

BILL ANALYSIS

Senate Research Center

C.S.S.B. 496
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State Affairs
4/10/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Current law permits an asbestos claim to be placed in the civil court system like any other civil claim. It is estimated that over half of the 200,000 asbestos claims pending in the United States have been filed in Texas courts. As a result, court dockets are overloaded and available money to compensate victims may not get to those who are currently ill.

C.S.S.B. 496 creates a new chapter in the Civil Practices and Remedies Code for civil claims relating to asbestos litigation. This bill establishes an inactive docket for unimpaired claims, establishes objective medical criteria for determining actual impairment, and gives trial preference to asbestos claims involving malignant conditions caused by asbestos exposure.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 (Sections 90.051 and 90.058, Civil Practices and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, as follows:

CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. Defines certain terms used in this chapter.

Sec. 90.002. APPLICABILITY. Provides that this chapter applies to any claim alleging personal injury or death caused by exposure to asbestos fibers.

Sec. 90.003. NO CAUSE OF ACTION CREATED. Provides that this chapter does not create a cause of action.

[Reserves Sections 90.004-90.050 for expansion.]

SUBCHAPTER B. INACTIVE DOCKET

Sec. 90.051. INACTIVE DOCKET ESTABLISHED. (a) Requires the supreme court to establish an inactive docket for claims under this chapter, to be administered by the office of court administration.

(b) Requires the supreme court by rule to establish procedures to implement the inactive docket according to this chapter.

Sec. 90.052. LIMITATIONS TOLLED. Provides that the limitations period for a claim assigned to the inactive docket under this subchapter is tolled as of the original date on which the petition and information form against each defendant named in the petition are filed under Section 90.054.

Sec. 90.053. INACTIVE CLAIMS NOT SUBJECT TO DISCOVERY AND OTHER COURT ORDERS. Provides that a claim on the inactive docket is not subject to any order of the trial court in which the claim was originally filed affecting active claims involving exposure to asbestos fibers, including discovery orders. Prohibits discovery from proceeding on an inactive claim until the claim is removed to the active docket as provided by this subchapter.

Sec. 90.054. FILING A CLAIM; FILING FEE. (a) Requires a claimant seeking recovery of damages for personal injury or death caused by exposure to asbestos fibers to file, in addition to the petition, an information form containing certain information.

(b) Requires each claimant to file a petition and information form required by this section and pay the filing fee required by Section 51.317(b)(1).

(c) Prohibits a claim from being brought on behalf of a group or class of persons, and multiple claims from being joined unless each claimant files a complaint and information form and pays the applicable filing fee.

(d) Requires the trial court as soon as possible after the claim is filed, except as provided by Subsection (e), to send the appropriate cause number and a copy of the claimant's information form to the office of court administration for listing on the inactive docket.

(e) Requires the trial court to place a claim on the active docket if the claimant's petition and information form are accompanied by certain documents.

(f) Requires the clerk of the court in which the claim is filed to forward one-half of the filing fee paid under this section to the comptroller for deposit to the asbestos claims inactive docket account established under Subchapter C.

Sec. 90.055. MOTION FOR REMOVAL TO ACTIVE DOCKET. (a) Requires a claimant seeking to remove a claim from the inactive docket for placement on the active docket to file with the trial court in which the claim was originally filed a motion for removal.

(b) Requires the motion for removal to be accompanied by the documentation necessary to satisfy the criteria specified by Section 90.056.

(c) Requires the claimant, at the time of filing with the trial court, to serve the motion for removal and supporting documentation on each defendant named in the claimant's original petition.

(d) Requires, by a certain date, a defendant who objects to the removal of the claim to file an objection to removal with the trial court stating the reasons for the objection. Requires the objection to be served on the claimant and each other defendant.

(e) Provides that certain actions are not considered an appearance for purposes of establishing the court's jurisdiction over the defendant in the event the claim is removed to the active docket.

