

SUMMARY OF S.B. 15**ASBESTOS/SILICA LITIGATION REFORM BILL**

S.B. 15, the asbestos/silica litigation reform bill, distinguishes between the claims of people who are physically impaired or sick due to exposure to asbestos or silica and those who are not experiencing any physical impairment relating to asbestos or silica. The bill allows those claimants who are actually impaired to pursue their claims in the judicial system and defer the claims of those who are not impaired. The bill does this by establishing medical criteria that a claimant must meet to demonstrate impairment before proceeding with a lawsuit. The bill also protects those who have been exposed to asbestos or silica but who do not show signs of illness by extending the point at which limitations begins to run to ensure that if an unimpaired claimant ever becomes sick, he or she will be able to pursue a claim. The bill also addresses specific abuses in asbestos/silica litigation by preventing the “bundling” of claims of different people for trial, applying the current rules relating to multi-district litigation (MDL) to most asbestos/silica cases currently pending, and putting limits on the use of testing materials generated by lawyer-sponsored, mass screenings.

Principal Features

- Creates Chapter 90 of the Civil Practice and Remedies Code governing “Claims Involving Asbestos and Silica”.
- Requires a person seeking damages for asbestos-related injury or silica-related injury to provide a report showing:
 - 1) the exposed person has been diagnosed by a board-certified physician with mesothelioma or other cancer caused by exposure to asbestos or silica; or
 - 2) the exposed person has been diagnosed by a board-certified physician with actual physical impairment caused by exposure to asbestos or silica and the physical impairment meets specified, medical criteria.
- Requires dismissal if a claim is filed that does not meet the specified criteria upon a request by the defendant for a dismissal. Dismissal applies only to cases filed after September 1, 2005. Pending cases cannot be dismissed, but they are subject to being included in an MDL proceeding and cannot be remanded for trial from an MDL proceeding unless or until they meet the medical criteria.
- Provides for an interlocutory appeal of a denial of a motion to dismiss.

- Extends the statute of limitations for asbestos-related or silica-related injury claims to the earlier of:
 - 1) two years after the injured person's death; or
 - 2) two years after the person serves a report on a defendant that complies with the statute.
- Prohibits physicians from relying on findings, testing or screening performed in violation of state regulations governing how such testing may be done.
- Prohibits joinder of claims of more than one exposed person for trial in any case in which trial commences after September 1, 2005.
- Applies the rules relating to multidistrict litigation to cases that do not meet the medical criteria and that were filed before September 1, 2003. Cases filed after September 1, 2003, are already subject to the multidistrict litigation rules adopted as part of H.B. 4. S.B. 15 does not change the application of the MDL rules for these cases.
- Effective on September 1, 2005.

Medical Criteria

- Requirements for pursuing a nonmalignant, asbestos-related claim:
 - Physical examination;
 - Detailed medical history covering the possible causes of the claimant's medical problems and confirming exposure to asbestos;
 - 10 years since exposure to asbestos (latency period);
 - Either 1) a quality 1 or 2 chest x-ray, read by a certified B-reader graded 1/1 or higher for bilateral irregular opacities or b2 or higher for pleural thickening with blunting of the costophrenic angle; or, 2) pathological asbestosis graded 1(B) or higher;
 - Pulmonary function testing reflecting the following:
 - forced vital capacity either 1) below the lower limit of normal according to the interpretive standards of the Official Statement of the American Thoracic Society entitled "Lung Function Testing: Selection of Reference Values and Interpretive Strategies" (1991) or 2) below 80 percent of predicted; and
 - FEV1/FVC ratio (using actual values) at or above either 1) the lower limit of normal, or 2) 65 percent; or
 - total lung capacity either 1) below the lower limit of normal or 2) below 80 percent of predicted;

- An opinion by a board-certified physician that the impairment was not more probably the result of causes other than asbestos.
- If a person's pulmonary function testing is within the range of normal, but there is still sufficient reason to believe the person is suffering from asbestos-related disease, the alternative medical criteria are:
 - Report by a board-certified physician who has a doctor/patient relationship with the injured person;
 - Quality 1 or 2 chest x-ray, read by a certified B-reader graded 2/1 or higher for bilateral irregular opacities;
 - Opinion by the physician that the injured person has restrictive impairment from asbestosis.
- If a person's x-ray reading is normal or marginal (0/0 or 1/0), but there is still sufficient reason to believe the person is suffering from asbestos-related disease, the alternative medical criteria are:
 - Report by a board-certified physician who has a doctor/patient relationship with the injured person;
 - Pulmonary function testing reflecting results below the lower limit of normal, including a diffusing capacity of carbon monoxide test;
 - A CT scan or HRCT scan of the injured person that, in the opinion of the physician, reflects the presence of asbestos-related pleural or parenchymal disease.
- Requirements for pursuing a silicosis claim:
 - Physical examination;
 - Detailed medical history covering all possible causes of the claimant's medical problems and confirming substantial occupational exposure to silica;
 - Verification of a sufficient latency period for the applicable type of silicosis;
 - Pulmonary function testing reflecting Class 2 impairment or higher according to the American Medical Association's Guides to the Evaluation of Permanent Impairment;
 - Either 1) a quality 1 or 2 chest x-ray, read by a certified B-reader graded 1/1 or higher for bilateral nodular opacities occurring primarily in the upper lung fields, 2) pathological demonstration of classic silicotic nodules exceeding one centimeter in diameter, 3) progressive massive fibrosis radiologically established by silicotic nodules larger than one centimeter in diameter, or 4) acute silicosis;
 - An opinion by a board-certified physician that the impairment was not more probably the result of causes other than silica.

