

1-1 By: Miller of Comal, Lewis, Clardy H.B. No. 1325
 1-2 (Senate Sponsor - Duncan)
 1-3 (In the Senate - Received from the House April 23, 2013;
 1-4 April 25, 2013, read first time and referred to Committee on State
 1-5 Affairs; April 29, 2013, reported favorably by the following vote:
 1-6 Yeas 8, Nays 0; April 29, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to the dismissal of certain actions arising from exposure
 1-21 to asbestos and silica.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. The heading to Section 90.007, Civil Practice
 1-24 and Remedies Code, is amended to read as follows:

1-25 Sec. 90.007. MOTION TO DISMISS IN ACTION FILED ON OR AFTER
 1-26 SEPTEMBER 1, 2005.

1-27 SECTION 2. Section 90.007(a), Civil Practice and Remedies
 1-28 Code, is amended to read as follows:

1-29 (a) In an action filed on or after September 1, 2005 [~~the~~
 1-30 ~~date this chapter becomes law~~], if a claimant fails to timely serve
 1-31 a report on a defendant, or serves on the defendant a report that
 1-32 does not comply with the requirements of Section 90.003 or 90.004,
 1-33 the defendant may file a motion to dismiss the claimant's
 1-34 asbestos-related claims or silica-related claims. The motion must
 1-35 be filed on or before the 30th day after the date the report is
 1-36 served on the defendant. If a claimant fails to serve a report on
 1-37 the defendant, the motion must be filed on or before the 30th day
 1-38 after the date the report was required to be served on the defendant
 1-39 under Section 90.006. If the basis of the motion is that the
 1-40 claimant has served on the defendant a report that does not comply
 1-41 with Section 90.003 or 90.004, the motion must include the reasons
 1-42 why the report does not comply with that section.

1-43 SECTION 3. Section 90.010, Civil Practice and Remedies
 1-44 Code, is amended by amending Subsection (d) and adding Subsections
 1-45 (d-1), (l), (m), (n), and (o) to read as follows:

1-46 (d) In an action that was pending on August 31, 2005, [~~the~~
 1-47 ~~date this chapter becomes law~~] that was [is] transferred to and
 1-48 remains [or] pending in an MDL pretrial court, the [and in which the
 1-49 ~~claimant does not serve a report that complies with Section 90.003~~
 1-50 ~~or 90.004, the MDL pretrial court shall not dismiss the action~~
 1-51 ~~pursuant to this chapter but shall retain jurisdiction over the~~
 1-52 ~~action under the MDL rules. The] MDL pretrial court shall not
 1-53 remand such action for trial unless:~~

1-54 (1) the claimant serves a report complying with
 1-55 Section 90.003 or 90.004; or

1-56 (2)(A) the claimant does not serve a report that
 1-57 complies with Section 90.003 or 90.004;

1-58 (B) the claimant serves a report complying with
 1-59 Subsection (f)(1); and

1-60 (C) the court, on motion and hearing, makes the
 1-61 findings required by Subsection (f)(2).

2-1 (d-1) Beginning on September 1, 2014, the MDL pretrial court
2-2 shall dismiss each action for an asbestos-related injury or a
2-3 silica-related injury that was pending on August 31, 2005, unless a
2-4 report was served on or after September 1, 2013, that complies with
2-5 Section 90.003, Section 90.004, or Subsection (f). The MDL
2-6 pretrial court shall provide for the dismissal of such actions in a
2-7 case management order entered for that purpose. All such actions
2-8 shall be dismissed on or before August 31, 2015.

2-9 (l) A dismissal under Subsection (d-1) is without prejudice
2-10 to the claimant's right to file a subsequent action seeking damages
2-11 arising from an asbestos-related injury or a silica-related injury.

2-12 (m) This chapter and Section 16.0031 apply to a subsequent
2-13 action for an asbestos-related injury or a silica-related injury
2-14 filed by a claimant whose action was dismissed under Subsection
2-15 (d-1) or by a claimant in an action described by Subsection (d) who
2-16 voluntarily dismissed the action under Section 90.008.

2-17 (n) If a claimant subsequently refiles an action for an
2-18 asbestos-related injury or a silica-related injury that was
2-19 dismissed under Subsection (d-1), the refiled action is treated for
2-20 purposes of determining the applicable law as if that claimant's
2-21 action had never been dismissed but, instead, had remained pending
2-22 until the claimant served a report that complied with Section
2-23 90.003, Section 90.004, or Subsection (f).

2-24 (o) A claimant whose action was dismissed under Subsection
2-25 (d-1) may serve the petition and citation for any subsequently
2-26 filed action for an asbestos-related or silica-related injury by
2-27 certified mail, return receipt requested, or other method approved
2-28 by the MDL pretrial court that is likely to accomplish service in a
2-29 cost-effective manner, on a person who was a defendant in the
2-30 dismissed action.

2-31 SECTION 4. (a) Section 90.010, Civil Practice and Remedies
2-32 Code, as amended by this Act, applies to an action pending in the
2-33 multidistrict litigation pretrial court on, or referred to the
2-34 multidistrict litigation pretrial court on or after, the effective
2-35 date of this Act.

2-36 (b) Nothing in this Act is intended to be regarded as a
2-37 decision on the merits of a dismissed action, to affect the rights
2-38 of any party in a bankruptcy proceeding, or to affect the ability of
2-39 any person to satisfy the claim criteria for compensable claims or
2-40 demands under a trust established pursuant to a plan of
2-41 reorganization under Chapter 11 of the United States Bankruptcy
2-42 Code (11 U.S.C. Section 1101 et seq.). With respect to the
2-43 administrative dismissal of an action under Section 90.010(d-1),
2-44 Civil Practice and Remedies Code, as added by this Act, the tort
2-45 system rights of the dismissed actions are specifically preserved.

2-46 SECTION 5. This Act takes effect September 1, 2013.

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