

By: Miller of Comal

H.B. No. 2545

A BILL TO BE ENTITLED

AN ACT

relating to settlement credits in asbestos and silica cases.

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

SECTION 1. Section 90.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "Asbestos-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation or ingestion of asbestos.

(3) "Asbestos tort action" means a tort action based on an allegation that the claimant is has an asbestos-related injury.

(4) "Asbestos trust" means and encompasses all trust entities, claims agents, or claims processing facilities that are created pursuant to the jurisdiction of a United States bankruptcy court and section 524(g) of Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 524(g), or other applicable provision of law, that are formed for the purpose of compensating claimants asserting eligible asbestos claims, and that are in existence on the date initially set for trial in the asbestos tort action.

1           (5) "Asbestos trust claim" means any claim for  
2 compensation by an exposed person or the exposed person's  
3 representative against any asbestos trust.

4           (6) "Asbestosis" means bilateral diffuse interstitial  
5 fibrosis of the lungs caused by inhalation of asbestos fibers.

6           (7) "Cancer" means a malignant condition.

7           (8) [~~(4)~~] "Certified B-reader" means a person who has  
8 successfully completed the x-ray interpretation course sponsored  
9 by the National Institute for Occupational Safety and Health  
10 (NIOSH) and passed the B-reader certification examination for x-ray  
11 interpretation and whose NIOSH certification is current at the time  
12 of any readings required by this chapter.

13           (9) [~~(5)~~] "Chest x-ray" means chest films that are  
14 taken in accordance with all applicable state and federal  
15 regulatory standards and in the posterior-anterior view.

16           (10) [~~(6)~~] "Claimant" means an exposed person and any  
17 person who is seeking recovery of damages for or arising from the  
18 injury or death of an exposed person.

19           (11) [~~(7)~~] "Defendant" means a person against whom a  
20 claim arising from an asbestos-related injury or a silica-related  
21 injury is made.

22           (12) [~~(8)~~] "Exposed person" means a person who is  
23 alleged to have suffered an asbestos-related injury or a  
24 silica-related injury.

25           (13) [~~(9)~~] "FEV1" means forced expiratory volume in  
26 the first second, which is the maximal volume of air expelled in one  
27 second during performance of simple spirometric tests.

1           (14) [~~(10)~~] "FVC" means forced vital capacity, which  
2 is the maximal volume of air expired with maximum effort from a  
3 position of full inspiration.

4           (15) [~~(11)~~] "ILO system of classification" means the  
5 radiological rating system of the International Labor Office in  
6 "Guidelines for the Use of ILO International Classification of  
7 Radiographs of Pneumoconioses" (2000), as amended.

8           (16) [~~(12)~~] "MDL pretrial court" means the district  
9 court to which related cases are transferred for consolidated or  
10 coordinated pretrial proceedings under Rule 13, Texas Rules of  
11 Judicial Administration.

12           (17) [~~(13)~~] "MDL rules" means the rules adopted by the  
13 supreme court under Subchapter H, Chapter 74, Government Code.

14           (18) [~~(14)~~] "Mesothelioma" means a rare form of cancer  
15 allegedly caused in some instances by exposure to asbestos in which  
16 the cancer invades cells in the membrane lining:

17                   (A) the lungs and chest cavity (the pleural  
18 region);

19                   (B) the abdominal cavity (the peritoneal  
20 region); or

21                   (C) the heart (the pericardial region).

22           (19) "Noncancer" means a nonmalignant condition.

23           (20) [~~(15)~~] "Nonmalignant asbestos-related injury"  
24 means an asbestos-related injury other than mesothelioma or other  
25 cancer.

26           (21) [~~(16)~~] "Nonmalignant silica-related injury"  
27 means a silica-related injury other than cancer.

1           (22) [~~(17)~~] "Physician board certified in internal  
2 medicine" means a physician who is certified by the American Board  
3 of Internal Medicine or the American Osteopathic Board of Internal  
4 Medicine.

5           (23) [~~(18)~~] "Physician board certified in  
6 occupational medicine" means a physician who is certified in the  
7 subspecialty of occupational medicine by the American Board of  
8 Preventive Medicine or the American Osteopathic Board of Preventive  
9 Medicine.

