

By: Nixon

H.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos and silica.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The Legislature of the State of Texas finds:

(1) Asbestos is a mineral that was used extensively in industrial applications, especially between the 1940s and the 1970s. Exposure to asbestos, particularly through inhalation of asbestos fibers, has allegedly been linked to certain malignant and non-malignant diseases, including mesothelioma and asbestosis. These diseases have latency periods of up to 40 years. It is estimated that as many as 27 million American workers were exposed to asbestos between 1940 and 1979.

(2) Over the last three decades, hundreds of thousands of lawsuits alleging asbestos-related disease have been filed throughout the United States. In the early 1990s, between 15,000 and 20,000 new lawsuits alleging asbestos-related disease were filed each year. By the late 1990s, the number of new lawsuits filed each year alleging asbestos-related disease was more than double the number of yearly filings seen in the early 1990s. By one estimate, the number of asbestos lawsuits pending in state and federal courts in the United States doubled in the 1990s, from approximately 100,000 to over 200,000.

(3) In 1991, the Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by United States Supreme Court

1 Chief Justice William Rehnquist, found that "the [asbestos
2 litigation] situation has reached critical dimensions and is
3 getting worse." In 1997 in Amchem Products, Inc. v. Windsor, the
4 United States Supreme Court acknowledged that the country is in the
5 midst of an "asbestos-litigation crisis." 521 U.S. 591, 597 (1997).

6 (4) Texas has not been spared this crisis. Since 1988,
7 more lawsuits alleging asbestos-related disease were filed in Texas
8 than in any other state. Today, thousands of asbestos lawsuits are
9 pending in Texas courts.

10 (5) This asbestos litigation crisis is due, in part,
11 to for-profit litigation screening of persons with possible
12 occupational exposure to asbestos, and to the existence of statutes
13 of limitations that begin to run based merely on knowledge of a
14 *possible* asbestos-related disease or symptom. The for-profit
15 screening process identifies individuals with radiographically
16 detectable markings on their lungs that are "consistent with"
17 asbestos-related disease regardless of whether the individuals
18 have any physical impairment. The identified individuals then file
19 lawsuits, in part, to avoid the running of limitations triggered by
20 the "discovery" that they may have an asbestos-related injury.
21 Many of the identified individuals (at least one estimate puts the
22 figure as high as 90%) are not experiencing any symptoms of
23 asbestos-related disease and not suffering from any
24 asbestos-related illness affecting their daily functions.

25 (6) The crush of asbestos litigation has been costly
26 to employers, employees, litigants, and the court system. In 1982,
27 the Nation's largest single supplier of asbestos-containing

1 insulation products, the Johns-Manville Corporation, declared
2 bankruptcy due to the burden of the asbestos litigation. Since
3 then, more than 70 other companies have declared bankruptcy due to
4 the burden of asbestos litigation. It is estimated that between
5 60,000 and 128,000 American workers already have lost their jobs as
6 a result of asbestos-related bankruptcies, and that the total
7 number of jobs that will be lost due to asbestos-related
8 bankruptcies will eventually reach 432,000. Each worker who loses
9 his or her job due to an asbestos-related bankruptcy loses between
10 \$25,000 and \$50,000 in wages over his or her career. Those workers
11 also have seen the value of their 401(k) retirement plans drop by
12 25% or more due the bankruptcies.

13 (7) Additionally, it is estimated that asbestos
14 litigation has already cost over \$54 billion, with well over half of
15 this expense going to lawyers' fees and other litigation costs. The
16 crowded dockets that result from the crush of asbestos cases filed
17 by persons who are not functionally or physically impaired by any
18 asbestos-related illness prevent seriously ill claimants from
19 having their day in court, while those who have had their day in
20 court often find that the value of their recovery is seriously
21 reduced when the company against whom the judgment was rendered
22 files bankruptcy.

23 (8) Silica is a naturally occurring mineral, and is
24 the second most common constituent of the Earth's crust.
25 Crystalline silica in the form of quartz is present in sand, gravel,
26 soil and rocks.

27 (9) Materials that contain crystalline silica are

1 essential to the Texas way of life. For example, silica sand is the
2 primary raw material for the production of glass, including
3 container glass (bottles, jars), flat glass (windows), and other
4 forms of glass. Aggregates, most of which contain crystalline
5 silica, are the primary raw material in concrete and asphalt, and
6 therefore are the primary raw material used in the construction of
7 roads, sidewalks, building foundations and many other things.

