

## **BILL ANALYSIS**

C.S.H.B. 1240  
By: Nixon  
Civil Practices  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law permits an asbestos claim to be placed in the civil court system like any other civil claim. It is estimated that over half of the 200,000 asbestos claims pending in the United States have been filed in Texas courts. As a result, court dockets are overloaded and available money to compensate victims may not get to those who are currently ill.

CSHB 1240 creates a new chapter in the Civil Practice and Remedies Code for civil claims relating to asbestos litigation and a new chapter in the Civil Practice and Remedies Code relating to limiting post-merger asbestos-related liabilities of an innocent successor corporation. This bill establishes an inactive docket for unimpaired claims, establishes objective medical criteria for determining actual impairment, and gives trial preference to asbestos claims involving malignant conditions caused by asbestos exposure.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court in Section 1 (Sections 90.051 and 90.058, Civil Practice and Remedies Code) of this bill.

### **ANALYSIS**

CSHB 1240 amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, CLAIMS INVOLVING EXPOSURE TO ASBESTOS, which applies to any claim alleging personal injury or death caused by exposure to asbestos fibers and provides that this chapter does not create a cause of action.

Requires the supreme court to establish an inactive docket for claims under this chapter and requires the office of court administration to administer the inactive docket. Further, it requires the supreme court by rule to establish procedures to implement the inactive docket.

Provides that the limitations period for a claim placed on the inactive docket is tolled as of the date of filing the original petition and information form against each defendant named in the complaint required by the bill. Provides that a claim on the inactive docket is not subject to any discovery or other orders affecting claims on the active docket.

Requires each claimant to file a claim, including the complaint and an information form, and pay the applicable filing fee. Provides that a claim may not be brought on behalf of a group or class of persons, and multiple claims may not be joined unless each claimant files an information form and pays the applicable filing fee. The trial court shall transfer the claim to the office of court administration for placement on the inactive docket.

Provides that a claim shall be placed on the active docket if the claimant's complaint and information form are accompanied by: (1) a sworn statement by a physician licensed in this state and board-certified in internal medicine, oncology, pulmonary medicine, or pathology, indicating a diagnosis of pleural or peritoneal mesothelioma; or (2) a written diagnosis of cancer supported by a medical report

showing a the diagnosis as a primary cancer and a signed report certified by a physician licensed in this state and board-certified in internal medicine, oncology, pulmonary medicine, or pathology and stating to a reasonable degree of medical probability that the asbestos exposure was a producing cause of the cancer.

Requires a claimant seeking to remove a claim to the active docket to file a petition for removal, accompanied by supporting documentation, with the trial court in which the claim was originally filed.

Allows the trial judge to remove a claim from the inactive docket to the active docket if the claimant shows a diagnosis of impaired asbestosis or other specific, nonmalignant asbestos-related condition. An impairment diagnosis must be demonstrated by a medical report certified by a physician licensed in this state and board-certified in internal, occupational or pulmonary medicine, be based on objective criteria and include a reliable history of exposure to asbestos fibers. The medical criteria reflects ABA guidelines, with alternative criteria for those who do not have pulmonary function tests within the medical criteria.

Provides that if a defendant objects to the petition for removal, the trial court shall refer the medical report to an independent expert, randomly selected. Requires the supreme court to publish and distribute a list of independent experts to review petitions for removal, and establishes eligibility requirements for the independent experts.

Sets out requirements for the trial court to issue an order granting or denying a motion for removal and provides that the decision of the court not to hold a hearing is not appealable and does not constitute reversible error.

The fact that a claim is on the inactive docket, is inadmissible for any purpose, except for a proceeding concerned with the removal of a claim from the inactive docket.

Provides that the medical criteria established by this subchapter and the expert report are solely for the purpose of determining whether a claim may be removed to the active docket and may not be used in the trial of a claim for the purpose of determining whether the person has a condition related to asbestos exposure.

Provides that placement of a claim on the inactive docket may not be construed as an admission by the claimant that the claimant has not developed a condition related to asbestos exposure.

Establishes the asbestos claims inactive docket account is an account in the general revenue fund and provides that the account may only be appropriated for purposes of administering this chapter. Allows the office of court administration to accept donations to the account.

Amends the Government Code, to require a trial court to give preference to hearings and trials relating to a claim for personal injury caused by asbestos exposure if the basis for the claim is a diagnosis of mesothelioma or other malignancy, and if the exposed person is still living.

Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 149, LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS, to limit post-merger asbestos-related liabilities of an innocent successor corporation to the total gross assets of the transferor corporation.

These limits only apply to “inherited” liabilities stemming from wrongs committed solely by the transferor. Any successor that independently commits a tort — whether before or after a merger — could be held liable to the full extent of its assets. The value of the transferor corporation would be indexed, and also is defined to include liability insurance.

Provides that Chapter 90, Civil Practice and Remedies Code, as added by this Act, applies to all

actions: (1) commenced on or after the effective date; 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 the effective date. Sections 90.057 and 90.058, Civil Practice and Remedies Code, as added by this Act, apply only to an action commenced on or after April 1, 2003.

Provides that in an action commenced before the effective date of this Act in which a trial, new trial, or retrial is in progress on the day before the effective date, is governed by the applicable law in effect immediately before that date.

Requires the supreme court to establish the inactive docket not later than the 60<sup>th</sup> day after the effective date and requires the supreme court to publish the list of independent experts and adopt a system for the random selection of experts not later than the 60<sup>th</sup> day after the effective date.

Provides that Chapter 149, Civil Practice and Remedies Code, as added by this Act, applies to all actions: (1) commenced on or after the effective date; 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 the effective date.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB1240 modifies the original by replacing the successor liability provision from a choice of law provision to a substantive statute, to limit post-merger asbestos-related liabilities of an innocent successor corporation to the total gross assets of the transferor corporation.

The committee substitute also makes the following changes:

- streamlines the petition and filing process;
- adds occupational medicine to the physicians qualified to evaluate and diagnose non-malignant asbestos;
- changes the medical criteria to reflect American Bar Association guidelines, with alternative criteria for those who do not have pulmonary function tests within the medical criteria;
- deletes prohibition of paying for "B" readers; and
- applies independent expert requirements on a prospective basis only.