10          (24) [~~(19)~~] "Physician board certified in oncology"  
11 means a physician who is certified in the subspecialty of medical  
12 oncology by the American Board of Internal Medicine or the American  
13 Osteopathic Board of Internal Medicine.

14          (25) [~~(20)~~] "Physician board certified in pathology"  
15 means a physician who holds primary certification in anatomic  
16 pathology or clinical pathology from the American Board of  
17 Pathology or the American Osteopathic Board of Internal Medicine  
18 and whose professional practice:

19                   (A) is principally in the field of pathology; and  
20                   (B) involves regular evaluation of pathology  
21 materials obtained from surgical or postmortem specimens.

22          (26) [~~(21)~~] "Physician board certified in pulmonary  
23 medicine" means a physician who is certified in the subspecialty of  
24 pulmonary medicine by the American Board of Internal Medicine or  
25 the American Osteopathic Board of Internal Medicine.

26          (27) [~~(22)~~] "Plethysmography" means the test for  
27 determining lung volume, also known as "body plethysmography," in

1 which the subject of the test is enclosed in a chamber that is  
2 equipped to measure pressure, flow, or volume change.

3 (28) "Proof of claim" means any form of documentation  
4 that a potential claimant against an asbestos trust submits or  
5 provides to the asbestos trust that attests to or asserts the  
6 existence of any liquidated or unliquidated asbestos claim that the  
7 claimant may have against the asbestos trust or its predecessors  
8 under any theory of law.

9 (29) [~~(23)~~] "Pulmonary function testing" means  
10 spirometry, lung volume, and diffusion capacity testing performed  
11 in accordance with Section 90.002 using equipment, methods of  
12 calibration, and techniques that meet:

13 (A) the criteria incorporated in the American  
14 Medical Association Guides to the Evaluation of Permanent  
15 Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix  
16 1, Part (A), Sections 3.00(E) and (F)(2003); and

17 (B) the interpretative standards in the Official  
18 Statement of the American Thoracic Society entitled "Lung Function  
19 Testing: Selection of Reference Values and Interpretative  
20 Strategies," as published in 144 American Review of Respiratory  
21 Disease 1202-1218 (1991).

22 (30) [~~(24)~~] "Report" means a report required by  
23 Section 90.003, 90.004, or 90.010(f)(1).

24 (31) [~~(25)~~] "Respirable," with respect to silica,  
25 means particles that are less than 10 microns in diameter.

26 (32) [~~(26)~~] "Serve" means to serve notice on a party  
27 in compliance with Rule 21a, Texas Rules of Civil Procedure.

1           (33) [~~(27)~~] "Silica" means a respirable form of  
2 crystalline silicon dioxide, including alpha quartz, cristobalite,  
3 and tridymite.

4           (34) [~~(28)~~] "Silica-related injury" means personal  
5 injury or death allegedly caused, in whole or in part, by inhalation  
6 of silica.

7           (35) [~~(29)~~] "Silicosis" means interstitial fibrosis  
8 of the lungs caused by inhalation of silica, including:

9                   (A) acute silicosis, which may occur after  
10 exposure to very high levels of silica within a period of months to  
11 five years after the initial exposure;

12                   (B) accelerated silicosis; and

13                   (C) chronic silicosis.

14           (36) "Trust claims material" means documents  
15 constituting an asbestos trust claim, including, but not limited  
16 to, claim forms, proofs of claim, and informational material  
17 required by an asbestos trust to be submitted by a claimant in order  
18 to have the claim evaluated by the asbestos trust and relied upon by  
19 the asbestos trust in making its compensation determination.

20           SECTION 2. Section 90.010, Civil Practice and Remedies  
21 Code, is amended to read as follows:

22           Sec. 90.010. MULTIDISTRICT LITIGATION PROCEEDINGS. (a) The  
23 MDL rules apply to any action pending on the date this chapter  
24 becomes law in which the claimant alleges personal injury or death  
25 from exposure to asbestos or silica unless:

26                   (1) the action was filed before September 1, 2003, and  
27 trial has commenced or is set to commence on or before the 90th day

1 after the date this chapter becomes law, except that the MDL rules  
2 shall apply to the action if the trial does not commence on or  
3 before the 90th day after the date this chapter becomes law;

4 (2) the action was filed before September 1, 2003, and  
5 the claimant serves a report that complies with Section 90.003 or  
6 90.004 on or before the 90th day after the date this chapter becomes  
7 law; or

8 (3) the action was filed before September 1, 2003, and  
9 the exposed person has been diagnosed with malignant mesothelioma,  
10 other malignant asbestos-related cancer, or malignant  
11 silica-related cancer.