8 (10) The primary adverse health effect associated with
9 crystalline silica is silicosis, a fibrosis--scarring--of the
10 lungs. Additionally, crystalline silica inhaled from occupational
11 sources was classified as a lung carcinogen in 1996, and there are
12 equivocal studies associating occupational exposures to
13 crystalline silica to other diseases.

14 (11) The potential adverse health effects associated
15 with crystalline silica, including silicosis, can occur after the
16 prolonged inhalation of respirable crystalline silica in excess of
17 certain levels. Respirable means that the silica particles must be
18 less than 10 microns, around 1/24,000 of an inch, in diameter. The
19 term prolonged means that respirable silica particles must be
20 breathed over a period of time, usually many years, to present a
21 risk of adverse health effects.

22 (12) Silicosis was recognized as an occupational
23 disease many years ago. In fact, the American Foundrymen's Society
24 has distributed literature to its members warning of the dangers of
25 overexposure to respirable crystalline silica in foundry
26 operations for more than 70 years. In the 1930s, the federal
27 government launched a silica-awareness campaign; the U.S.

1 Department of Labor brought together labor unions, industry, and
2 state and federal government for a National Silicosis Conference in
3 1936, which focused on understanding and providing solutions for
4 occupations with silicosis, and the US Department of Labor issued a
5 newsreel entitled "Stop Silicosis" in 1938.

6 (13) In 1999, the US Centers for Disease
7 Control/National Institute for Occupational Safety and Health
8 (CDC/NIOSH) in 1999 called the reduction in occupational lung
9 diseases--specifically mentioning silicosis--as one of the ten
10 great public health achievements of the 20th Century. CDC/NIOSH
11 data disclose a substantial decrease in silicosis since 1968 (the
12 first year the data were collected). Specifically, these data show
13 a 70 per cent decrease in deaths from silicosis during the period
14 1982-2000 when compared to the period 1968-1981.

15 (14) After a decades long decline in the prevalence of
16 silicosis, the number of new lawsuits alleging silicosis filed each
17 year began to rise precipitously in 2002. For example, one of
18 America's largest suppliers of industrial sand had more than 15,000
19 new claims in the first six months of 2003. This is three times the
20 number of claims it had in all of 2002, and more than ten times the
21 number of claims it had in all of 2001.

22 (15) Silica claims, like asbestos claims, often arise
23 when an individual is identified as having markings on his or her
24 lungs that are possibly consistent with silica exposure, but the
25 individual has no functional or physical impairment from any
26 silica-related disease. These individuals are being identified
27 through the efforts of marketing firms and screening companies, in

1 conjunction with lawyers being compensated by contingency fees,
2 just as with asbestos litigation. The lawyers for the individuals
3 identified by these marketing firms and screening companies as
4 "inventory" file lawsuits [under the theory that they must do so to
5 avoid having their claims barred by limitations even though they
6 have no current impairment and may never have impairment.] It is,
7 therefore, necessary to address silica-related litigation to avoid
8 an asbestos-like litigation crisis in Texas.

9 (b) It is the purpose of this Act: (i) to protect the right
10 of people with impairing asbestos-related and silica-related
11 injuries to pursue their claims for compensation under our tort
12 principles in a fair and efficient manner through the Texas court
13 system; and (ii) while, at the same time, preventing scarce
14 judicial and litigant resources from being misdirected by the
15 claims of individuals exposed to asbestos or silica but having no
16 functional or physical impairment from asbestos-related or
17 silica-related disease, or by the factually and medically baseless
18 claims of individuals who have been mistakenly identified as
19 claimants by marketing firms and screening companies in the
20 business of creating "inventories" of toxic tort claimants. To
21 that end, this Act:

22 (1) adopts medically accepted standards for
23 differentiating between individuals with non-malignant
24 asbestos-related or silica-related disease causing functional
25 impairment and individuals with no functional impairment;

26 (2) provides a method to obtain the dismissal of
27 lawsuits in which the exposed person has no functional impairment

1 while, at the same time, protecting a person's right to bring suit
2 upon discovering an impairing asbestos-related or silica-related
3 injury; and

4 (3) creates an extended period of limitations in which
5 to bring claims for non-malignant injuries caused by inhalation or
6 ingestion of asbestos or the inhalation of silica to preserve the
7 right of those who have been exposed to asbestos or silica but are
8 not yet impaired to bring a claim later, in the event they develop
9 an asbestos-related or silica-related disease or injury.

