

By: Nixon

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-rays" means chest films that are:

(A) taken in the following four views: posterior-anterior, lateral, left oblique, and right oblique; and

(B) graded quality 1 for reading in accordance with the radiological standards established by the International Labor Office, as interpreted by a certified B-reader.

1           (5) "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           (6) "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           (7) "Defendant" means a party from whom the claimant  
11 seeks recovery of damages.

12           (8) "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           (9) "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           (10) "Inactive docket" means the docket established  
19 under Subchapter B for a claim.

20           (11) "Independent expert" is an expert appointed to  
21 examine a contested petition to remove under Section 90.057.

22           (12) "ILO grade" means the radiological ratings of the  
23 International Labor Office set forth in "Guidelines for the Use of  
24 ILO International Classification of Radiographs of Pneumoconioses"  
25 (1980), as amended.

26           (13) "ILO scale" means the system for the  
27 classification of chest x-rays set forth in the International Labor

1 Office's "Guidelines for the Use of ILO International  
2 Classification of Radiographs of Pneumoconioses" (1980), as  
3 amended.

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

7 (A) the lungs and chest cavity, the pleural  
8 region; or

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

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

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

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

18 (18) "Physician board-certified in pathology" means a  
19 physician who holds primary certification in anatomic pathology or  
20 clinical pathology from the American Board of Pathology and whose  
21 professional practice:

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

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

25 (19) "Physician board-certified in pulmonary  
26 medicine" means a physician who is certified in the subspecialty of  
27 pulmonary medicine by the American Board of Internal Medicine.

1           (20) "Pulmonary function testing" means spirometry,  
2 lung volume testing, and diffusing capacity testing that conform to  
3 quality criteria established by the American Thoracic Society (ATS)  
4 and are performed on equipment that meets ATS standards for  
5 technical quality and calibration, as set forth in 20 C.F.R.  
6 Section 718.103 and 20 C.F.R. Part 718, Appendix B, and contained in  
7 the ATS guidelines in 144 *American Review of Respiratory Disease*  
8 1202-1218 (1991); 152 *American Journal of Respiratory and Critical*  
9 *Care Medicine* 1107-1136; 2185-2198 (1995). Pulmonary function  
10 testing must be performed under the supervision of and interpreted  
11 by a physician who is licensed in this state and board-certified in  
12 pulmonary medicine. Each subject must be tested with and without  
13 inhaled bronchodilators, with the best values taken. Predicted  
14 values for spirometry and lung volume shall be those published by  
15 Morris, *Clinical Pulmonary Function Testing*, 2nd Edition,  
16 Intermountain Thoracic Society (1984). Predicted values for  
17 diffusing capacity shall be those published by Miller et al., 127  
18 *American Review of Respiratory Disease* 270-277 (1983), and shall  
19 take appropriate account of smoking history or exposure to silica.

20           Sec. 90.002. APPLICABILITY. This chapter applies to any  
21 claim alleging personal injury or death caused by exposure to  
22 asbestos fibers.

23           Sec. 90.003. NO CAUSE OF ACTION CREATED. This chapter does  
24 not create a cause of action.

25           [Sections 90.004-90.050 reserved for expansion]

26                           SUBCHAPTER B. INACTIVE DOCKET

27           Sec. 90.051. INACTIVE DOCKET ESTABLISHED. (a) The supreme

1 court shall establish an inactive docket for claims under this  
2 chapter. The inactive docket shall be administered by the office of  
3 court administration.

4 (b) The supreme court by rule shall establish procedures to  
5 implement the inactive docket according to this chapter.

6 Sec. 90.052. LIMITATIONS TOLLED. The limitations period  
7 for a claim assigned to the inactive docket under this subchapter is  
8 tolled as of the original date on which the complaint and  
9 information form against each defendant named in the complaint are  
10 filed under Section 90.054.

11 Sec. 90.053. INACTIVE CLAIMS NOT SUBJECT TO DISCOVERY AND  
12 OTHER COURT ORDERS. A claim on the inactive docket is not subject  
13 to any order of the trial court in which the claim was originally  
14 filed affecting active claims involving exposure to asbestos  
15 fibers, including discovery orders. Discovery may not proceed on  
16 an inactive claim until the claim is removed to the active docket as  
17 provided by this subchapter.

