

By: Duncan

S.B. No. 1123

A BILL TO BE ENTITLED

AN ACT

relating to the standard of causation in claims involving mesothelioma caused by exposure to asbestos fibers.

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

SECTION 1. Chapter 90, Civil Practice and Remedies Code, is amended by adding Section 90.013 to read as follows:

Sec. 90.013. STANDARD OF CAUSATION FOR CLAIMS INVOLVING MALIGNANT MESOTHELIOMA. (a) To recover damages for malignant mesothelioma allegedly caused by exposure to asbestos or asbestos containing products, the claimant must prove, among other elements of the claim, that a defendant's product or conduct was a substantial factor in causing the claimant's injury.

(b) A defendant's product or conduct was a substantial factor in causing the exposed claimant's injury if the claimant presents qualitative proof that the asbestos exposure attributed to the defendant was substantial, and not merely de minimis, when considering:

(1) the frequency of the exposure;

(2) the regularity of the exposure; and

(3) the proximity of the claimant to the source of the asbestos fibers.

(c) A defendant who seeks a determination of the percentage of responsibility of another person under Section 33.003(a) must present qualitative proof in the same manner as is required of a

1 claimant under Subsection (b).

2 (d) A claimant or a defendant, including a defendant seeking
3 a determination under Section 33.003(a), shall not be required to
4 prove, or be prohibited from proving through otherwise admissible
5 evidence, the numerical dose, approximate or otherwise, of asbestos
6 fibers to which the claimant was exposed that are attributable to
7 the defendant or another person under Section 33.003(a).

8 (e) Nothing in this section modifies the general legal
9 requirements for the admissibility of expert testimony with respect
10 to the issue of causation.

11 SECTION 2. Section 90.013, Civil Practice and Remedies
12 Code, as added by this Act, applies to an action commenced on or
13 after the effective date of this Act or pending on the effective
14 date of this Act and in which the trial, or any new trial or retrial
15 following motion, appeal, or otherwise, has not commenced on or
16 before the effective date of this Act. An action commenced before
17 the effective date of this Act in which trial has commenced on or
18 before the effective date of this Act or in which there has been a
19 final, unappealable disposition by order, judgment, voluntary
20 dismissal, or otherwise is governed by the law applicable to the
21 action immediately before the effective date of this Act, and that
22 law is continued in effect for that purpose.

23 SECTION 3. If any provision of this Act or its application
24 to any person or circumstance is held invalid, the invalidity does
25 not affect other provisions or applications of this Act that can be
26 given effect without the invalid provision or application, and to
27 this end the provisions of this Act are declared to be severable.

1 SECTION 4. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.