10 SECTION 2. Title 4, Civil Practice and Remedies Code, is
11 amended by adding Chapter 90 to read as follows:

12 CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA

13 Sec. 90.001. DEFINITIONS. In this chapter:

14 (1) "Asbestos" means chrysotile, amosite,
15 crocidolite, tremolite asbestos, anthophyllite asbestos,
16 actinolite asbestos, and any of these minerals that have been
17 chemically treated or altered.

18 (2) "Asbestos-related injury" means personal injury
19 or death allegedly caused by inhalation or ingestion of asbestos.

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

22 (4) "Certified B-reader" means a person who has
23 successfully completed the x-ray interpretation course and passed
24 the B-reader certification examination for x-ray interpretation
25 sponsored by the National Institute for Occupational Safety and
26 Health (NIOSH) and whose NIOSH certification was current at the
27 time of any readings required by this Chapter.

1 (5) "Chest X-ray" means chest films that are taken in
2 accordance with all applicable state and federal regulatory
3 standards and in the following two views:

4 (A) posterior-anterior; and

5 (B) lateral.

6 (6) "Claimant" means an exposed person and any person
7 who is seeking recovery of damages for or arising from the injury or
8 death of that exposed person.

9 (7) "Competent medical authority" means a person who
10 is providing a diagnosis for purposes of constituting prima-facie
11 evidence of an exposed person's physical impairment and who:

12 (A) is licensed to practice medicine in this or
13 another state of the United States whose license was not on inactive
14 status at the time the diagnosis was made;

15 (B) is a physician board-certified in internal
16 medicine, occupational medicine, oncology, pathology, or pulmonary
17 medicine;

18 (C) is actually treating, or has treated, the
19 exposed person and has or had a doctor-patient relationship with
20 the person;

21 (D) spends not more than twenty-five per cent of
22 the his or her professional practice time providing consulting or
23 expert services in connection with actual or potential tort
24 actions, and whose medical group, professional corporation,
25 clinic, or other affiliated group earns not more than twenty per
26 cent of its revenues from providing such services; and

27 (E) has not relied, in whole or in part, on any of

1 the following as the basis for the diagnosis:

2 (1) reports or opinions of any doctor,
3 clinic, laboratory, or testing company that performed an
4 examination, test, or screening of the claimant's medical condition
5 in violation of any law, regulation, licensing requirement, or
6 medical code of practice of the state in which that examination,
7 test, or screening was conducted;

8 (2) reports or opinions of any doctor,
9 clinic, laboratory, or testing company that performed an
10 examination, test, or screening of the claimant's medical condition
11 that was conducted without clearly establishing a doctor-patient
12 relationship with the claimant or medical personnel involved in the
13 examination, test, or screening process;

14 (3) reports or opinions of any doctor,
15 clinic, laboratory, or testing company that performed an
16 examination, test, or screening of the claimant's medical condition
17 that required the claimant to agree to retain the legal services of
18 the law firm sponsoring the examination, test, or screening.

19 (8) "Defendant" means a person against whom a claim
20 arising from an asbestos-related injury or a silica-related injury
21 is made.

22 (9) "Exposed person" means a person who has
23 substantial occupational exposure to asbestos or silica and who is
24 alleged to have suffered an injury caused by exposure to asbestos or
25 silica.

26 (10) "FEV1" means forced expiratory volume in the
27 first second, which is the maximal volume of air expelled in one

1 second during performance of simple spirometric tests.

2 (11) "FVC" means forced vital capacity, which is the
3 maximal volume of air expired with maximum effort from a position of
4 full inspiration.

5 (12) "ILO system" means the radiological rating system
6 of the International Labour Office set forth in "Guidelines for the
7 Use of ILO International Classification of Radiographs of
8 Pneumoconioses" (2000), as amended.

9 (13) "Mesothelioma" means a rare form of cancer
10 allegedly caused in some instances by exposure to asbestos in which
11 the cancer invades cells in the membranes lining:

12 (A) the lungs and chest cavity (the pleural
13 region);

14 (B) the abdominal cavity (the peritoneal
15 region); or

16 (C) the heart (the pericardial region).

17 (14) "Mixed dust claimant" means a person alleging
18 injury from both asbestos and silica exposure, either in the same or
19 separate proceedings.

20 (15) "Nonmalignant asbestos-related injury" means an
21 asbestos-related injury other than mesothelioma or other cancer.