18 Sec. 90.054. FILING A CLAIM; FILING FEE. (a) A claimant  
19 seeking recovery of damages for personal injury or death caused by  
20 exposure to asbestos fibers shall file, together with the  
21 complaint, a sworn information form containing the following  
22 information:

23 (1) the claimant's name, address, date of birth,  
24 social security number, and marital status;

25 (2) if the claimant is not the person whose alleged  
26 exposure to asbestos fibers gave rise to the claim, the person's  
27 name, address, date of birth, social security number, and marital

1 status and the claimant's relationship to the person;

2 (3) the beginning and ending dates of each alleged  
3 exposure for each asbestos product at each location;

4 (4) the specific location of each alleged exposure;

5 (5) the occupation and name of the employer of the  
6 exposed person at the time of each alleged exposure;

7 (6) the specific asbestos-related condition claimed  
8 to exist; and

9 (7) any supporting documentation of the  
10 asbestos-related condition claimed to exist.

11 (b) Each claimant shall:

12 (1) file a claim, including the complaint and sworn  
13 information form required by this section; and

14 (2) pay the applicable filing fee.

15 (c) A claim may not be brought on behalf of a group or class  
16 of persons, and multiple claims may not be joined unless each  
17 claimant files a complaint and information form and pays the  
18 applicable filing fee.

19 (d) Except as provided by Subsection (e), as soon as  
20 possible after the complaint and an information form are filed, the  
21 trial court shall transfer the claim to the office of court  
22 administration for placement on the inactive docket.

23 (e) The trial court shall place a claim on the active docket  
24 if the claimant's complaint and information form are accompanied  
25 by:

26 (1) a sworn statement by a physician licensed in this  
27 state and board-certified in pathology indicating a diagnosis of

1 pleural or peritoneal mesothelioma; or

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

3 (A) a medical report showing the diagnosis as a  
4 primary cancer; and

5 (B) a signed and sworn report:

6 (i) certified by a physician licensed in  
7 this state and board-certified in internal medicine, oncology,  
8 pulmonary medicine, or pathology; and

9 (ii) stating to a reasonable degree of  
10 medical certainty that the diagnosed cancer was substantially  
11 caused by exposure to asbestos fibers.

12 (f) The clerk of the court in which the claim is filed shall  
13 forward one-half of the filing fee paid under this section to the  
14 comptroller for deposit to the asbestos claims inactive docket  
15 account established under Subchapter C.

16 Sec. 90.055. PETITION FOR REMOVAL TO ACTIVE DOCKET. (a) A  
17 claimant seeking to remove a claim from the inactive docket for  
18 placement on the active docket shall file with the trial court in  
19 which the claim was originally filed a petition for removal.

20 (b) The petition for removal must be accompanied by the  
21 documentation necessary to satisfy the criteria specified by  
22 Section 90.056.

23 (c) At the time of filing with the trial court, the claimant  
24 shall serve the petition for removal and supporting documentation  
25 on each defendant named in the claimant's original complaint.

26 (d) Not later than the 14th day after the date of service of  
27 the petition for removal and supporting documentation, a defendant

1 who objects to the removal of the claim must file a motion with the  
2 trial court stating the reasons for the objection. The motion shall  
3 be served on the claimant and each other defendant.

4 (e) The filing by a defendant of a motion objecting to  
5 removal and any documentation supporting the motion, or the  
6 defendant's appearance at a hearing ordered by the court in  
7 connection with a petition for removal, is not considered an  
8 appearance for purposes of establishing the court's jurisdiction  
9 over the defendant in the event the claim is removed to the active  
10 docket.

11 (f) Not later than the 10th day after the date of service of  
12 the motion objecting to removal, the claimant may file a response  
13 with the trial court. The response must be served on each  
14 defendant.

15 (g) A petition for removal may be filed simultaneously with  
16 the original claim and information form under Section 90.054.

