

By: Patrick

S.B. No. 1202

A BILL TO BE ENTITLED

AN ACT

relating to asbestos and silica litigation.

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

SECTION 1. Sections 90.001 through 90.012, Civil Practice and Remedies Code, are designated as Subchapter A, Chapter 90, Civil Practice and Remedies Code, and a heading is added to Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Section 90.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) If [~~In an action filed on or after the date this chapter becomes law, if~~] a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, the defendant may file a motion to dismiss the claimant's asbestos-related claims or silica-related claims. If the basis for the motion is that the claimant has served on the defendant a report that does not comply with Section 90.003 or 90.004, the [~~The~~] motion must:

(1) be filed on or before the 30th day after the date the report is served on the defendant; and

(2) [~~. If a claimant fails to serve a report on the defendant, the motion must be filed on or before the 30th day after the date the report was required to be served on the defendant under Section 90.006. If the basis of the motion is that the claimant has~~]

1 ~~served on the defendant a report that does not comply with Section~~  
2 ~~90.003 or 90.004, the motion must]~~ include the reasons why the  
3 report does not comply with that section.

4 SECTION 3. Section 90.008, Civil Practice and Remedies  
5 Code, is amended to read as follows:

6 Sec. 90.008. [~~VOLUNTARY~~] DISMISSAL BY CLAIMANT OR PRETRIAL  
7 COURT. (a) Before serving a report required by Section 90.003 or  
8 90.004, a claimant seeking damages arising from an asbestos-related  
9 injury or silica-related injury may voluntarily dismiss the  
10 claimant's action. If a claimant files a voluntary dismissal under  
11 this subsection [~~section~~], the claimant's voluntary dismissal is  
12 without prejudice to the claimant's right to file a subsequent  
13 action seeking damages arising from an asbestos-related injury or a  
14 silica-related injury.

15 (b) An MDL pretrial court, on its own motion, may dismiss  
16 any action that has been pending for more than 180 days in which the  
17 claimant has not served a report that complies with Section 90.003  
18 or 90.004. A dismissal under this subsection is without prejudice  
19 to the claimant's right to file a subsequent action seeking damages  
20 arising from an asbestos-related injury or a silica-related injury.

21 SECTION 4. Section 90.010(d), Civil Practice and Remedies  
22 Code, is amended to read as follows:

23 (d) In an action pending on the date this chapter becomes  
24 law that is transferred to or pending in an MDL pretrial court and  
25 in which the claimant does not serve a report that complies with  
26 Section 90.003 or 90.004, the MDL pretrial court shall not dismiss  
27 the action, except as provided by Section 90.007 or 90.008,

1 ~~[pursuant to this chapter]~~ but shall retain jurisdiction over the  
2 action under the MDL rules. The MDL pretrial court shall not remand  
3 an [such] action over which it retains jurisdiction for trial  
4 unless:

5 (1) the claimant serves a report complying with  
6 Section 90.003 or 90.004; or

7 (2)(A) the claimant does not serve a report that  
8 complies with Section 90.003 or 90.004;

9 (B) the claimant serves a report complying with  
10 Subsection (f)(1); and

11 (C) the court, on motion and hearing, makes the  
12 findings required by Subsection (f)(2).

13 SECTION 5. Chapter 90, Civil Practice and Remedies Code, is  
14 amended by adding Subchapter B to read as follows:

15 SUBCHAPTER B. ASBESTOS TRUSTS

16 Sec. 90.051. DEFINITION. In this subchapter, "asbestos  
17 trust" means a trust fund or claim facility created as a result of a  
18 bankruptcy filing or other insolvency proceeding that is intended  
19 to provide compensation to claimants alleging asbestos-related  
20 injuries. The term includes a trust created under 11 U.S.C. Section  
21 524(g).

22 Sec. 90.052. STATEMENT OF CLAIMS AGAINST ASBESTOS TRUST.

23 (a) In an action in which a claimant alleges an asbestos-related  
24 injury, not later than the 90th day before trial, or another date  
25 specified by court order, the claimant shall file with the court and  
26 serve on all parties a statement listing all:

27 (1) existing or anticipated claims the claimant

1 intends to bring against an asbestos trust; and

2 (2) payments or other compensation the claimant  
3 reasonably believes the claimant is entitled to receive or has  
4 already received from an asbestos trust.

5 (b) A statement provided under Subsection (a) must:

6 (1) be supported by a sworn affidavit by the claimant  
7 that the statement is based on a good faith investigation of all  
8 potential claims against asbestos trusts;

9 (2) be supported by a certification by the claimant's  
10 attorney that the attorney has conducted a good faith investigation  
11 of all potential claims against asbestos trusts;

12 (3) disclose the date on which a claim was or will be  
13 submitted to each asbestos trust and the status of each claim,  
14 including whether there has been a response from the asbestos trust  
15 and whether the claimant or the claimant's counsel has requested  
16 deferral, delay, suspension, or tolling of any aspect of the  
17 asbestos trust's claims process; and

18 (4) disclose the amount of money, if any, the claimant  
19 has received or will receive from each asbestos trust and an  
20 explanation of any contingency that may cause the amount to be paid  
21 to the claimant to increase in the future.