12 (b) If the claimant fails to serve a report complying with  
13 Section 90.003 or 90.004 on or before the 90th day after the date  
14 this chapter becomes law under Subsection (a)(2), the defendant may  
15 file a notice of transfer to the MDL pretrial court. If the MDL  
16 pretrial court determines that the claimant served a report that  
17 complies with Section 90.003 or 90.004 on or before the 90th day  
18 after the date this chapter becomes law, the MDL pretrial court  
19 shall remand the action to the court in which the action was filed.  
20 If the MDL pretrial court determines that the report was not served  
21 on or before the 90th day after the date this chapter becomes law or  
22 that the report served does not comply with Section 90.003 or  
23 90.004, the MDL pretrial court shall retain jurisdiction over the  
24 action pursuant to the MDL rules.

25 (c) In an action transferred to an MDL pretrial court in  
26 which the exposed person is living and has been diagnosed with  
27 malignant mesothelioma, other malignant asbestos-related cancer,

1 malignant silica-related cancer, or acute silicosis, the MDL  
2 pretrial court shall expedite the action in a manner calculated to  
3 provide the exposed person with a trial or other disposition in the  
4 shortest period that is fair to all parties and consistent with the  
5 principles of due process. The MDL pretrial court should, as far as  
6 reasonably possible, ensure that such action is brought to trial or  
7 final disposition within six months from the date the action is  
8 transferred to the MDL pretrial court, provided that all discovery  
9 and case management requirements of the MDL pretrial court have  
10 been satisfied.

11 (d) In an action pending on the date this chapter becomes  
12 law that is transferred to or pending in an MDL pretrial court and  
13 in which the claimant does not serve a report that complies with  
14 Section 90.003 or 90.004, the MDL pretrial court shall not dismiss  
15 the action pursuant to this chapter but shall retain jurisdiction  
16 over the action under the MDL rules. The MDL pretrial court shall  
17 not remand such action for trial unless:

18 (1) the claimant serves a report complying with  
19 Section 90.003 or 90.004; or

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

22 (B) the claimant serves a report complying with  
23 Subsection (f)(1); and

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

26 (e) In an action filed on or after the date this chapter  
27 becomes law that is transferred to an MDL pretrial court and in



1 which the claimant does not serve on a defendant a report that  
2 complies with Section 90.003 or 90.004, the MDL pretrial court  
3 shall, on motion by a defendant, dismiss the action under Section  
4 90.007 unless:

5           (1) the claimant serves a report that complies with  
6 Subsection (f)(1); and

7           (2) the court, on motion and hearing, makes the  
8 findings required by Subsection (f)(2).

9           (f) In an action in which the claimant seeks remand for  
10 trial under Subsection (d)(2) or denial of a motion to dismiss under  
11 Subsection (e):

12           (1) the claimant shall serve on each defendant a  
13 report that:

14                   (A) complies with the requirements of Sections  
15 90.003(a)(2)(A), (B), (E), and (F) and 90.003(b) or Sections  
16 90.004(a)(1), (2), and (4) and 90.004(e); and

17                   (B) verifies that:

18                           (i) the physician making the report has a  
19 physician-patient relationship with the exposed person;

20                           (ii) pulmonary function testing has been  
21 performed on the exposed person and the physician making the report  
22 has interpreted the pulmonary function testing;

23                           (iii) the physician making the report has  
24 concluded, to a reasonable degree of medical probability, that the  
25 exposed person has radiographic, pathologic, or computed  
26 tomography evidence establishing bilateral pleural disease or  
27 bilateral parenchymal disease caused by exposure to asbestos or

1 silica; and

2 (iv) the physician has concluded that the  
3 exposed person has asbestos-related or silica-related physical  
4 impairment comparable to the impairment the exposed person would  
5 have had if the exposed person met the criteria set forth in Section  
6 90.003 or 90.004; and

