

- SUBJECT:** Dismissing certain actions arising from exposure to asbestos and silica
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* George Allen, Texas Apartment Association; Kathy Barber, NFIB/Texas; Bryan Blevins, Jr., Texas Trial Lawyers Association; Mark Borskey, General Electric; Jay Brown, Valero Energy Corp.; David Cagnolatti, Phillips66; George Christian, Texas Association of Defense Counsel; Kevin Cooper, American Insurance Association; Kinnan Golemon, Shell Oil Co.; Hugo Gutierrez, Marathon Oil; Steve Hazlewood, Dow Chemical Co.; Lisa Kaufman, Texas Civil Justice League; John LaBoon; Bill Oswald, Koch Companies; Lee Parsley, Texans for Lawsuit Reform; Steve Perry, Chevron USA; Cary Roberts, U.S. Chamber Institute for Legal Reform; Nelson Salinas, Texas Association of Business; Tara Snowden, Zachry Corp.; Sara Tays, Exxon Mobil; Daniel Womack, Texas Chemical Council)
- Against — None
- BACKGROUND:** The 79th Legislature in 2005 enacted SB 15 by Janek to require persons claiming an asbestos- or silica-related injury to file a report from a board-certified doctor proving that they meet certain medical criteria as proof of significant injury before they can proceed with their action in court. The bill also established a pretrial multidistrict litigation process.
- A multidistrict litigation pretrial court decides all pretrial matters related to a claim and remands individual cases to a trial court.
- DIGEST:** HB 1325 would direct multidistrict litigation (MDL) pretrial courts to dismiss a claim for an asbestos- or silica-related injury that was pending on August 31, 2005, unless the plaintiff filed a medical report on or after September 1, 2013, that appropriately documented and substantiated the injury claim. The MDL pretrial courts would dismiss all such claims

before September 1, 2015.

A dismissal would not prejudice the claimant's right to file a subsequent action seeking damages from an asbestos- or silica-related injury. If a claimant refiled a claim that had been dismissed, the refiled action would be treated as if it had never been dismissed but had remained pending until the claimant served the appropriate medical report as proof of injury.

A refiling claimant could serve the petition for relief by certified mail or another method approved by the MDL pretrial court on a person who was a defendant in the first, dismissed action.

Nothing in the bill would be regarded as a decision on the merits of a dismissed action, affect the rights of any party in a bankruptcy proceeding, nor affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a bankruptcy trust under federal law. The tort system rights of any actions dismissed under HB 1325 would be specifically preserved.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

HB 1325 would clean up inactive MDL pretrial court dockets by dismissing inactive claims so that both claimants and defendants no longer had unresolved cases pending in the Texas judicial system.

When the 79th Legislature enacted SB 15 in 2005, it created a system where the sickest of those claiming an asbestos- or silica-based injury would advance to court ahead of people who had simply been exposed to asbestos or silica. SB 15 also created a more generous two-year statute of limitations that starts when a plaintiff dies of an asbestos- or silica-related cause or files a report with the court showing that a board-certified doctor has diagnosed the person as suffering from asbestos- or silica-related injuries based on valid medical criteria. In Texas, there are an estimated 60,000 to 80,000 individual plaintiffs with an asbestos-related claim and as many as 5,000 to 6,000 silica claimants. Many of these claimants have initiated proceedings but cannot properly document their injuries, so their claims sit inactive on the MDL pretrial court docket until they can prove their injury claims.

It is important to clean up the inactive dockets because cases that run on

indefinitely without a method for dismissal harm several parties. Plaintiffs' lawyers can be caught in an ethical bind by representing clients whose cases never advance and give plaintiffs unrealistic expectations. Corporate defendants are harmed because they must list these inactive cases against them in reports to regulators and investors, even though most of these cases are stalled because they lack the evidence needed to advance to trial. Finally, the court system would become more efficient through not having to maintain ongoing but inactive claims.

HB 1325 would not harm claimants because they would retain the right to refile should their injuries ever meet the scientifically valid standards. HB 1325 would include specific protections for the rights of claimants. They would continue to benefit from the existing statute of limitations. HB 1325 would provide that, if a case were refiled, the claimant would be put back in the same position legally as if their case had remained pending the entire time. Finally, a claimant could refile simply by sending a petition by certified mail or another court-approved method to the MDL pretrial court.

OPPONENTS  
SAY:

HB 1325 would attempt to fix problems that do not exist. Plaintiffs' attorneys are not placed into ethical dilemmas by having clients on the inactive dockets. Attorneys can represent them in good faith knowing that if their clients' health failed, they may eventually meet the medical criteria necessary for their claim to advance. Corporations have an ethical responsibility to report lawsuits against them, inactive or not. Data on inactive cases that could become active are useful to regulators and investors who need to make appropriate decisions when interacting with these defendants. Finally, the court system is not clogged with inactive asbestos and silica claims. All parties agree the MDL pretrial courts have been a success and are able to manage case loads. If anything, HB 1325 would place a burden on MDL pretrial courts, forcing them to examine and then dismiss these cases.

HB 1325 also would place a burden on asbestos and silica claimants by forcing them to refile cases they already had filed. This inconvenience is unnecessary and could be costly to people who may suffer serious health problems arising from being exposed to asbestos or silica.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- direct the MDL pretrial courts to dismiss cases that did not include a

required medical report, rather than dismissing them on motion of the defendant;

- treat refiled claims as though they had never been dismissed;
- remove the filed bill's requirement that a refiler prove that the original claim had been timely filed;
- include a statement of legislative intent designed to preserve the rights of all parties from any possible impact of a dismissal.