

By: Janek

S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to 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 OR SILICA

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "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:

(A) posterior-anterior; and

(B) lateral.

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

(3) "Physician board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine.

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

1 (5) "Physician board-certified in pathology" means a
2 physician who holds primary certification in anatomic pathology or
3 clinical pathology from the American Board of Pathology or the
4 American Osteopathic Board of Internal Medicine and whose
5 professional practice:

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

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

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

13 Sec. 90.002. PULMONARY FUNCTION TESTING. (a) In this
14 chapter, "pulmonary function testing" means spirometry, lung
15 volume testing, and diffusing capacity testing performed using
16 equipment, methods of calibration, and techniques that meet:

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

21 (2) the interpretative standards set forth in the
22 Official Statement of the American Thoracic Society entitled "Lung
23 Function Testing: Selection of Reference Values and Interpretative
24 Strategies," as published in 144 American Review of Respiratory
25 Disease 1202-1218 (1991) and 152 American Journal of Respiratory
26 and Critical Care Medicine 1107-1136; 2185-2198 (1995).

27 (b) Pulmonary function testing must be performed under the

1 supervision of and interpreted by a physician who is currently
2 licensed in this or another state of the United States and
3 board-certified in pulmonary medicine, and whose license or
4 certification is not on inactive status. Each subject must be
5 tested with and without inhaled bronchodilators, with the best
6 values taken.

7 (c) Predicted values for spirometry and lung volume shall be
8 those published by Morris, Clinical Pulmonary Function Testing, 2nd
9 Edition, Intermountain Thoracic Society (1984). Predicted values
10 for diffusing capacity shall be those published by Miller et al.,
11 127 American Review of Respiratory Disease 270-277 (1983), and
12 shall take appropriate account of smoking history.

13 Sec. 90.003. CLAIMS. This chapter applies only to claims
14 alleging personal injury or death caused by exposure to asbestos
15 fibers or silica.

16 [Sections 90.004-90.050 reserved for expansion]

17 SUBCHAPTER B. INACTIVE DOCKET FOR CLAIMS INVOLVING EXPOSURE TO
18 ASBESTOS OR SILICA

19 Sec. 90.051. APPLICABILITY OF SUBCHAPTER TO CLAIMS
20 COMMENCED ON OR AFTER JULY 1, 2003. This subchapter applies only to
21 claims alleging personal injury or death caused by exposure to
22 asbestos fibers or silica that are commenced on or after July 1,
23 2003.

24 Sec. 90.052. ADOPTION OF RULES BY SUPREME COURT. (a) The
25 supreme court shall adopt rules to provide for the creation of an
26 inactive docket for claims alleging personal injury or death caused
27 by exposure to asbestos fibers or silica.

1 (b) The supreme court shall adopt rules under this
2 subchapter on or before March 1, 2004.

3 Sec. 90.053. MANDATORY GUIDELINES. Rules adopted under
4 Section 90.052 must comply with the mandatory guidelines
5 established by this subchapter.

6 Sec. 90.054. MESOTHELIOMA OR OTHER MALIGNANCY. (a) Rules
7 adopted under this subchapter must provide that the inactive docket
8 procedure under this subchapter does not apply to a claim alleging
9 personal injury or death caused by exposure to asbestos fibers or
10 silica if the basis for the claim is a diagnosis of mesothelioma or
11 other malignancy allegedly caused by exposure to asbestos fibers or
12 silica.

13 (b) Rules adopted under this subchapter must provide for the
14 preferential setting of hearings and trials for a living claimant
15 alleging personal injury caused by exposure to asbestos fibers or
16 silica if the basis for the claim is a diagnosis of mesothelioma or
17 other malignancy caused by exposure to asbestos fibers or silica.

18 Sec. 90.055. PLACEMENT ON INACTIVE DOCKET. (a) Rules
19 adopted under this subchapter must provide that a claim alleging
20 personal injury or death caused by exposure to asbestos fibers or
21 silica other than a claim described by Section 90.054(a) must be
22 placed on the inactive docket when the claim is filed.

