

## **BILL ANALYSIS**

Senate Research Center

S.B. 1123  
By: Duncan  
State Affairs  
3/22/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill establishes a standard requiring that a claimant prove that a defendant's product or conduct was a substantial factor in causing an injury and that the exposed person's cumulative exposure to asbestos fibers was the cause of person's mesothelioma.

As proposed, S.B. 1123 establishes the standard of causation in mesothelioma claims. The bill requires the claimant to prove that the defendant's product or conduct was a substantial factor in causing the injury to the exposed person and that the exposed person's cumulative exposure to asbestos fibers was a cause of the person's mesothelioma.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 90, Civil Practice and Remedies Code, by adding Section 90.013, as follows:

Sec. 90.013. STANDARD OF CAUSATION FOR CLAIMS INVOLVING MALIGNANT MESOTHELIOMA. (a) Provides that this section provides the exclusive means of proving causation for claims in which the claimant seeks recovery for malignant mesothelioma allegedly caused by exposure to asbestos fibers.

(b) Requires the claimant, notwithstanding any other law, to recover damages on a claim to which this section applies, to prove that a defendant's product or conduct was a substantial factor in causing the injury to the exposed person, as described by Subsection (c); foreseeability, if the cause of action is one in which foreseeability is an element of causation; and that the exposed person's cumulative exposure to asbestos fibers was a cause of the person's mesothelioma.

(c) Provides that a defendant's product or conduct was a substantial factor in causing the exposed person's injury if the exposure to the asbestos fibers for which the defendant is alleged to be responsible contributed to the cumulative exposure of the exposed person and was more than purely trivial when considering the following qualitative factors: the frequency of exposure; the regularity of exposure; and the proximity of the exposed person to the source of the asbestos fibers.

(d) Requires a defendant who seeks a determination of the percentage of responsibility of another person under Section 33.003(a) (relating to determination of percentage of responsibility of certain persons), in a claim to which this section applies, to prove causation in the same manner as is required of a claimant.

(e) Provides that nothing in this section requires a claimant or defendant who seeks a determination of the percentage of responsibility of another person under Section 33.003(a) to prove, for any purpose, a quantitative dose, approximate

quantitative dose, or estimated quantitative dose of asbestos fibers to which the exposed person was exposed.

SECTION 2. Provides that the change in law made by this Act applies to all actions pending or commenced on or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2009.