- Additional requirements for pursuing a silica-related lung cancer claim:
 - Diagnosis by board certified physician of primary lung cancer;
 - Opinion by board certified physician that silica was a substantial contributing factor to the lung cancer;
 - Sufficient evidence to demonstrate at least 15 years have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis or sufficient evidence to rebut the presumption that if less than 15 years have elapsed since the date of exposure silica is not the cause of the cancer;
- A silica-related cancer claimant need not meet the x-ray, pathology, or silicosis diagnosis requirements for silicosis claims.
- Additional requirement for silica-related diseases other than silicosis and lung cancer:
 - Diagnosis by board certified physician of silica-related disease that is not more probably the result of causes other than silica.

Medical Criteria for Unusual or Extraordinary Cases

- Cases that are in the MDL may also survive dismissal and/or be remanded for trial if they meet the criteria of Section 90.010 (f) which is a pathway for exceptional or unusual cases. 90.010(f) is for the unusual case where the exposed person has unique or extraordinary physical characteristics that prevent the medical criteria in the statute from adequately assessing the person's impairment. This pathway is expressly limited to exceptional circumstances and cannot be used to negate the medical requirements of the statute. Section 90.010(f) requires:
 - Report by a board-certified physician with a doctor/patient relationship with the injured person;
 - Pulmonary function testing reflecting impairment in the opinion of the physician;
 - An opinion by the physician that the person is impaired by pleural or parenchymal disease;
 - Finding by the court that the person suffers from unique or extraordinary physical characteristics;
 - Finding by the court that the opinions of the physician are reliable and credible;
 - Finding by the court that the person's unique or extraordinary physical characteristics cause the medical criteria not to adequately assess the person's impairment;

- Finding by the court that the person is impaired from asbestos or silica in a manner comparable to the impairment required under the normal medical criteria.

X-ray Criteria for Cases filed before May 1, 2005

- The medical criteria for cases filed before May 1, 2005, differs from the standard medical criteria in the statute in one respect: the required ILO classification for radiographic evidence of asbestos or silica related disease in these cases is 1/0 as opposed to 1/1. All cases filed after May 1, 2005, must meet a 1/1 standard for the grading of radiographic evidence (x-rays). Those cases filed before May 1, 2005, may meet a 1/0 ILO classification threshold for any x-ray evidence being relied on to satisfy medical reporting requirements. All other medical criteria for cases filed before May 1, 2005, are the same as for cases filed after that date.

Deadlines for serving Reports

- For cases pending on September 1, 2005, reports must be served on each defendant on the earlier of:
 - the 60th day before trial commences, or
 - the 180th day after September 1, 2005.
- For cases filed after September 1, 2005, reports must be served on each defendant within 30 days of the defendant's answer or appearance in the suit.

Deadlines for filing Motions to Dismiss

- A motion to dismiss for failure to serve a complying report must be filed within 30 days of the date the report is served.
- The claimant must file any response to the motion to dismiss within 15 days.
- All proceedings in the case are stayed until the court rules on the motion to dismiss.

Application of the New Statute

- Applies the medical criteria to all claims that have not gone to trial as of the 90th day after the effective date of Act. Cases in which trial has not commenced as of December 1, 2005, must comply with the reporting requirements of the statute.
- Applies the current multidistrict litigation rules to asbestos and silica cases pending on or filed after the effective date of the Act as follows:
 - Pre-September 1, 2003, cases in which the claimant has been diagnosed with malignant mesothelioma, or other malignant

asbestos-related or silica-related cancer are not subject to the MDL rules;

- Non-cancer cases in which the claimant meets the medical criteria may avoid the MDL if the claimant files a complying report on or before the 90th day after the effective date of the Act;

Other provisions

- Permissive direct appeal to the Supreme Court in the event of a constitutional challenge.
- Constitutional severability clause. The medical criteria sections, 90.003, 90.004, and 90.010 (d), are declared nonseverable from the limitations provision. Otherwise, all other provisions are severable.