7 (2) the MDL pretrial court shall determine whether:

8 (A) the report and medical opinions offered by  
9 the claimant are reliable and credible;

10 (B) due to unique or extraordinary physical or  
11 medical characteristics of the exposed person, the medical criteria  
12 set forth in Sections 90.003 and 90.004 do not adequately assess the  
13 exposed person's physical impairment caused by exposure to asbestos  
14 or silica; and

15 (C) the claimant has produced sufficient  
16 credible evidence for a finder of fact to reasonably find that the  
17 exposed person is physically impaired as the result of exposure to  
18 asbestos or silica to a degree comparable to the impairment the  
19 exposed person would have had if the exposed person met the criteria  
20 set forth in Section 90.003 or 90.004.

21 (g) A court's determination under Subsection (f) shall be  
22 made after conducting an evidentiary hearing at which the claimant  
23 and any defendant to the action may offer supporting or  
24 controverting evidence. The parties shall be permitted a reasonable  
25 opportunity to conduct discovery before the evidentiary hearing.

26 (h) The court shall state its findings under Subsection  
27 (f)(2) in writing and shall address in its findings:

1           (1) the unique or extraordinary physical or medical  
2 characteristics of the exposed person that justify the application  
3 of this section; and

4           (2) the reasons the criteria set forth in Sections  
5 90.003 and 90.004 do not adequately assess the exposed person's  
6 physical impairment caused by exposure to asbestos or silica.

7           (i) Any findings made by a court under Subsection (f) are  
8 not admissible for any purpose at a trial on the merits.

9           (j) Subsections (d)(2) and (e)-(i) apply only in  
10 exceptional and limited circumstances in which the exposed person  
11 does not satisfy the medical criteria of Section 90.003 or 90.004  
12 but can demonstrate meaningful asbestos-related or silica-related  
13 physical impairment that satisfies the requirements of Subsection  
14 (f). Subsections (d)(2) and (e)-(i) have limited application and  
15 shall not be used to negate the requirements of this chapter.

16           ~~[(k) On or before September 1, 2010, each MDL pretrial court~~  
17 ~~having jurisdiction over cases to which this chapter applies shall~~  
18 ~~deliver a report to the governor, lieutenant governor, and the~~  
19 ~~speaker of the house of representatives stating:~~

20           ~~(1) the number of cases on the court's multidistrict~~  
21 ~~litigation docket as of August 1, 2010,~~

22           ~~(2) the number of cases on the court's multidistrict~~  
23 ~~litigation docket as of August 1, 2010, that do not meet the~~  
24 ~~criteria of Section 90.003 or 90.004, to the extent known,~~

25           ~~(3) the court's evaluation of the effectiveness of the~~  
26 ~~medical criteria established by Sections 90.003 and 90.004,~~

27           ~~(4) the court's recommendation, if any, as to how~~

~~medical criteria should be applied to the cases on the court's multidistrict litigation docket as of August 1, 2010, and~~

~~(5) any other information regarding the administration of cases in the MDL pretrial courts that the court deems appropriate.]~~

(k) The following provisions apply to an asbestos tort action pending in any MDL pretrial court:

(1) Within thirty days after the commencement of discovery in the action or within thirty days of the effective date of this section with respect to an asbestos tort action that is pending on that effective date of this Act and in which discovery has commenced, a claimant shall serve on all parties a sworn statement by the claimant identifying all existing asbestos trust claims made by or on behalf of the claimant and all trust claims material pertaining to each identified asbestos trust claim. The sworn statement shall disclose the date on which each asbestos trust claim against the relevant asbestos trust was made and whether any request for a deferral, delay, suspension, or tolling of the asbestos trust claims process has been submitted.

(2) The providing of a sworn statement under subsection (k)(1) shall be in addition to any disclosure requirements otherwise imposed by law, rule of procedure, court order or ruling, applicable agreement or stipulation, local rule, or case management order.

(3) If the claimant, subsequent to service of the sworn statement under subsection (k)(1) files with or submits to any asbestos trust additional asbestos trust claims not previously

1 disclosed, the claimant shall serve on all parties an amendment  
2 updating the sworn statement and identifying the additional  
3 asbestos trust claims. The claimant shall serve any such amendment  
4 within thirty days of filing an additional asbestos trust claim  
5 with, or submitting an additional asbestos trust claim to, any  
6 asbestos trust.