22 (16) "Nonmalignant silica-related injury" means a
23 silica-related injury other than lung cancer.

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

27 (18) "Physician board-certified in occupational

1 medicine" means a physician who is certified in the subspecialty of
2 occupational medicine by the American Board of Preventive Medicine
3 or the American Osteopathic Board of Preventive Medicine.

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

8 (20) "Physician board-certified in pathology" means a
9 physician who holds primary certification in anatomic pathology or
10 clinical pathology from the American Board of Pathology or the
11 American Osteopathic Board of Internal Medicine and whose
12 professional practice:

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

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

16 (21) "Physician board-certified in pulmonary
17 medicine" means a physician who is certified in the subspecialty of
18 pulmonary medicine by the American Board of Internal Medicine or
19 the American Osteopathic Board of Internal Medicine.

20 (22) "Plethysmography" means the test for determining
21 lung volume, also known as "body plethysmography," in which the
22 subject of the test is enclosed in a chamber that is equipped to
23 measure pressure, flow, or volume change.

24 (23) "Pulmonary function testing" means spirometry,
25 lung volume, and diffusion capacity testing performed in accordance
26 with Section 90.002 using equipment, methods of calibration, and
27 techniques that meet:

1 (A) the criteria incorporated in the American
2 Medical Association Guides to the Evaluation of Permanent
3 Impairment (5th ed.) and reported as set forth in 20 C.F.R. Part
4 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and
5 (F) (2003); and

6 (B) the interpretative standards set forth in the
7 Official Statement of the American Thoracic Society entitled "Lung
8 Function Testing: Selection of Reference Values and Interpretative
9 Strategies," as published in 144 American Review of Respiratory
10 Disease 1202-1218 (1991).

11 (24) "Report" when used in sections 90.006 and 90.007
12 means a report required by Section 90.003 or 90.004.

13 (25) "Serve" means service complying with Texas Rule
14 of Civil Procedure 21a.

15 (26) "Silica" means any material containing
16 crystalline silica, including, but not limited to, quartz,
17 cristobalite, and trydimite, of respirable particle size.

18 (27) "Silica-related injury" means personal injury or
19 death allegedly caused by inhalation of silica.

20 (28) "Silicosis" means interstitial fibrosis of the
21 lungs caused by inhalation of respirable silica.

22 (29) "Substantial occupational exposure," with
23 respect to exposure to silica, means employment for a cumulative
24 period of at least five years in an industry and an occupation in
25 which, for a substantial portion of a normal work year for that
26 occupation, the person did any of the following:

27 (A) handled silica;

1 (B) worked directly with industrial equipment in
2 a manner that exposed the person on a regular basis to silica;

3 (C) fabricated silica-containing products so
4 that the person was exposed to silica in the fabrication process;

5 (D) altered, repaired, or otherwise worked with
6 silica-containing products or materials in a manner that exposed
7 the person on a regular basis to silica; or

8 (E) worked in close proximity to other workers
9 engaged in any of the activities described in (27)(A), (B), (C), or
10 (D) of this section in a manner that exposed the person on a regular
11 basis to silica.

12 Sec. 90.002. PULMONARY FUNCTION TESTING. Pulmonary
13 function testing required by this Chapter must be performed under
14 the supervision of and interpreted by a physician board-certified
15 in pulmonary medicine who is licensed in the State where the
16 pulmonary function testing is performed and whose license and
17 certification was not on inactive status at the time the acts were
18 performed.

19 Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING
20 ASBESTOS-RELATED INJURY. (a) Unless a claimant is excused from
21 doing so by Section 90.007(b), a claimant must serve the following
22 in accordance with Section 90.007:

23 (1) a report by a physician board-certified in
24 pulmonary medicine, internal medicine, oncology, or pathology
25 whose license and certification were not on inactive status at the
26 time the acts were performed, stating a diagnosis of the exposed
27 person of mesothelioma or other cancer and stating that, to a

1 reasonable degree of medical probability, exposure to asbestos was
2 a cause of the diagnosed mesothelioma or other cancer in the exposed
3 person; or

4 (2) a report by a physician board-certified in
5 pulmonary medicine, internal medicine, or occupational medicine,
6 whose license and certification were not on inactive status at the
7 time the acts were performed, that:

8 (A) verifies that the physician or a medical
9 professional employed by and under the direct supervision and
10 control of the physician:

11 (i) performed a physical examination of the
12 exposed person, or if the exposed person is deceased, reviewed
13 available records relating to the exposed person's medical
14 condition;

15 (ii) took a detailed occupational and
16 exposure history from the exposed person or, if the exposed person
17 is deceased, from the person most knowledgeable about the alleged
18 exposures that form the basis of the action; and

19 (iii) took a detailed medical and smoking
20 history that includes a thorough review of the exposed person's
21 past and present medical problems, and their most probable cause;

22 (B) sets out the details of the exposed person's
23 occupational, medical, and smoking history, and verifies that at
24 least 10 years have elapsed between the exposed person's first
25 exposure to asbestos and the date of diagnosis;

26 (C) verifies that the exposed person has:

27 (i) a quality 1 chest x-ray under the ILO

1 System of classification (in a death case where no pathology is
2 available, the necessary radiologic findings may be made with a
3 quality 2 film if a quality 1 film is not available), and that the
4 x-ray has been read by a certified B-reader as showing, according to
5 the ILO System of classification, bilateral small irregular
6 opacities (s, t, or u) graded 1/1 or higher or bilateral diffuse
7 pleural thickening graded b2 or higher including blunting of the
8 costophrenic angle; or

9 (ii) pathological asbestosis graded 1(B) or
10 higher under the criteria published in "Asbestos-Associated
11 Diseases," 106 *Archive of Pathology and Laboratory Medicine* 11,
12 Appendix 3 (October 8, 1982);

13 (D) verifies that the exposed person has
14 asbestos-related pulmonary impairment as demonstrated by pulmonary
15 function testing showing:

16 (i) forced vital capacity 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 (ii) total lung capacity, by
20 plethysmography or timed gas dilution, below the lower limit of
21 normal;

22 (E) verifies that the physician has concluded
23 that the exposed person's medical findings and impairment were not
24 more probably the result of causes other than asbestos exposure
25 revealed by the exposed person's employment and medical history;
26 and

27 (F) is accompanied by copies of all B-reading,

1 pulmonary function tests (including printouts of all data, flow
2 volume loops, and other information required to demonstrate
3 compliance with the equipment, quality, interpretation and
4 reporting standards set out in this Chapter), lung volume tests,
5 x-ray examinations, pathology reports or other testing reviewed by
6 the physician in reaching his or her conclusions.

7 (b) The detailed occupational and exposure history required
8 by (a)(2)(A)(ii) must include all of the principal employments and
9 exposures of the exposed person involving exposures to airborne
10 contaminants. It must indicate whether each employment involved
11 exposure to airborne contaminants (including, but not limited to,
12 asbestos fibers and other disease-causing dusts) that can cause
13 pulmonary impairment and the nature, duration, and level of such
14 exposure.

15 (c)(1) If the pulmonary function test results do not meet
16 the requirements of (a)(2)(D)(i) or (ii), a claimant may serve a
17 report by a physician board-certified in pulmonary medicine,
18 internal medicine, or occupational medicine, whose license and
19 certification are not on inactive status, stating that:

20 (A) the physician has a physician/patient
21 relationship with the exposed person;

22 (B) the exposed person has a quality 1 chest
23 x-ray under the ILO System of classification (in a death case where
24 no pathology is available, the necessary radiologic findings may be
25 made with a quality 2 film if a quality 1 film is not available), and
26 that the x-ray has been read by a certified B-reader as showing,
27 according to the ILO System of classification, bilateral small

1 irregular opacities (s, t, or u) graded 2/1 or higher;

2 (C) the exposed person has restrictive
3 impairment from asbestosis and the specific pulmonary function test
4 findings on which the physician relies to establish that the
5 exposed person has restrictive impairment; and

6 (D) the physician has concluded that the exposed
7 person's medical findings and impairment were not more probably the
8 result of causes other than asbestos exposure revealed by the
9 exposed person's employment and medical history.

10 (2) The physician's report must be accompanied by
11 copies of all B-reading, pulmonary function tests (including
12 printouts of all data, flow volume loops, and other information
13 required to demonstrate compliance with the equipment, quality,
14 interpretation and reporting standards set out in this Chapter),
15 lung volume tests, x-ray examinations, pathology reports or other
16 testing reviewed by the physician in reaching his or her
17 conclusions.

18 Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING
19 SILICA-RELATED INJURY. (a) Unless a claimant is excused from doing
20 so by Section 90.007(b), a claimant must serve the following in
21 accordance with Section 90.007:

22 (1) With regard to any claim of silica-related injury,
23 a report that details the claimant's substantial occupational
24 exposure to silica.