(f) Authorizes the claimant, by a certain date, to file a response with the trial court. Requires the response to be served on each defendant.

(g) Authorizes a petition for removal to be filed simultaneously with the original claim and information form under Section 90.054.

Sec. 90.056. CRITERIA FOR REMOVAL FOR NONMALIGNANCY. (a) Authorizes a judge reviewing a motion for removal to remove a claim from the inactive docket and

place it on the active docket of the trial court in which it was originally filed if the claimant shows by a preponderance of the evidence, a certain diagnosis.

(b) Requires an impairment diagnosis under Subsection (a) to meet certain criteria.

(c) Provides that for purposes of this section, meeting the objective criteria for generally accepted medical standards of impairment related to a reliable history of exposure to asbestos fibers requires certain pulmonary function test results, at a minimum.

(d) Authorizes a claimant to submit an additional report, providing certain information, by a physician licensed in this state and board-certified in pulmonary, internal, or occupational medicine, if the pulmonary function testing results do not meet certain requirements.

(d) [sic] Authorizes the radiologic findings required by this section to be made with a quality 2 chest x-ray if a quality 1 chest x-ray is not available, if a claimant is deceased and no pathology is available.

Sec. 90.057. REVIEW BY INDEPENDENT EXPERT. (a) Requires the trial court, by a certain date and if a defendant objects to the motion for removal, to refer the medical report, test results, and other documentation submitted by the claimant, the defendant's objection to removal, and any other information directed by the court to an independent expert randomly selected from a list of experts published by the supreme court according to Section 90.058.

(b) Requires the costs of the expert to be paid by the objecting defendant if the expert determines the medical criteria for removal have been met or by the claimant if the expert determines the medical criteria for removal have not been met.

(c) Requires the independent expert to submit a report and recommendation to the court by a certain date. Authorizes the independent expert to perform pulmonary function testing to verify the information submitted by the claimant.

Sec. 90.058. LIST OF INDEPENDENT EXPERTS. (a) Requires the supreme court to publish a list of independent experts for the purpose of reviewing petitions for removal filed under this subchapter.

(b) Requires a person to meet certain requirements in order to be eligible for placement on the list of independent experts.

(c) Requires the supreme court to distribute the list of independent experts to each district court in the state and to update the list at least annually.

(d) Requires the supreme court by rule to adopt a system for the random selection of independent experts from the list.

Sec. 90.059. ORDER GRANTING OR DENYING PETITION FOR REMOVAL. (a) Requires the trial court by a certain date to issue an order granting or denying the petition for removal based on certain factors.

(b) Authorizes the court, before issuing the order, to hold a hearing on its own motion or, in its discretion, on the motion of a party. Provides that the decision of the court not to grant a request for a hearing may not be appealed and does not constitute reversible error.

(c) Provides that if the court orders a claim removed from the inactive docket and

placed on the active docket, any date, deadline, or other provision in a court order relating to claims on the active docket or in the Texas Rules of Civil Procedure applies as if the claim had been filed on the date of the court's order granting the motion for removal.

(d) Requires the trial court to notify the office of court administration, if the trial court orders a claim removed from the inactive docket and placed on the court's active docket. Requires the office of court administration, upon receipt of such notification, to remove the claim from its list of inactive claims.

Sec. 90.060. **ADMISSIBILITY OF CERTAIN INFORMATION.** (a) Provides that the existence of an inactive docket, or the fact that a claim is or is not on an inactive docket, is not admissible in any proceeding for any purpose, except for a proceeding concerned with the removal of a claim from the inactive docket.

(b) Provides that the medical criteria established by this subchapter for removal of a claim from the inactive docket are established solely for the purpose of determining whether a claim may be removed to the active docket. Provides that the fact that a claimant satisfies the medical criteria for removal of a claim from the inactive docket may not be construed as an admission or determination that a person has a condition related to exposure to asbestos fibers. Prohibits the criteria used to determine whether a claim should be removed from being cited, referred to, or otherwise used in the trial of a claim for the purpose of determining whether a person has a condition related to exposure to asbestos fibers.