17 Sec. 90.056. CRITERIA FOR REMOVAL FOR NONMALIGNANCY.

18 (a) A judge reviewing a petition for removal may remove a claim  
19 from the inactive docket and place it on the active docket of the  
20 trial court in which it was originally filed if the claimant shows  
21 by a preponderance of the evidence a diagnosis of impaired  
22 asbestosis or other specific, nonmalignant asbestos-related  
23 condition accompanied by a substantial, verifiable physical  
24 impairment substantially caused by the asbestos-related condition.

25 (b) An impairment diagnosis under Subsection (a) must:

26 (1) be demonstrated by a medical report certified by a  
27 physician licensed in this state and board-certified in internal or



1 pulmonary medicine;

2 (2) be based on objective criteria of generally  
3 accepted medical standards related to impairment due to a reliable  
4 history of exposure to asbestos fibers; and

5 (3) include a physical examination of the claimant by  
6 the physician rendering the diagnosis that sets forth:

7 (A) a detailed medical history that includes  
8 nonoccupational causes of lung and pleural changes and that  
9 documents the claimant's smoking history; and

10 (B) a reliable history of exposure:

11 (i) that is based on a detailed  
12 occupational and exposure history taken from the claimant by the  
13 physician rendering the diagnosis or, if the claimant is deceased,  
14 by the person most knowledgeable about those histories, including  
15 all known trades and all principal places of employment for the  
16 claimant involving airborne contaminants; and

17 (ii) that indicates whether each employment  
18 involved exposures to airborne contaminants, including asbestos  
19 fibers and other disease-causing dusts, that can cause pulmonary  
20 impairment, and indicates the nature, duration, and level of any  
21 such exposure.

22 (c) For purposes of this section, meeting the objective  
23 criteria for generally accepted medical standards of impairment  
24 related to a reliable history of exposure to asbestos fibers  
25 requires at a minimum:

26 (1) chest x-rays that, in the opinion of a certified  
27 B-reader, show bilateral small irregular opacities (s, t, or u) of

1 ILO grade of 1/1 or greater, and pulmonary function testing that  
2 demonstrates either:

3 (A) forced vital capacity (FVC) less than or  
4 equal to 70 percent of the predicted value with the ratio of forced  
5 expiratory volume 1 to forced vital capacity (FEV1/FVC) greater  
6 than or equal to 70 percent (actual value); or

7 (B) total lung capacity less than 70 percent of  
8 the predicted value;

9 (2) chest x-rays that, in the opinion of a certified  
10 B-reader, show asbestos-related bilateral pleural encasement  
11 graded C2 or higher on the ILO scale and that include the blunting  
12 of at least one costophrenic angle, and pulmonary function testing  
13 that demonstrates either:

14 (A) forced vital capacity (FVC) less than 70  
15 percent of the predicted value with the ratio of forced expiratory  
16 volume 1 to forced vital capacity (FEV1/FVC) greater than 70  
17 percent (actual value); or

18 (B) total lung capacity less than 70 percent of  
19 the predicted value with the ratio of forced expiratory volume 1 to  
20 forced vital capacity (FEV1/FVC) greater than 70 percent (actual  
21 value); or

22 (3) if the person whose personal injury or death is the  
23 basis of the claim is deceased, a medical report demonstrating an  
24 appropriate diagnosis of pathological asbestosis greater than  
25 grade 1B, as defined in "Asbestos-Associated Diseases," 106 *Archive*  
26 *of Pathology and Laboratory Medicine* 11, Appendix 3 (October 8,  
27 1982).

1       (d) A chest x-ray taken or interpreted by a person directly  
2 or indirectly employed or compensated by an attorney for the  
3 claimant may not be admitted for the purpose of establishing  
4 whether a claim may be removed from the inactive docket.

5       Sec. 90.057. REVIEW BY INDEPENDENT EXPERT. (a) If a  
6 defendant objects to the petition for removal, the trial court, not  
7 later than the 45th day after the date the petition for removal is  
8 filed, shall refer the medical report, test results, and other  
9 documentation submitted by the claimant, the defendant's objection  
10 to removal, and any other information directed by the court to an  
11 independent expert randomly selected from a list of experts  
12 published by the supreme court according to Section 90.058.

