

BILL ANALYSIS

C.S.H.B. 1325
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law sets out procedures for civil actions arising from exposure to asbestos and silica. Interested parties express concern that under current procedures, scarce judicial and litigant resources are being misdirected by the claims of individuals who have been exposed to asbestos or silica but have no functional or physical impairments from asbestos-related or silica-related diseases. C.S.H.B. 1325 seeks to prevent such a misdirection of resources and allow the multidistrict litigation pretrial courts that hear such cases to better manage their dockets by providing for the dismissal of certain asbestos-related and silica-related actions that are pending in those courts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1325 amends the Civil Practice and Remedies Code to remove a statutory provision prohibiting a multidistrict litigation (MDL) pretrial court from dismissing an action involving an asbestos-related or silica-related injury that was pending on August 31, 2005, that was transferred to and remains pending in the MDL pretrial court, and in which the claimant does not serve a physician report concerning the claimant's condition that complies with specified requirements. The bill removes a statutory provision requiring the court to retain jurisdiction over such an action under the MDL rules. The bill requires an MDL pretrial court, beginning on September 1, 2014, to dismiss each action for an asbestos-related or silica-related injury that was pending on August 31, 2005, unless a physician report concerning the claimant's condition that complies with specified requirements was served on or after September 1, 2013. The bill requires the MDL pretrial court to provide for the dismissal of such actions in a case management order entered for that purpose and requires all such actions to be dismissed on or before August 31, 2015.

C.S.H.B. 1325 establishes that a dismissal of an action under the bill's provisions is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related or silica-related injury. The bill establishes that specified statutory provisions relating to actions involving an asbestos-related or silica-related injury apply to a subsequent action for such an injury filed by a claimant whose action was dismissed under the bill's provisions or by a claimant who voluntarily dismissed an action subject to dismissal under the bill's provisions. The bill provides that if a claimant subsequently refiles an action for an asbestos-related or silica-related injury that was dismissed by an MDL pretrial court, the refiled action is treated for purposes of determining the applicable law as if that claimant's action had never been dismissed but, instead, had remained pending until the claimant served a physician report concerning the claimant's condition that complied with the specified requirements. The bill authorizes a claimant whose action was dismissed to serve the petition and citation for any subsequently filed action for an asbestos-related or silica-related injury by certified mail, return

receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

C.S.H.B. 1325 specifies that its provisions are not intended to be regarded as a decision on the merits of a dismissed action, to affect the rights of any party in a bankruptcy proceeding, or to affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under federal bankruptcy law. The bill provides that, with respect to the administrative dismissal of an action under the bill's provisions, the tort system rights of the dismissed actions are specifically preserved.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1325 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Section 90.007, Civil Practice and Remedies Code, is amended.

SECTION 2. Section 90.007(a), Civil Practice and Remedies Code, is amended.

SECTION 3. Section 90.010, Civil Practice and Remedies Code, is amended by amending Subsection (d) and adding Subsections (d-1), (l), (m), and (n) to read as follows:

(d) In an action that was pending on September 1, 2005, ~~[the date this chapter becomes law]~~ that has been [is] transferred to and is [ø] pending in an MDL pretrial court, and in which the claimant does not serve a report that complies with Section 90.003 or 90.004, the MDL pretrial court on motion of a defendant shall [not] dismiss the action pursuant to this chapter unless the claimant shows good cause why the action should not be dismissed ~~[but shall retain jurisdiction over the action under the MDL rules]~~. The MDL pretrial court shall not remand such action for trial unless:

- (1) the claimant serves a report complying with Section 90.003 or 90.004; or
- (2)(A) the claimant does not serve a report that complies with Section 90.003 or 90.004;
- (B) the claimant serves a report complying

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 90.010, Civil Practice and Remedies Code, is amended by amending Subsection (d) and adding Subsections (d-1), (l), (m), (n), and (o) to read as follows:

(d) In an action that was pending on August 31, 2005, ~~[the date this chapter becomes law]~~ that was [is] transferred to and remains [ø] pending in an MDL pretrial court, the ~~[and in which the claimant does not serve a report that complies with Section 90.003 or 90.004, the MDL pretrial court shall not dismiss the action pursuant to this chapter but shall retain jurisdiction over the action under the MDL rules. The]~~ MDL pretrial court shall not remand such action for trial unless:

- (1) the claimant serves a report complying with Section 90.003 or 90.004; or
- (2)(A) the claimant does not serve a report that complies with Section 90.003 or 90.004;
- (B) the claimant serves a report complying

with Subsection (f)(1); and
(C) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(d-1) In an action that was pending on September 1, 2005, that has been transferred to and is pending in an MDL pretrial court, and in which the claimant does not serve a report that complies with Section 90.003 or 90.004 before the later of March 1, 2014, or the 181st day after the date the action is transferred to the MDL pretrial court, the MDL pretrial court may on its own motion, after reasonable notice to the parties, dismiss the action unless the claimant shows good cause why the action should not be dismissed.

(l) A dismissal under Subsection (d) or (d-1) is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

(m) This chapter and Section 16.0031 govern a subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d) or (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008.

(n) A subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d) or (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008 is considered filed on the date the dismissed action was filed. The claimant has the burden to plead and prove the filing date of the dismissed action.

SECTION 4. Section 90.010, Civil Practice and Remedies Code, as amended by this

with Subsection (f)(1); and
(C) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(d-1) Beginning on September 1, 2014, the MDL pretrial court shall dismiss each action for an asbestos-related injury or a silica-related injury that was pending on August 31, 2005, unless a report was served on or after September 1, 2013, that complies with Section 90.003, Section 90.004, or Subsection (f). The MDL pretrial court shall provide for the dismissal of such actions in a case management order entered for that purpose. All such actions shall be dismissed on or before August 31, 2015.

(l) A dismissal under Subsection (d-1) is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

(m) This chapter and Section 16.0031 apply to a subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008.

(n) If a claimant subsequently refiles an action for an asbestos-related injury or a silica-related injury that was dismissed under Subsection (d-1), the refiled action is treated for purposes of determining the applicable law as if that claimant's action had never been dismissed but, instead, had remained pending until the claimant served a report that complied with Section 90.003, Section 90.004, or Subsection (f).

(o) A claimant whose action was dismissed under Subsection (d-1) may serve the petition and citation for any subsequently filed action for an asbestos-related or silica-related injury by certified mail, return receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

SECTION 4. (a) Section 90.010, Civil Practice and Remedies Code, as amended by

Act, applies to an action pending in the multidistrict litigation pretrial court on, or referred to the multidistrict litigation pretrial court on or after, the effective date of this Act.

this Act, applies to an action pending in the multidistrict litigation pretrial court on, or referred to the multidistrict litigation pretrial court on or after, the effective date of this Act.

(b) Nothing in this Act is intended to be regarded as a decision on the merits of a dismissed action, to affect the rights of any party in a bankruptcy proceeding, or to affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.). With respect to the administrative dismissal of an action under Section 90.010(d-1), Civil Practice and Remedies Code, as added by this Act, the tort system rights of the dismissed actions are specifically preserved.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.