

1-1 By: Duncan S.B. No. 1123  
1-2 (In the Senate - Filed February 25, 2009; March 13, 2009,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 April 6, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 2; April 6, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1123 By: Duncan

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the standard of causation in claims involving  
1-11 mesothelioma caused by exposure to asbestos fibers.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 90, Civil Practice and Remedies Code, is  
1-14 amended by adding Section 90.013 to read as follows:

1-15 Sec. 90.013. STANDARD OF CAUSATION FOR CLAIMS INVOLVING  
1-16 MALIGNANT MESOTHELIOMA. (a) To recover damages for malignant  
1-17 mesothelioma allegedly caused by exposure to asbestos or asbestos  
1-18 containing products, the claimant must prove, among other elements  
1-19 of the claim, that a defendant's product or conduct was a  
1-20 substantial factor in causing the claimant's injury.

1-21 (b) A defendant's product or conduct was a substantial  
1-22 factor in causing the exposed claimant's injury if the claimant  
1-23 presents qualitative proof that the asbestos exposure attributed to  
1-24 the defendant was substantial, and not merely de minimis, when  
1-25 considering:

1-26 (1) the frequency of the exposure;  
1-27 (2) the regularity of the exposure; and  
1-28 (3) the proximity of the claimant to the source of the  
1-29 asbestos fibers.

1-30 (c) A defendant who seeks a determination of the percentage  
1-31 of responsibility of another person under Section 33.003(a) must  
1-32 present qualitative proof in the same manner as is required of a  
1-33 claimant under Subsection (b).

1-34 (d) Neither a claimant nor a defendant seeking a  
1-35 determination under Section 33.003(a) shall be required to prove  
1-36 numerically the dose, approximate or otherwise, of asbestos fibers  
1-37 to which the claimant was exposed that are attributable to the  
1-38 defendant or another person under Section 33.003(a).

1-39 (e) Nothing in this section modifies the general legal  
1-40 requirements for the admissibility of expert testimony with respect  
1-41 to the issue of causation.

1-42 SECTION 2. Section 90.013, Civil Practice and Remedies  
1-43 Code, as added by this Act, applies to an action commenced on or  
1-44 after the effective date of this Act or pending on the effective  
1-45 date of this Act and in which the trial, or any new trial or retrial  
1-46 following motion, appeal, or otherwise, has not commenced on or  
1-47 before the effective date of this Act. An action commenced before  
1-48 the effective date of this Act in which trial has commenced on or  
1-49 before the effective date of this Act or in which there has been a  
1-50 final, unappealable disposition by order, judgment, voluntary  
1-51 dismissal, or otherwise is governed by the law applicable to the  
1-52 action immediately before the effective date of this Act, and that  
1-53 law is continued in effect for that purpose.

1-54 SECTION 3. If any provision of this Act or its application  
1-55 to any person or circumstance is held invalid, the invalidity does  
1-56 not affect other provisions or applications of this Act that can be  
1-57 given effect without the invalid provision or application, and to  
1-58 this end the provisions of this Act are declared to be severable.

1-59 SECTION 4. This Act takes effect immediately if it receives  
1-60 a vote of two-thirds of all the members elected to each house, as  
1-61 provided by Section 39, Article III, Texas Constitution. If this  
1-62 Act does not receive the vote necessary for immediate effect, this  
1-63 Act takes effect September 1, 2009.

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