13       (b) The costs of the expert shall be paid:

14           (1) by the objecting defendant if the expert  
15 determines the medical criteria for removal have been met; or

16           (2) by the claimant if the expert determines the  
17 medical criteria for removal have not been met.

18       (c) The independent expert shall submit a report and  
19 recommendation to the court not later than the 10th day after the  
20 date the expert receives the information from the court. The  
21 independent expert may perform pulmonary function testing to verify  
22 the information submitted by the claimant.

23       Sec. 90.058. LIST OF INDEPENDENT EXPERTS. (a) The supreme  
24 court shall publish a list of independent experts for the purpose of  
25 reviewing petitions for removal filed under this subchapter.

26       (b) To be eligible for placement on the list of independent  
27 experts, a person must:

1           (1) be a physician licensed in this state;

2           (2) be board-certified in internal medicine,  
3 oncology, pulmonary medicine, or pathology; and

4           (3) be actively and primarily practicing medicine in a  
5 field directly related to the physician's board certification.

6           (c) The supreme court shall distribute the list of  
7 independent experts to each district court in the state. The  
8 supreme court shall update the list at least annually.

9           (d) The supreme court by rule shall adopt a system for the  
10 random selection of independent experts from the list.

11           Sec. 90.059. ORDER GRANTING OR DENYING PETITION FOR  
12 REMOVAL. (a) Not later than the seventh day after the date the  
13 expert's report and recommendation are received, the trial court  
14 shall issue an order granting or denying the petition for removal  
15 based on the opinion of the independent expert and the submissions  
16 of the parties.

17           (b) Before issuing the order, the court may hold a hearing  
18 on its own motion or, in its discretion, on the motion of a party.  
19 The decision of the court not to grant a request for a hearing may  
20 not be appealed and does not constitute reversible error.

21           (c) If the court orders a claim removed from the inactive  
22 docket and placed on the active docket, any date, deadline, or other  
23 provision in a court order relating to claims on the active docket  
24 or in the Texas Rules of Civil Procedure applies as if the claim had  
25 been filed on the date of the court's order granting the petition  
26 for removal.

27           (d) If the trial court orders a claim removed from the

1 inactive docket and placed on the court's active docket, the office  
2 of court administration shall transfer the claim, accompanied by  
3 the supporting documentation, to the trial court.

4 Sec. 90.060. ADMISSIBILITY OF CERTAIN INFORMATION.

5 (a) The existence of an inactive docket, or the fact that a claim  
6 is or is not on an inactive docket, is not admissible in any  
7 proceeding for any purpose, except for a proceeding concerned with  
8 the removal of a claim from the inactive docket.

9 (b) The medical criteria established by this subchapter for  
10 removal of a claim from the inactive docket are established solely  
11 for the purpose of determining whether a claim may be removed to the  
12 active docket. The fact that a claimant satisfies the medical  
13 criteria for removal of a claim from the inactive docket may not be  
14 construed as an admission or determination that a person has a  
15 condition related to exposure to asbestos fibers. The criteria  
16 used to determine whether a claim should be removed may not be  
17 cited, referred to, or otherwise used in the trial of a claim for  
18 the purpose of determining whether a person has a condition related  
19 to exposure to asbestos fibers.

20 (c) An expert report submitted under Section 90.057 is  
21 solely for the purpose of determining whether a claim may be removed  
22 to the active docket and is inadmissible for any other purpose. An  
23 independent expert may not be compelled to testify at any hearing or  
24 trial for which the expert submitted a report under Section 90.057.

25 (d) Placement of a claim on an inactive docket may not be  
26 construed as an admission by a claimant or person allegedly exposed  
27 to asbestos fibers that the claimant or person has not developed a

1 condition related to exposure to asbestos fibers.