25 (2) With respect to a claim for silicosis, in addition
26 to the report required by Section 90.004(a)(1):

27 (A) a report by a competent medical authority

1 that:

2 (i) verifies the competent medical
3 authority or a medical professional employed by and under the
4 direct supervision and control of the competent medical authority:

5 (a) performed a physical examination
6 of the exposed person, or if the exposed person is deceased,
7 reviewed available records relating to the exposed person's medical
8 condition;

9 (b) took a detailed occupational and
10 exposure history from the exposed person or, if the exposed person
11 is deceased, from the person most knowledgeable about the alleged
12 exposures that form the basis of the action; and

13 (c) took a detailed medical and
14 smoking history that includes a thorough review of the exposed
15 person's past and present medical problems, and their most probable
16 cause;

17 (ii) sets out the details of the exposed
18 person's occupational, medical, and smoking history, and verifies
19 that the exposed person has substantial occupational exposure to
20 silica;

21 (iii) verifies that a sufficiency latency
22 period for the applicable type of silicosis has elapsed between the
23 exposed person's first exposure to silica and the date of
24 diagnosis;

25 (iv) verifies that the exposed person has
26 at least Class 2 or higher impairment due to silicosis, as set forth
27 in the American Medical Association's *Guides to the Evaluation of*

1 Permanent Impairment (5th ed.), reported in 20 C.F.R. Part 404,
2 Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F) (2003);

3 (v) verifies that the exposed person has
4 one or more of the following:

5 (a) a quality 1 chest x-ray under the
6 ILO System of classification (in a death case where no pathology is
7 available, the necessary radiologic findings may be made with a
8 quality 2 film if a quality 1 film is not available), and that the
9 x-ray has been read by a certified B-reader as showing, according to
10 the ILO System of classification, bilateral nodular opacities (of
11 size and shape p, q, or r) occurring primarily in the upper lung
12 fields, with a profusion of 1/1 or higher; or

13 (b) pathological demonstration of
14 classic silicotic nodules exceeding one centimeter in diameter as
15 published in 112 *Archive of Pathology and Laboratory Medicine* 7
16 (July 1988); or

17 (c) complicated silicosis
18 radiologically established by silicotic nodules larger than one
19 centimeter in diameter or acute silicoproteinosis, or silicosis
20 complicated by documented tuberculosis;

21 (vi) verifies that the physician has
22 concluded that the exposed person's medical findings and impairment
23 were not more probably the result of causes other than silica
24 exposure revealed by the exposed person's employment and medical
25 history; and

26 (vii) is accompanied by copies of all
27 B-readings, pulmonary function tests (including printouts of all

1 data, flow volume loops, and other information required to
2 demonstrate compliance with the equipment, quality, interpretation
3 and reporting standards set out in this Chapter), lung volume
4 tests, x-ray examinations, pathology reports or other testing
5 reviewed by the physician in reaching his or her conclusions.

6 (B) The detailed occupational and exposure
7 history required by (a)(2)(A)(ii) must include all of the principal
8 places of employment and exposures of the exposed person involving
9 exposures to airborne contaminants. It must indicate whether each
10 employment involved exposure to airborne contaminants (including,
11 but not limited to, silica and other disease-causing dusts) that
12 can cause pulmonary impairment and describe the nature, duration,
13 and intensity of each such exposure.

14 (3) With respect to any claim of silica-related lung
15 cancer, in addition to the reports required by Sections
16 90.004(a)(1) and 90.004(a)(2):

17 (A) a diagnosis by a competent medical authority
18 that the exposed person has primary lung cancer and that exposure to
19 silica is a substantial contributing factor to that cancer; and

20 (B) evidence that is sufficient to demonstrate
21 that at least fifteen years have elapsed from the date of the
22 exposed person's first exposure to silica until the date of
23 diagnosis of the exposed person's primary lung cancer. The
24 fifteen-year latency period is a rebuttable presumption and the
25 plaintiff has the burden of proof to rebut the presumption.

