

By: Nixon, Wohlgemuth, Stick

H.B. No. 1240

Substitute the following for H.B. No. 1240:

By: King

C.S.H.B. No. 1240

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos and to certain successor liability.

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

1 to asbestos fibers.

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

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

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

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

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

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

20 (12) "ILO grade" means the radiological ratings of the
21 International Labor Office set forth in "Guidelines for the Use of
22 ILO International Classification of Radiographs of Pneumoconioses"
23 (1980), as amended.

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

1 amended.

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

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

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

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

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

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

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

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

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

27 (B) involves regular evaluation of pathology

1 materials obtained from surgical or postmortem specimens.

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

6 (21) "Pulmonary function testing" means spirometry,
7 lung volume testing, and diffusing capacity testing performed using
8 equipment, methods of calibration, and techniques that meet the
9 criteria incorporated in the *American Medical Association Guides to*
10 *the Evaluation of Permanent Impairment* (5th Ed.) and reported as
11 set forth in 20 C.F.R. 404, Subpt. P, App. 1, Part (A), Secs.
12 3.00(E) and (F) and meet the interpretative standards set forth in
13 the Official Statement of the American Thoracic Society entitled
14 "Lung Function Testing: Selection of Reference Values and
15 Interpretative Strategies," as published in 144 *American Review of*
16 *Respiratory Disease* 1202-1218 (1991) and 152 *American Journal of*
17 *Respiratory and Critical Care Medicine* 1107-1136; 2185-2198
18 (1995). Pulmonary function testing must be performed under the
19 supervision of and interpreted by a physician who is licensed in
20 this state and board-certified in pulmonary medicine. Each subject
21 must be tested with and without inhaled bronchodilators, with the
22 best values taken. Predicted values for spirometry and lung volume
23 shall be those published by Morris, *Clinical Pulmonary Function*
24 *Testing*, 2nd Edition, Intermountain Thoracic Society (1984).
25 Predicted values for diffusing capacity shall be those published by
26 Miller et al., 127 *American Review of Respiratory Disease* 270-277
27 (1983), and shall take appropriate account of smoking history or

1 exposure to 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. (a) A
23 judge reviewing a motion for removal may remove a claim from the
24 inactive docket and place it on the active docket of the trial court
25 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 quality 1 chest x-ray that, in the opinion of a
6 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 (2) pathological asbestosis graded 1(B) or higher
11 under the criteria published in "Asbestos-Associated Diseases,"
12 106 *Archive of Pathology and Laboratory Medicine* 11, Appendix 3
13 (October 8, 1982); and

14 (3) 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)(3), 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 stating 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 expert 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 the 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. (a)
22 The existence of an inactive docket, or the fact that a claim is or
23 is not on an inactive docket, is not admissible in any proceeding
24 for any purpose except for a proceeding concerned with the removal
25 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. (a)
22 The asbestos claims inactive docket account is an account in the
23 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, is amended
9 to read as follows:

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

13 (1) temporary injunctions;

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

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

18 (B) criminal actions involving a charge that a
19 person committed an act of family violence, as defined by Section
20 71.01, Family Code; and

21 (C) an offense under:

22 (i) Section 21.11, Penal Code;

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

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

27 (iv) Section 25.06, Penal Code;

1 (3) election contests and suits under the Election
2 Code;

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

5 (5) appeals of final rulings and decisions of the
6 Texas Workers' Compensation Commission and claims under the Federal
7 Employers' Liability Act and the Jones Act; ~~and~~

8 (6) appeals of final orders of the commissioner of the
9 General Land Office under Section 51.3021, Natural Resources Code;
10 and

11 (7) a claim alleging personal injury caused by
12 exposure to asbestos fibers if the basis for the claim is a
13 diagnosis of mesothelioma or other malignancy allegedly caused by
14 exposure to asbestos fibers and the exposed person is still living.

15 SECTION 3. Title 6, Civil Practice and Remedies Code, is
16 amended by adding Chapter 149 to read as follows:

17 CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES

18 RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

19 Sec. 149.001. DEFINITIONS. In this chapter:

20 (1) "Asbestos claim" means any claim, wherever or
21 whenever made, for damages, losses, indemnification, contribution,
22 or other relief arising out of, based on, or in any way related to
23 asbestos, including:

24 (A) property damage caused by the installation,
25 presence, or removal of asbestos;

26 (B) the health effects of exposure to asbestos,
27 including any claim for:

1 (i) personal injury or death;
2 (ii) mental or emotional injury;
3 (iii) risk of disease or other injury; or
4 (iv) the costs of medical monitoring or
5 surveillance; and

6 (C) any claim made by or on behalf of any person
7 exposed to asbestos or any representative, spouse, parent, child,
8 or other relative of the person.

9 (2) "Corporation" means a corporation for profit,
10 including:

11 (A) a domestic business corporation organized
12 under the laws of this state; or

13 (B) a foreign corporation organized under laws
14 other than the laws of this state that has a certificate of
15 authority to transact business in this state or is doing business in
16 this state.

17 (3) "Successor asbestos-related liabilities" means
18 any liabilities, whether known or unknown, asserted or unasserted,
19 absolute or contingent, accrued or unaccrued, liquidated or
20 unliquidated, or due or to become due, that are related in any way
21 to asbestos claims that were assumed or incurred by a corporation as
22 a result of or in connection with a merger or consolidation, or the
23 plan of merger or consolidation related to the merger or
24 consolidation, with or into another corporation or that are related
25 in any way to asbestos claims based on the exercise of control or
26 the ownership of stock of the corporation before the merger or
27 consolidation. The term includes liabilities that, after the time

1 of the merger or consolidation for which the fair market value of
2 total gross assets is determined under Section 149.004, were or are
3 paid or otherwise discharged, or committed to be paid or otherwise
4 discharged, by or on behalf of the corporation, or by or on behalf
5 of a transferor, in connection with settlements, judgments, or
6 other discharges in this state or another jurisdiction.