2 [Sections 90.112-90.150 reserved for expansion]

3 SUBCHAPTER C. FINANCIAL PROVISIONS

4 Sec. 90.101. ASBESTOS CLAIMS INACTIVE DOCKET ACCOUNT.

5 (a) The asbestos claims inactive docket account is an account in  
6 the general revenue fund.

7 (b) The account consists of money deposited to the account  
8 under Section 90.054, grants, gifts, and donations to the account,  
9 and interest earned on money in the account.

10 (c) The account may be appropriated only for purposes of  
11 administering this chapter.

12 (d) Sections 403.095 and 404.071, Government Code, do not  
13 apply to the account.

14 Sec. 90.102. DONATIONS. The office of court administration  
15 may accept for the account established under Section 90.101 a  
16 donation, grant, or gift of any kind from any person for a purpose  
17 related to the administration of this chapter.

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

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

23 (1) temporary injunctions;

24 (2) criminal actions, with the following actions given  
25 preference over other criminal actions:

26 (A) criminal actions against defendants who are  
27 detained in jail pending trial;

1 (B) criminal actions involving a charge that a  
2 person committed an act of family violence, as defined by Section  
3 71.01, Family Code; and

4 (C) an offense under:

5 (i) Section 21.11, Penal Code;

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

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

10 (iv) Section 25.06, Penal Code;

11 (3) election contests and suits under the Election  
12 Code;

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

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

18 (6) appeals of final orders of the commissioner of the  
19 General Land Office under Section 51.3021, Natural Resources Code;  
20 and

21 (7) a claim alleging personal injury caused by  
22 exposure to asbestos fibers if the basis for the claim is a  
23 diagnosis of mesothelioma or other malignancy allegedly caused by  
24 exposure to asbestos fibers.

25 SECTION 3. Article 8.02, Texas Business Corporation Act, is  
26 amended to read as follows:

27 Art. 8.02. POWERS OF FOREIGN CORPORATION. A. A foreign

1 corporation which shall have received a certificate of authority  
2 under this Act shall, until its certificate of authority shall have  
3 been revoked in accordance with the provisions of this Act or until  
4 a certificate of withdrawal shall have been issued by the Secretary  
5 of State as provided in this Act, enjoy the same, but no greater,  
6 rights and privileges as a domestic corporation organized for the  
7 purposes set forth in the application pursuant to which such  
8 certificate of authority is issued; and, as to all matters  
9 affecting the transaction of intrastate business in this State, it  
10 and its officers and directors shall be subject to the same duties,  
11 restrictions, penalties, and liabilities now or hereafter imposed  
12 upon a domestic corporation of like character and its officers and  
13 directors; provided, however, that only the laws of the  
14 jurisdiction of incorporation of a foreign corporation shall govern  
15 (1) the internal affairs of the foreign corporation, including but  
16 not limited to the rights, powers, and duties of its board of  
17 directors and shareholders and matters relating to its shares,  
18 ~~and~~ (2) the liability, if any, of shareholders of the foreign  
19 corporation for the debts, liabilities, and obligations of the  
20 foreign corporation for which they are not otherwise liable by  
21 statute or agreement, and (3) any successor liability of the  
22 foreign corporation.

23 SECTION 4. (a) Chapter 90, Civil Practice and Remedies  
24 Code, as added by this Act, applies to all actions:

25 (1) commenced on or after the effective date of this  
26 Act; or

27 (2) pending on that effective date and in which the



1 trial, or any new trial or retrial following motion, appeal, or  
2 otherwise, begins on or after that effective date.

3 (b) In an action commenced before the effective date of this  
4 Act, a trial, new trial, or retrial that is in progress on the  
5 effective date is governed by the applicable law in effect  
6 immediately before that date, and that law is continued in effect  
7 for that purpose.

8 (c) The Supreme Court of Texas shall establish the inactive  
9 docket, as required by this Act, not later than the 60th day after  
10 the effective date of this Act.

11 (d) The Supreme Court of Texas shall publish the list of  
12 independent experts and adopt a system for the random selection of  
13 independent experts, as required by this Act, not later than the  
14 60th day after the effective date of this Act.

15 SECTION 5. 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 September 1, 2003.