26 (4) With respect to any claim for diseases other than
27 silicosis and lung cancer claimed to be related to silica exposure,

1 in addition to the reports required by Sections 90.004(a)(1) and
2 90.004(a)(2):

3 Sec. 90.005. REPORTS REQUIRED BY MIXED DUST CLAIMANTS.

4 Unless a claimant is excused from doing so by Section 90.007(b), any
5 person alleging injury from exposure to both asbestos and silica,
6 either in the same or separate proceedings, must serve the reports
7 required by both Sections 90.003 and 90.004 in accordance with
8 Section 90.007. If the mixed dust claimant has filed separate
9 lawsuits alleging asbestos and silica exposure, the reports
10 required by Sections 90.003 and 90.004 must be served on all parties
11 in each lawsuit.

12 Sec. 90.006. PROHIBITED BASIS FOR DIAGNOSIS. (a) For
13 purposes of this Chapter, a physician may not, as the basis for a
14 diagnosis, rely on any of the following:

15 (1) the reports or opinions of any doctor, clinic,
16 laboratory, or testing company that performed an examination, test,
17 or screening of the exposed person's medical condition in violation
18 of any law, regulation, licensing requirement, or medical code of
19 practice of the state in which the examination, test, or screening
20 was conducted; or

21 (2) the reports or opinions of any doctor, clinic,
22 laboratory, or testing company that performed an examination, test,
23 or screening of the exposed person's medical condition that
24 required the exposed person to agree to retain the legal services of
25 the law firm sponsoring the examination, test, or screening.

26 (b) If a physician relies on any information in violation of
27 Section 90.006(a), the physician's opinion or report does not

1 comply with the requirements of this Chapter.

2 Sec. 90.007. SERVING REPORTS. (a) In a case filed on or
3 after the effective date of this Act, a report must be served on
4 each party not later than the 30th day after the date that party
5 answers or otherwise appears in the suit.

6 (b) In a case pending on the effective date of this Act in
7 which trial (including a new trial or retrial following motion,
8 appeal, or otherwise) commences on or before the effective date of
9 this Act, a claimant is not required to serve a report on any party
10 unless a mistrial, new trial, or retrial is subsequently granted or
11 ordered.

12 (c) In a case pending on the effective date of this Act in
13 which trial (including a new trial or retrial following motion,
14 appeal, or otherwise) commences after the effective date of this
15 Act, a report must be served on all parties on or before the earlier
16 of:

17 (1) the 60th day before trial commences; or

18 (2) the 180th day after the effective date of this Act.

19 Sec. 90.008. MOTION TO DISMISS. (a) If a claimant fails to
20 timely serve a report, or serves a report that does not comply with
21 Section 90.003 or Section 90.004, or fails to comply with Section
22 90.005, a defendant may file a motion to dismiss the claimant's
23 asbestos-related or silica-related claims. That motion must be
24 filed on or before the 30th day after the date the report is served
25 on the defendant or was due. If the basis of the motion is that the
26 claimant served a report that does not comply with the requirements
27 of this Chapter, the motion must set out the reasons the report does

1 not comply with this Chapter.

2 (b) The claimant may file a response to the motion to
3 dismiss on or before the 15th calendar day after the date the motion
4 to dismiss is served. A report may be filed, amended, or
5 supplemented within the time for responding to a motion to dismiss.
6 The service of an amended or supplemental report does not require
7 the filing of an additional motion to dismiss if the reasons stated
8 in the original motion to dismiss are sufficient to require
9 dismissal under this Chapter.

10 (c) If the trial court is of the opinion that the motion to
11 dismiss is meritorious, the court shall, by written order, grant
12 the motion and dismiss all of the claimant's asbestos-related or
13 silica-related claims against the defendant. A dismissal under
14 this section is without prejudice to the claimant's right, if any,
15 to assert claims for an asbestos-related injury or a silica-related
16 injury in a subsequent lawsuit.

17 (d) Upon the filing of a motion to dismiss under this
18 section, all further proceedings in the case are stayed until the
19 motion is heard and determined by the trial court.

20 (e) The trial court, upon the motion of a party showing good
21 cause, may shorten or extend the time limits provided in this
22 section for filing or serving motions, responses, or reports.

23 Sec. 90.009. VOLUNTARY DISMISSAL. Instead of and prior to
24 -serving a report required by Section 90.003(a)(2) or Section
25 90.004(a)(2), a claimant seeking damages arising from a
26 nonmalignant asbestos-related injury or non-malignant
27 silica-related injury may voluntarily dismiss his or her action.

1 If a claimant files a voluntary dismissal under this section, the
2 claimant's voluntary dismissal is without prejudice to the
3 claimant's right to file a subsequent lawsuit seeking damages
4 arising from an asbestos-related injury or silica-related injury.