(c) Provides that an expert report submitted under Section 90.057 is solely for the purpose of determining whether a claim may be removed to the active docket and is inadmissible for any other purpose. Prohibits an independent expert from being compelled to testify at any hearing or trial for which the expert submitted a report under Section 90.057.

(d) Prohibits listing of a claim on an inactive docket from being construed as an admission by a claimant or person allegedly exposed to asbestos fibers that the claimant or person has not developed a condition related to exposure to asbestos fibers.

[Reserves Sections 90.061-90.100 for expansion.]

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 90.101. **ASBESTOS CLAIMS INACTIVE DOCKET ACCOUNT.** (a) Provides that the asbestos claims inactive docket account is an account in the general revenue fund.

(b) Provides that the account consists of money deposited to the account under Section 90.054, grants, gifts, and donations to the account, and interest earned on money in the account.

(c) Authorizes the account to be appropriated only for purposes of administering this chapter.

(d) Provides that Sections 403.095(Use of Dedicated Revenue) and 404.071(Disposition of Interests on Investments), Government Code, do not apply to the account.

Sec. 90.102. **DONATIONS.** Authorizes the office of court administration to accept for the account established under Section 90.101 a donation, grant, or gift of any kind from any person for a purpose related to the administration of this chapter.

SECTION 2. Amends Subsection (a), Section 23.101, Government Code, to require the trial

courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to certain hearings and trials including a claim alleging personal injury caused by exposure to asbestos fibers if the basis for the claim is a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers and the exposed person is still living.

SECTION 3. (a) Provides that except as provided by this section, Chapter 90, Civil Practice and Remedies Code, as added by this Act, applies to all actions: (1) commenced on or after the effective date of this Act or (2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

(b) Provides that Sections 90.057 and 90.058, as added by this Act, apply only to an action commenced on or after April 1, 2003. Requires the trial court to issue an order granting or denying a motion based on evidence presented by the parties, if a defendant objects to a motion for removal in an action commenced before that date.

(c) Provides that an action commenced before the effective date of this Act, in which a trial, new trial, or retrial is in progress on the day prior to the effective date, is governed by the applicable law in effect immediately before that date, and that law is continued in effect for that purpose.

(d) Requires the Supreme Court of Texas to establish the inactive docket, as required by this Act, not later than the 60th day after the effective date of this Act.

(e) Requires the Supreme Court of Texas to publish the list of independent experts and adopt a system for the random selection of independent experts, as required by this Act, by a certain date.

SECTION 4. (a) Requires a claimant, in an action to which Section 3(a)(2) of this Act applies, to file a notice of claim with the trial court in which the claim was originally filed for purposes of placing the claim on the inactive docket established under Chapter 90, Subchapter B, Civil Practices and Remedies Code, as added by this Act, unless the claim qualifies for the active docket as provided by Section 90.054(e), Civil Practices and Remedies Code, as added by this Act.

(b) Requires the notice of claim required under Subsection (a) of this section to identify the claimant, each defendant named in the original complaint, and the cause number of the original claim. Requires the clerk of the court to send a copy of the notice of claim to the Office of Court Administration of the Texas Judicial System and requires the claim to be treated in all respects as any other claim placed on the inactive docket established under Chapter 90, Subchapter B, Civil Practices and Remedies Code, as added by this Act.

(c) Requires the claimant to pay the filing fee required by Section 51.317 (b)(1), Government Code, if a claimant to which this section applies did not pay the applicable filing fee when the claim was originally filed, with the notice of claim required under Subsection (a) of this section. Requires the clerk of the court to forward one-half of the fee to the comptroller of public accounts in accordance with Section 90.054 (f), Civil Practices and Remedies Code, as added by this Act.

SECTION 5. Effective date: upon passage or September 1, 2003.