

By: Miller of Comal, Lewis, Clardy

H.B. No. 1325

Substitute the following for H.B. No. 1325:

By: Gooden

C.S.H.B. No. 1325

A BILL TO BE ENTITLED

AN ACT

relating to the dismissal of certain actions arising from exposure to asbestos and silica.

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

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

Sec. 90.007. MOTION TO DISMISS IN ACTION FILED ON OR AFTER SEPTEMBER 1, 2005.

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

(a) In an action filed on or after September 1, 2005 [~~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. The motion must be filed on or before the 30th day after the date the report is served on the defendant. 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 served on the defendant a report that does not comply with Section 90.003 or 90.004, the motion must include the reasons why the report does not comply with that section.

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

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

12 (1) the claimant serves a report complying with
13 Section 90.003 or 90.004; or

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

16 (B) the claimant serves a report complying with
17 Subsection (f)(1); and

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

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

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

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

9 (n) If a claimant subsequently refiles an action for an
10 asbestos-related injury or a silica-related injury that was
11 dismissed under Subsection (d-1), the refiled action is treated for
12 purposes of determining the applicable law as if that claimant's
13 action had never been dismissed but, instead, had remained pending
14 until the claimant served a report that complied with Section
15 90.003, Section 90.004, or Subsection (f).

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

23 SECTION 4. (a) Section 90.010, Civil Practice and Remedies
24 Code, as amended by this Act, applies to an action pending in the
25 multidistrict litigation pretrial court on, or referred to the
26 multidistrict litigation pretrial court on or after, the effective
27 date of this Act.

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

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