

By: Miller of Comal

H.B. No. 1325

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the dismissal of certain actions arising from exposure  
3 to asbestos and silica.

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

5 SECTION 1. The heading to Section 90.007, Civil Practice  
6 and Remedies Code, is amended to read as follows:

7 Sec. 90.007. MOTION TO DISMISS IN ACTION FILED ON OR AFTER  
8 SEPTEMBER 1, 2005.

9 SECTION 2. Section 90.007(a), Civil Practice and Remedies  
10 Code, is amended to read as follows:

11 (a) In an action filed on or after September 1, 2005 [~~the~~  
12 ~~date this chapter becomes law~~], if a claimant fails to timely serve  
13 a report on a defendant, or serves on the defendant a report that  
14 does not comply with the requirements of Section 90.003 or 90.004,  
15 the defendant may file a motion to dismiss the claimant's  
16 asbestos-related claims or silica-related claims. The motion must  
17 be filed on or before the 30th day after the date the report is  
18 served on the defendant. If a claimant fails to serve a report on  
19 the defendant, the motion must be filed on or before the 30th day  
20 after the date the report was required to be served on the defendant  
21 under Section 90.006. If the basis of the motion is that the  
22 claimant has served on the defendant a report that does not comply  
23 with Section 90.003 or 90.004, the motion must include the reasons  
24 why the report does not comply with that section.

1 SECTION 3. Section 90.010, Civil Practice and Remedies  
2 Code, is amended by amending Subsection (d) and adding Subsections  
3 (d-1), (l), (m), and (n) to read as follows:

4 (d) In an action that was pending on September 1, 2005, [~~the~~  
5 ~~date this chapter becomes law~~] that has been [~~is~~] transferred to and  
6 is [~~or~~] pending in an MDL pretrial court, and in which the claimant  
7 does not serve a report that complies with Section 90.003 or 90.004,  
8 the MDL pretrial court on motion of a defendant shall [~~not~~] dismiss  
9 the action pursuant to this chapter unless the claimant shows good  
10 cause why the action should not be dismissed [~~but shall retain~~  
11 ~~jurisdiction over the action under the MDL rules~~]. The MDL pretrial  
12 court shall not remand such action for trial unless:

13 (1) the claimant serves a report complying with  
14 Section 90.003 or 90.004; or

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

17 (B) the claimant serves a report complying with  
18 Subsection (f)(1); and

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

21 (d-1) In an action that was pending on September 1, 2005,  
22 that has been transferred to and is pending in an MDL pretrial  
23 court, and in which the claimant does not serve a report that  
24 complies with Section 90.003 or 90.004 before the later of March 1,  
25 2014, or the 181st day after the date the action is transferred to  
26 the MDL pretrial court, the MDL pretrial court may on its own  
27 motion, after reasonable notice to the parties, dismiss the action

1 unless the claimant shows good cause why the action should not be  
2 dismissed.

3 (l) A dismissal under Subsection (d) or (d-1) is without  
4 prejudice to the claimant's right to file a subsequent action  
5 seeking damages arising from an asbestos-related injury or a  
6 silica-related injury.

7 (m) This chapter and Section 16.0031 govern a subsequent  
8 action for an asbestos-related injury or a silica-related injury  
9 filed by a claimant whose action was dismissed under Subsection (d)  
10 or (d-1) or by a claimant in an action described by Subsection (d)  
11 who voluntarily dismissed the action under Section 90.008.

12 (n) A subsequent action for an asbestos-related injury or a  
13 silica-related injury filed by a claimant whose action was  
14 dismissed under Subsection (d) or (d-1) or by a claimant in an  
15 action described by Subsection (d) who voluntarily dismissed the  
16 action under Section 90.008 is considered filed on the date the  
17 dismissed action was filed. The claimant has the burden to plead  
18 and prove the filing date of the dismissed action.

19 SECTION 4. Section 90.010, Civil Practice and Remedies  
20 Code, as amended by this Act, applies to an action pending in the  
21 multidistrict litigation pretrial court on, or referred to the  
22 multidistrict litigation pretrial court on or after, the effective  
23 date of this Act.

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