5 Sec. 90.010. JOINDER OF CLAIMANTS. Unless all parties
6 agree otherwise, claims relating to more than one exposed person
7 shall not be joined for a single trial.

8 Sec. 90.011. APPLICABILITY OF CHAPTERS 33 AND 41. Chapters
9 33 and 41, Civil Practice and Remedies Code, as amended by H.B.4,
10 78th Leg., R.S., are applicable in any case in which a claimant
11 seeks to recover damages for an alleged asbestos-related injury or
12 silica-related injury and which: (1) was filed on or after the
13 effective date of this Act, or (2) was pending on the effective date
14 of this Act and trial (including a new trial or retrial following
15 motion, appeal, or otherwise) has not commenced on or before the
16 effective date of this Act.

17 Sec. 90.012. SUPREME COURT RULEMAKING. (a) The supreme
18 court may promulgate amendments to the Texas Rules of Civil
19 Procedure regarding the joinder of claimants in asbestos-related or
20 silica-related actions if such rules are consistent with Section
21 90.010.

22 SECTION 3. Section 16.003, Civil Practice and Remedies
23 Code, is amended by adding Sections 16.003(c) and 16.003(d), as
24 follows:

25 (c)(1) This subsection applies if:

26 (A) the claimant's action is for personal injury
27 or death allegedly resulting from a nonmalignant asbestos-related

1 injury (as that term is defined in Section 90.001); and

2 (B) a report is required by Section 90.003(a)(2).

3 (2) In an action to which this subsection applies, the
4 cause of action accrues for purposes of this section on the earlier
5 of:

6 (A) the date of the exposed person's death;

7 (B) the date the exposed person knew or
8 reasonably should have known that he or she had an asbestos-related
9 injury that would meet the diagnostic criteria set forth in Section
10 90.003(a)(2)(C) and (D); or

11 (C) the date the claimant serves a report
12 complying with Section 90.003.

13 (d)(1) This subsection applies if:

14 (A) the claimant's action is for personal injury
15 or death allegedly resulting from a nonmalignant silica-related
16 injury (as that term is defined in Section 90.001); and

17 (B) a report is required by Section 90.004(a)(2).

18 (2) In an action to which this subsection applies, the
19 cause of action accrues for purposes of this section on the earlier
20 of:

21 (1) the date of the exposed person's death;

22 (2) the date the exposed person knew or reasonably
23 should have known that he or she had a silica-related injury that
24 would meet the diagnostic criteria set forth in Section
25 90.004(a)(2); or

26 (3) the date the claimant serves a report complying
27 with Section 90.004.

1 SECTION 4. Section 51.014, Civil Practice and Remedies
2 Code, is amended by adding Subsection (a)(11) as follows:

3 (11) denies a motion to dismiss filed under section 90.008,
4 Civil Practice and Remedies Code.

5 SECTION 5. Section 71.051, Civil Practice and Remedies
6 Code, is amended by repealing Section 71.051(f).

7 SECTION 6. Section 22.225, Government Code, is amended by
8 amending Subsection (d) as follows:

9 (d) A petition for review is allowed to the supreme court
10 for an appeal from an interlocutory order described by Section
11 51.014(a)(3), (6) or (11) [~~or (6)~~], Civil Practice and Remedies
12 Code.

13 SECTION 7. The rules adopted by the supreme court under
14 Subchapter H, Chapter 74, Government Code, apply to any action
15 filed or pending on or after September 1, 2003.

16 SECTION 8. (a) This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect on the 91st day after the last day of
21 the legislative session.

22 (b) The changes made by this Act to Section 90.010,
23 Civil Practice and Remedies Code, apply to actions: (1) filed on or
24 after the effective date of this Act, or (2) pending on the
25 effective date of this Act in which trial (including a new trial or
26 retrial following motion, appeal, or otherwise) has not commenced
27 on or before the effective date of this Act.

1 (c) The changes made by this Act to Section 71.051,
2 Civil Practice and Remedies Code, apply to actions: (1) filed on or
3 after the effective date of this Act, or (2) pending on the
4 effective date of this Act in which trial (including a new trial or
5 retrial following motion, appeal, or otherwise) has not commenced
6 on or before the effective date of this Act.

7 (d) Unless otherwise specified in this Act, an action
8 is governed by the law applicable to that action that was in effect
9 immediately before the effective date of this Act, and that law is
10 continued in effect for that purpose.