23 (b) Rules adopted under this subchapter must provide that a
24 claim may be removed from the inactive docket only if it meets the
25 medical criteria for removal established under this subchapter.

26 Sec. 90.056. LIMITATIONS TOLLED. Rules adopted under this
27 subchapter must provide that the limitations period for a claim

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

3 Sec. 90.057. DISCOVERY AND OTHER COURT ORDERS. Rules
4 adopted under this subchapter must provide that a claim on the
5 inactive docket is not subject to any order of the trial court in
6 which the claim was originally filed affecting active claims
7 involving exposure to asbestos fibers or silica, including
8 discovery orders, and that discovery may not proceed on an inactive
9 claim until the claim is removed to the active docket.

10 Sec. 90.058. REMOVAL TO ACTIVE DOCKET. (a) Rules adopted
11 under this subchapter must provide procedures for the removal of a
12 claim from the inactive to the active docket on a showing that the
13 claimant meets the medical criteria for removal established under
14 this subchapter. The rules must assure a reasonable and adequate
15 time for discovery and trial preparation consistent with the Texas
16 Rules of Civil Procedure.

17 (b) Rules adopted under this subchapter must establish
18 medical criteria for removing a claim alleging exposure to asbestos
19 fibers or silica from the inactive to the active docket. The rules
20 must provide that a claim may only be removed based on objective
21 medical criteria indicating significant physical impairment caused
22 to a reasonable degree of medical probability by exposure to the
23 asbestos fiber or silica. The medical criteria must be appropriate
24 and reasonable, such as those used in the American Bar Association
25 Asbestos Litigation Policy.

26 (c) For a claim alleging respiratory disease, rules adopted
27 under this subchapter must provide that the claim may only be

1 removed from the inactive to the active docket based on objective
2 medical criteria indicating significant respiratory impairment
3 caused to a reasonable degree of medical probability by exposure to
4 the asbestos fiber or silica. The medical criteria must be
5 appropriate and reasonable, such as those used in the American Bar
6 Association Asbestos Litigation Policy.

7 (d) Rules adopted under this subchapter must provide that,
8 if the claimant is unable to meet criteria established under
9 Subsection (c) for removal from the inactive docket, the claimant
10 may qualify for removal by submitting an additional report, by a
11 physician with a medical license in this or another state of the
12 United States who is board-certified in pulmonary, internal, or
13 occupational medicine, and whose license or certification is not on
14 inactive status, that:

15 (1) states that the claimant has a chest x-ray that
16 satisfies the medical criteria established by the rules for the
17 purposes of this subsection;

18 (2) states that the claimant has restrictive
19 impairment from asbestosis or from exposure to silica and states in
20 detail the specific pulmonary function test findings that the
21 physician is relying on to establish that the claimant has
22 restrictive impairment;

23 (3) includes the reports and readouts from all
24 pulmonary function, lung volume, diffusing capacity, or other
25 testing relied on for the report's conclusions, provided that the
26 tests comply with equipment, quality, and reporting standards
27 established by the rules for the purpose of this subsection; and

1 (4) states the physician's conclusion that the
2 claimant's medical findings and impairment were not more probably
3 the result of other causes revealed by the claimant's employment
4 and medical history.

5 (e) Rules adopted under this subchapter must provide that if
6 the claim alleges death caused by exposure to asbestos fibers or
7 silica, the report under Subsection (d) may be made with a quality 2
8 chest x-ray if a quality 1 chest x-ray is not available.

9 (f) Rules adopted under this subchapter must provide that a
10 claim shall be removed based on a diagnosis of mesothelioma or other
11 malignancy allegedly caused by exposure to asbestos fibers.

12 (g) Rules adopted under this subchapter must provide that a
13 physician who is currently licensed in this or another state of the
14 United States and currently board-certified in occupational
15 disease, oncology, pulmonary medicine, pathology, or internal
16 medicine, and whose license or certification is not on inactive
17 status, must perform the appropriate testing and physical
18 examination and render the diagnosis necessary to support removal
19 of a claim from the inactive to the active docket.

20 (h) Rules adopted under this subchapter must provide that a
21 currently certified B-reader shall perform all x-ray readings
22 necessary to support removal of a claim from the inactive to the
23 active docket.