7       (4) With respect to any asbestos trust claim that a  
8 claimant discloses in an amendment to the claimant's sworn  
9 statement provided under subsection (k)(1), the claimant shall  
10 serve on all parties all trust claims material pertaining to each  
11 additional asbestos trust claim identified in that amendment. The  
12 claimant shall serve the trust claims materials as required by this  
13 subsection within thirty days of filing or submitting each  
14 additional asbestos trust claim.

15       (5) Failure to serve on all parties all trust claims  
16 material as required by this subsection in a timely manner shall  
17 constitute grounds for the MDL pretrial court to decline to remand  
18 the case for trial to court in which the action was filed.

19       (6) Nothing in this subsection prevents a court of  
20 competent jurisdiction from requiring any disclosures in addition  
21 to the disclosures required under this subsection.

22       (7) Not less than seventy-five days prior to the  
23 commencement of trial, any defendant in an asbestos tort action may  
24 file a motion with the MDL pretrial court for an order to stay the  
25 proceedings setting forth credible evidence demonstrating all of  
26 the following:

27       (A) The identities of all asbestos trusts not

1 previously disclosed by the claimant, against which the claimant  
2 has not made any asbestos trust claims, and against which the  
3 defendant in good faith believes the claimant may make a successful  
4 asbestos trust claim;

5 (B) The information that the defendant believes  
6 supports the additional asbestos trust claims;

7 (C) A description of the information sufficient  
8 to meet the asbestos trust claim requirements of the asbestos  
9 trusts described in subsection (k)(7)(A).

10 (8) Notwithstanding any other provision in this  
11 subsection, if the claimant produces additional asbestos exposure  
12 information that supports the filing of an additional asbestos  
13 trust claim, the defendant may file a motion to stay the proceedings  
14 as provided in subsection (k)(7) within seven days of receiving the  
15 additional asbestos exposure information.

16 (9) Within fourteen days after the filing of the  
17 defendant's motion for an order to stay the proceedings under  
18 subsection (k)(7), the claimant may do any of the following:

19 (A) File the asbestos trust claims with or submit  
20 them to the asbestos trusts identified in the defendant's motion  
21 for an order to stay the proceedings. The submission to the court  
22 and to all of the parties in the asbestos tort action of proof  
23 demonstrating that the asbestos trust claims identified in the  
24 defendant's motion to stay the proceedings have been filed with or  
25 submitted to the appropriate asbestos trusts is dispositive of the  
26 defendant's motion for an order to stay the proceedings.

27 (B) File with the court a response to the

1 defendant's motion requesting a determination by the court that the  
2 information supporting the asbestos trust claims against the  
3 asbestos trusts identified in the defendant's motion should be  
4 modified prior to the filing of an asbestos trust claim with, or the  
5 submission of an asbestos trust claim to, an asbestos trust or that  
6 there is insufficient information to file or submit the asbestos  
7 trust claim identified in the defendant's motion.

8 (C) File with the court a response to the  
9 defendant's motion requesting a determination by the court that the  
10 claimant's or attorney's fees and expenses to prepare the asbestos  
11 claim form and file or submit the asbestos trust claim identified in  
12 the defendant's motion exceed the claimant's reasonably anticipated  
13 recovery from the asbestos trust claim.

14 (10) If the defendant files a motion to stay the  
15 proceedings and if the claimant files a response pursuant to  
16 subsection (k)(9)(C), the court shall determine if the claimant's  
17 or attorney's fees and expenses to prepare the asbestos claim form  
18 and file or submit the asbestos trust claim identified in the  
19 defendant's motion exceed the claimant's reasonably anticipated  
20 recovery from the asbestos trust claim. If the court determines  
21 that the claimant's or attorney's fees and expenses exceed the  
22 claimant's reasonably anticipated recovery from the asbestos trust  
23 claim, the court shall require the claimant to file with the court a  
24 verified statement of the claimant's exposure history to the  
25 asbestos products covered by that asbestos trust.

