in
11 the opinion of a board certified radiologist, shows bilateral
12 diffuse interstitial fibrosis or bilateral pleural thickening
13 and/or pleural plaques; or

14 (c) pathological asbestosis that, in
15 the opinion of a board-certified pathologist, shows grade 1(B) or
16 higher under the criteria published in "Asbestos Associated
17 Diseases," 106 Archive of Pathology and Laboratory Medicine 11,
18 Appendix 3 (October 8, 1992).

19 Sec. 90.023. ADDITIONAL CLAIMS. A claimant who has pursued
20 a claim under Subsection (D)(3) shall be entitled to pursue a
21 separate and new claim for a condition that has progressed to a
22 nonmalignant asbestos-related disease consistent with this
23 chapter, with pulmonary function testing that demonstrates either:

24 (1) forced vital capacity (FVC) below eighty percent
25 (80%) and FEV1/FVC ratio (using actual values) at or above
26 sixty-five percent (65%);

27 (2) total lung capacity below eighty percent (80%); or

1 (3) diffusing capacity below forty percent (40%).

2 SECTION 2. Subsection (a), Section 23.101, Government Code,
3 is amended to read as follows:

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

7 (1) temporary injunctions;

8 (2) criminal actions, with the following actions given
9 preference over other criminal actions:

10 (A) criminal actions against defendants who are
11 detained in jail pending trial;

12 (B) criminal actions involving a charge that a
13 person committed an act of family violence, as defined by Section
14 71.01, Family Code; and

15 (C) an offense under:

16 (i) Section 21.11, Penal Code;

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

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

21 (iv) Section 25.06, Penal Code;

22 (3) election contests and suits under the Election
23 Code;

24 (4) orders for the protection of the family under
25 Section 3.581, 71.11, or 71.12, Family Code;

26 (5) appeals of final rulings and decisions of the
27 Texas Workers' Compensation Commission and claims under the Federal

1 Employers' Liability Act and the Jones Act; and

2 (6) appeals of final orders of the commissioner of the
3 General Land Office under Section 51.3021, Natural Resources Code;
4 and

5 (7) a claim or claims alleging personal injury caused
6 by exposure to asbestos fibers if the basis for the claim is a
7 diagnosis of mesothelioma or other malignancy allegedly caused by
8 exposure to asbestos fibers.

9 SECTION 3. Chapter 90, Civil Practice and Remedies Code, as
10 added by this Act, applies to all actions commenced on or after the
11 effective date of this Act. An action commenced before the
12 effective date of this Act, is governed by the applicable law in
13 effect immediately before that date, and that law is continued in
14 effect for that purpose.

15 SECTION 4. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect November 1, 2003.