24 Sec. 90.059. INACTIVE DOCKET INFORMATION. (a) Rules
25 adopted under this subchapter must provide for the collection and
26 dissemination of information regarding all claims assigned to and
27 removed from the inactive docket in each trial court in this state.

1 (b) Rules adopted under this subchapter must provide that
2 the information collected contain basic information about the
3 claim, including the name of the claimant and the cause number.

4 (c) Rules adopted under this subchapter must assure that the
5 appropriate filing fee is or has been paid with respect to each
6 individual claim to which this subchapter applies. The rules must
7 also provide that a reasonable portion of the fee be used to support
8 the administration of the inactive docket created by this
9 subchapter.

10 Sec. 90.060. BANKRUPTCY TRUSTS. (a) Rules adopted under
11 this subchapter must provide that any claimant with a claim on an
12 active or inactive docket in a trial court in this state shall be
13 eligible to participate in any bankruptcy trust established to
14 compensate claimants alleging injury from exposure to asbestos
15 fibers or silica.

16 (b) It is not the intent of this section to prevent a
17 claimant from participating in a bankruptcy case commenced under
18 Title 11, United States Code.

19 [Sections 90.061-90.100 reserved for expansion]

20 SUBCHAPTER C. PENDING CLAIMS

21 Sec. 90.101. APPLICABILITY OF SUBCHAPTER TO CLAIMS
22 COMMENCED BEFORE JULY 1, 2003. This subchapter applies only to
23 claims alleging personal injury or death caused by exposure to
24 asbestos fibers or silica that are commenced before July 1, 2003.

25 Sec. 90.102. MESOTHELIOMA OR OTHER MALIGNANCY. This
26 subchapter does not apply to a claim alleging personal injury or
27 death caused by exposure to asbestos fibers or silica if the basis

1 for the claim is a diagnosis of mesothelioma or other malignancy
2 allegedly caused by exposure to asbestos fibers or silica.

3 Sec. 90.103. MANDATORY DISMISSAL. (a) After the 90th day
4 after the effective date of this chapter, a court shall dismiss
5 without prejudice, on motion by the defendant, a claim alleging
6 personal injury caused by exposure to asbestos fibers or silica
7 that was commenced before July 1, 2003, if the claimant cannot show,
8 in relation to the alleged personal injury:

9 (1) an examination by a physician who is currently
10 board-certified in occupational disease, oncology, pulmonary
11 medicine, pathology, or internal medicine and whose medical license
12 or certification is not on inactive status;

13 (2) a specific medical diagnosis by the examining
14 physician described in Subdivision (1) that the personal injury
15 alleged by the claimant is the result of a disease a producing cause
16 of which is asbestos or silica and the results of any test necessary
17 to establish the medical diagnosis;

18 (3) a chest x-ray;

19 (4) pulmonary function testing; and

20 (5) a detailed occupational history and history of
21 exposure to asbestos or silica.

22 (b) After the 90th day after the effective date of this
23 chapter, a court shall dismiss without prejudice, on motion by the
24 defendant, a claim alleging death caused by exposure to asbestos
25 fibers or silica and that was commenced before July 1, 2003, if the
26 claimant cannot show, in relation to the death, a statement by a
27 physician described by Subsection (a)(1) stating to a reasonable

1 degree of medical probability that the death is the result of a
2 disease a producing cause of which is asbestos or silica.

3 Sec. 90.104. REFILING CLAIM; TOLLING OF STATUTE OF
4 LIMITATIONS. (a) A claimant whose claim is dismissed under Section
5 90.103 may refile the claim if the statute of limitations for the
6 claim has not expired.

7 (b) The statute of limitations for the claim is tolled for
8 the period beginning on the original date the claim was filed and
9 ending on the date the claim is dismissed under Section 90.103.

10 Sec. 90.105. LAW APPLICABLE TO REFILED CLAIM. A claim
11 dismissed under Section 90.103 and refiled under Section 90.104 is
12 subject to the rules adopted by the supreme court under Subchapter
13 B.

14 SECTION 2. 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 on the 91st day after the last day of the
19 legislative session.