26 (11) If the court determines that there is a good faith  
27 basis for filing an asbestos trust claim with, or submitting an

asbestos trust claim to, an asbestos trust identified in the defendant's motion brought under subsection (k)(7), the court shall stay the proceedings until the claimant files the asbestos trust claims with or submits them to the asbestos trusts identified in the defendant's motion and has otherwise met the obligations set forth in this Chapter.

(12) A noncancer asbestos trust claim and a cancer asbestos trust claim are based on distinct injuries caused by a person's exposure to asbestos. If a claimant filed a noncancer asbestos trust claim with, or submitted a noncancer asbestos trust claim to, an asbestos trust and subsequently filed an asbestos tort action based on a cancer asbestos claim, the claimant has an obligation to include in the claimant's sworn statement and serve on the parties to the action the asbestos trust materials related to both the noncancer asbestos trust claim and the cancer asbestos claim.

(13) Asbestos trust claims and the information that is the subject of disclosure under this subsection are presumed to be authentic, relevant to, and discoverable in an asbestos tort action. Notwithstanding any agreement or confidentiality provision, trust claims material are presumed to not be privileged. The parties in the asbestos tort action may introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to person, to prove a basis to allocate responsibility for the claimant's claimed injury, death, or loss to person, and to prove issues relevant to an adjudication of the asbestos claim, unless the exclusion of the



1 trust claims material is otherwise required by the rules of  
2 evidence.

3 (14) In addition to the disclosure requirements in  
4 this subsection, the parties to the asbestos tort action may seek  
5 additional disclosure and discovery of information relevant to the  
6 action by any mechanism provided by any applicable order, rule or  
7 law. Nothing in this subsection prevents any defendant in an  
8 asbestos tort action from also seeking discovery of the claimant's  
9 asbestos trust claims directly from the asbestos trusts involved.

10 (15) In an asbestos tort action, upon the filing by a  
11 defendant or judgment debtor of an appropriate motion seeking  
12 sanctions or other relief, the court may impose any sanction  
13 provided by a law, including, but not limited to, vacating a  
14 judgment rendered in an asbestos tort action, for a claimant's  
15 failure to comply with the disclosure requirements of this  
16 subsection.

17 (16) If subsequent to obtaining a judgment in an  
18 asbestos tort action in this state a claimant files any additional  
19 asbestos trust claim with, or submits any additional asbestos trust  
20 claim to, an asbestos trust that was in existence at the time the  
21 claimant obtained the judgment, the trial court, upon the filing by  
22 a defendant or judgment debtor of an appropriate motion seeking  
23 sanctions or other relief, has jurisdiction to reopen its judgment  
24 in the asbestos tort action and either adjust the judgment by the  
25 amount of any subsequent asbestos trust payments obtained by the  
26 claimant or order other relief to the parties that the court  
27 considers just and proper. A defendant or judgment debtor shall

1 file any motion under this subsection within a reasonable time and  
2 not more than one year after the judgment was signed.

3         SECTION 3. The provisions of this Act shall apply to  
4 asbestos tort actions filed on or after the effective date of this  
5 Act and to pending asbestos tort actions in which trial has not  
6 commenced as of the effective date of this Act.

7         SECTION 4. (A) If any provision that constitutes the whole  
8 or part of a section of the Civil Practice and Remedies Code enacted  
9 by this act or if any application of any provision that constitutes  
10 the whole or part of a section of the Civil Practice and Remedies  
11 Code enacted by this act is held invalid, the invalidity does not  
12 affect other provisions of the section or applications of other  
13 provisions of the section that can be given effect without the  
14 invalid provision or application. To this end, the provisions that  
15 constitute the whole or part of the sections of the Civil Practice  
16 and Remedies Code enacted by this act and their applications are  
17 independent and severable.

18         (B) If any provision that constitutes the whole or part of a  
19 section of the Civil Practice and Remedies Code enacted by this act  
20 or if any application of any provision that constitutes the whole or  
21 part of a section of the Civil Practice and Remedies Code enacted by  
22 this act is held to be preempted by federal law, the preemption does  
23 not affect other provisions of the section or applications of other  
24 provisions of the section that can be given effect without the  
25 preempted provision or application. To this end, the provisions  
26 that constitute the whole or part of the sections of the Civil  
27 Practice and Remedies Code enacted by this act and their

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1 applications are independent and severable.

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