22 Sec. 90.053. COMMUNICATIONS WITH TRUST. (a) At the time a  
23 claimant files and serves an asbestos claim statement as required  
24 by Section 90.052, the claimant shall serve on all parties to the  
25 action copies of the claimant's submissions to and communications  
26 with asbestos trusts, including:

27 (1) copies of electronic data and e-mails;

1           (2) proof-of-claim forms; and

2           (3) all material or information provided in support of  
3 the claim or in response to any inquiry from an asbestos trust.

4           (b) A claimant shall continue to supplement a statement  
5 filed under Section 90.052 or forms and material provided under  
6 Subsection (a) as follows:

7           (1) if the claimant learns that the statement filed  
8 under Section 90.052 was incomplete or incorrect when filed or is no  
9 longer complete and correct, the claimant shall promptly file and  
10 serve on all parties to the action a supplemental statement; and

11           (2) if a claimant files a claim form with an asbestos  
12 trust or provides other material to an asbestos trust after the  
13 claimant initially provides forms and material under Subsection  
14 (a), the claimant shall promptly serve copies of the additional  
15 claim forms or material on all parties.

16           Sec. 90.054. PROHIBITED REMAND. Notwithstanding Section  
17 90.010(c), an MDL pretrial court may not remand a case for trial  
18 until the requirements of Sections 90.052 and 90.053 have been  
19 satisfied.

20           Sec. 90.055. MOTION TO COMPEL TRUST CLAIM. A defendant in  
21 an asbestos-related action may, at any time, move to compel a  
22 claimant to file a claim with an asbestos trust. If the trial court  
23 determines that there is a good faith basis for the claimant to file  
24 the claim with the asbestos trust, the court shall order the  
25 claimant to file the claim with the asbestos trust and to comply  
26 with Sections 90.052 and 90.053.

27           Sec. 90.056. DISCOVERY. (a) A defendant in an action in

1 which the claimant alleges an asbestos-related injury may seek  
2 discovery from an asbestos trust about matters related to the  
3 claimant's injury. If a defendant seeks discovery from an asbestos  
4 trust, the claimant shall provide any consent or permission  
5 required by the asbestos trust for the release of information and  
6 records.

7 (b) Trust claim forms and other claims-related material are  
8 discoverable and presumed relevant to an action in which the  
9 claimant alleges an asbestos-related injury. The forms, material,  
10 and other information provided or discovered under this section may  
11 be used in evidence by the parties to:

12 (1) show alternative causation for the claimant's  
13 alleged asbestos-related injury;

14 (2) serve as a basis for allocating a percentage of  
15 responsibility for the claimant's alleged injury, as provided by  
16 Section 33.003;

17 (3) serve as a basis for designating the creator of the  
18 trust as a responsible third party, as provided by Section 33.004;  
19 and

20 (4) serve as a basis for reducing the amount of  
21 recoverable damages under Section 90.058.

22 Sec. 90.057. RESPONSIBLE THIRD PARTY. If a claimant has  
23 sought compensation from an asbestos trust:

24 (1) the creator of the trust is a responsible third  
25 party under Section 33.004; and

26 (2) the trier of fact shall allocate a percentage of  
27 responsibility to the asbestos trust under Section 33.003.

1       Sec. 90.058. PRESUMPTION OF PAYMENT; AMOUNT OF RECOVERY.

2       (a) If an action proceeds to trial before the claimant has received  
3       a final decision from an asbestos trust as to payment of the  
4       claimant's claim, there is a rebuttable presumption that the  
5       claimant will receive the compensation in accordance with the  
6       relevant trust governance documents. The trial court shall take  
7       judicial notice of the trust governance documents and the payment  
8       amounts provided by the documents.

9       (b) If a verdict in favor of the claimant is reached, the  
10       court shall:

11               (1) establish for each pending asbestos trust claim a  
12       value; and

13               (2) reduce the amount of damages to be recovered by the  
14       claimant by that amount.

15       (c) If the recoverable damages are reduced by the amount of  
16       the value attributed to a claim under Subsection (b) and the claim  
17       is wholly or partly rejected by the asbestos trust, the trial court  
18       may at any time modify the judgment and enter an appropriate  
19       judgment considering the effect of the rejected claim.

20       SECTION 6. The change in law made by this Act applies only  
21 to an action filed on or after the effective date of this Act. An  
22 action filed before the effective date of this Act is governed by  
23 the law that applied to the action immediately before that date, and  
24 that law is continued in effect for that purpose.

25       SECTION 7. This Act takes effect September 1, 2011.