

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1123
By: Duncan
State Affairs
4/3/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill establishes a standard requiring that a claimant prove that a defendant's product or conduct was a substantial factor in causing an injury and that the exposed person's cumulative exposure to asbestos fibers was the cause of person's mesothelioma.

C.S.S.B. 1123 establishes the standard of causation for claims involving malignant mesothelioma.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 90, Civil Practice and Remedies Code, by adding Section 90.013, as follows:

Sec. 90.013. STANDARD OF CAUSATION FOR CLAIMS INVOLVING MALIGNANT MESOTHELIOMA. (a) Requires a claimant, to recover damages for malignant mesothelioma allegedly caused by exposure to asbestos or asbestos containing products, to prove, among other elements of the claim, that a defendant's product or conduct was a substantial factor in causing the claimant's injury.

(b) Provides that a defendant's product or conduct was a substantial factor in causing the exposed claimant's injury if the claimant presents qualitative proof that the asbestos exposure attributed to the defendant was substantial, and not merely de minimis, when considering the frequency of exposure, the regularity of exposure, and the proximity of the exposed person to the source of the asbestos fibers.

(c) Requires a defendant who seeks a determination of the percentage of responsibility of another person under Section 33.003(a) (relating to determination of percentage of responsibility of certain persons), to present qualitative proof in the same manner as is required of a claimant under Subsection (b).

(d) Provides that neither a claimant nor a defendant seeking a determination under Section 33.003(a) are required to prove numerically the dose, approximate or otherwise, of asbestos fibers to which the claimant was exposed that are attributable to the defendant or another person under Section 33.003(a).

(e) Provides that nothing in this section modifies the general legal requirements for the admissibility of expert testimony with respect to the issue of causation.

SECTION 2. Provides that Section 90.013, Civil Practice and Remedies Code, as added by this Act, applies to an action commenced on or after the effective date of this Act or pending on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced on or before the effective date of this Act.

SECTION 3. Provides that if any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 4. Effective date: upon passage or September 1, 2009.