7 (4) "Transferor" means a corporation from which
8 successor asbestos-related liabilities are assumed or incurred.

9 Sec. 149.002. APPLICABILITY. (a) The limitation in
10 Section 149.003 applies to a merger or consolidation effected under
11 the laws of this state or another jurisdiction.

12 (b) The limitation in Section 149.003 does not apply to:

13 (1) workers' compensation benefits paid by or on
14 behalf of an employer to an employee under the Texas Workers'
15 Compensation Act, Subtitle A, Title 5, Labor Code, or comparable
16 workers' compensation law of another jurisdiction;

17 (2) any claim against a corporation that does not
18 constitute a successor asbestos-related liability;

19 (3) an insurance corporation, as that term is used in
20 the Insurance Code; or

21 (4) any obligations under the National Labor Relations
22 Act (29 U.S.C. Section 151 et seq.), as amended, or under any
23 collective bargaining agreement.

24 Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED
25 LIABILITIES. (a) Except as provided by Subsection (b), the
26 cumulative successor asbestos-related liabilities of a corporation
27 are limited to the fair market value of the total gross assets of

1 the transferor, including any applicable insurance of the
2 transferor covering asbestos-related liabilities, determined as of
3 the time of the merger or consolidation. The corporation does not
4 have any responsibility for successor asbestos-related liabilities
5 in excess of this limitation.

6 (b) If the transferor had assumed or incurred successor
7 asbestos-related liabilities in connection with a prior merger or
8 consolidation with a prior transferor, the cumulative successor
9 asbestos-related liabilities of a corporation are limited to the
10 fair market value of the total gross assets of the prior transferor,
11 including any applicable insurance of the prior transferor covering
12 asbestos-related liabilities, determined as of the time of the
13 earlier merger or consolidation.

14 Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS
15 ASSETS. (a) A corporation may establish the fair market value of
16 total gross assets for the purpose of the limitation under Section
17 149.003 through any method reasonable under the circumstances,
18 including:

19 (1) by reference to the going concern value of the
20 assets or to the purchase price attributable to or paid for the
21 assets in an arm's-length transaction; or

22 (2) in the absence of other readily available
23 information from which fair market value can be determined, by
24 reference to the value of the assets recorded on a balance sheet.

25 (b) Total gross assets include intangible assets.

26 Sec. 149.005. ADJUSTMENT. (a) With the exception of any
27 insurance, the fair market value of total gross assets at the time

1 of a merger or consolidation increases annually at a rate equal to
2 the sum of:

3 (1) the prime rate as listed in the first edition of
4 the Wall Street Journal published for each calendar year since the
5 merger or consolidation; and

6 (2) one percent.

7 (b) The rate in Subsection (a) is not compounded.

8 (c) The adjustment of fair market value of total gross
9 assets continues as provided under Subsection (a) until the date
10 the adjusted value is exceeded by the cumulative amounts of
11 successor asbestos-related liabilities paid or committed to be paid
12 by or on behalf of the corporation, or by or on behalf of a
13 transferor, after the time of the merger or consolidation for which
14 the fair market value of total gross assets is determined.

15 Sec. 149.006. SCOPE OF CHAPTER. The courts in this state
16 shall apply, to the fullest extent permissible under the United
17 States Constitution, this state's substantive law, including the
18 limitation under this chapter, to the issue of successor
19 asbestos-related liabilities.

20 SECTION 4. (a) Except as otherwise provided by this
21 section, Chapter 90, Civil Practice and Remedies Code, as added by
22 this Act, applies to all actions:

23 (1) commenced on or after the effective date of this
24 Act; or

25 (2) pending on that effective date and in which the
26 trial, or any new trial or retrial following motion, appeal, or
27 otherwise, begins on or after that effective date.

1 (b) Sections 90.057 and 90.058, Civil Practice and Remedies
2 Code, as added by this Act, apply only to an action commenced on or
3 after April 1, 2003. If a defendant objects to a motion for removal
4 in an action commenced before that date, the trial court shall issue
5 an order granting or denying the motion based on the evidence
6 presented by the parties.

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

12 (d) The Supreme Court of Texas shall establish the inactive
13 docket, as required by this Act, not later than the 60th day after
14 the effective date of this Act.

15 (e) The Supreme Court of Texas shall publish the list of
16 independent experts and adopt a system for the random selection of
17 independent experts, as required by this Act, not later than the
18 60th day after the effective date of this Act.

19 SECTION 5. (a) In an action described by Section 4(a)(2) of
20 this Act, a claimant shall file a notice of claim with the trial
21 court in which the claim was originally filed for purposes of
22 placing the claim on the inactive docket established under
23 Subchapter B, Chapter 90, Civil Practice and Remedies Code, as
24 added by this Act, unless the claim qualifies for the active docket
25 as provided by Section 90.054(e), Civil Practice and Remedies Code,
26 as added by this Act.

27 (b) The notice of claim required under Subsection (a) of

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

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

16 SECTION 6. Chapter 149, Civil Practice and Remedies Code,
17 as added by this Act, applies to all actions:

18 (1) commenced on or after the effective date of this
19 Act; or

20 (2) pending on that effective date and in which the
21 trial, or any new trial or retrial following motion, appeal, or
22 otherwise, begins on or after that effective date.

23 SECTION 7. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2003.