

Bill No. CS for SB 2562

Barcode 273270

CHAMBER ACTION

Senate

House

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Senator Webster moved the following amendment:

Senate Amendment

On page 15, line 28, through page 17, line 24, delete those lines

and insert:

(3) A person who is a smoker may not file or maintain a civil action alleging an asbestos claim which is based upon cancer of the lung, larynx, pharynx, or esophagus in the absence of a prima facie showing that includes all of the following requirements:

(a) A diagnosis by a qualified physician who is board-certified in pathology, pulmonary medicine, or oncology, as appropriate for the type of cancer claimed, of a primary cancer of the lung, larynx, pharynx, or esophagus, and that exposure to asbestos was a substantial contributing factor to the condition.

(b) Evidence sufficient to demonstrate that at least 10 years have elapsed between the date of first exposure to asbestos and the date of diagnosis of the cancer.

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1 (c) Radiological or pathological evidence of
2 asbestosis or diffuse pleural thickening or a qualified
3 physician's diagnosis of asbestosis based on a chest x-ray
4 graded by a certified B-reader as at least 1/0 on the ILO
5 scale and high-resolution computed tomography supporting the
6 diagnosis of asbestosis to a reasonable degree of medical
7 certainty.

8 (d) Evidence of the exposed person's substantial
9 occupational exposure to asbestos. If a plaintiff files a
10 civil action alleging an asbestos-related claim based on
11 cancer of the lung, larynx, pharynx, or esophagus, and that
12 plaintiff alleges that his or her exposure to asbestos was the
13 result of extended contact with another exposed person who, if
14 the civil action had been filed by the other exposed person,
15 would have met the substantial occupational exposure
16 requirement of this subsection, and the plaintiff alleges that
17 he or she had extended contact with the exposed person during
18 the time period in which that exposed person met the
19 substantial occupational exposure requirement of this
20 subsection, the plaintiff has satisfied the requirements of
21 this paragraph. The plaintiff in such a civil action must
22 individually satisfy the requirements of this subsection.

23 (e) If the exposed person is deceased, the qualified
24 physician, or someone working under the direct supervision and
25 control of a qualified physician, may obtain the evidence
26 required in paragraph (b) and paragraph (d) from the person
27 most knowledgeable about the alleged exposures that form the
28 basis of the asbestos claim.

29 (f) A conclusion by a qualified physician that the
30 exposed person's medical findings and impairment were not more
31 probably the result of causes other than the asbestos exposure

1 revealed by the exposed person's employment and medical
 2 history. A conclusion that the medical findings and impairment
 3 are "consistent with" or "compatible with" exposure to
 4 asbestos does not meet the requirements of this subsection.

5 (4) In a civil action alleging an asbestos claim by a
 6 nonsmoker based on cancer of the lung, larynx, pharynx, or
 7 esophagus, a prima facie showing of an impairment due to
 8 asbestos exposure is not required.

9 (5) A person may not file or maintain a civil action
 10 alleging an asbestos claim which is based on cancer of the
 11 colon, rectum, or stomach in the absence of a prima facie
 12 showing that includes all of the following requirements:

13 (a) A diagnosis by a qualified physician who is
 14 board-certified in pathology, pulmonary medicine, or oncology,
 15 as appropriate for the type of cancer claimed, of cancer of
 16 the colon, rectum, or stomach, and that exposure to asbestos
 17 was a substantial contributing factor to the condition.

18 (b) Evidence sufficient to demonstrate that at least
 19 10 years have elapsed between the date of first exposure to
 20 asbestos and the date of diagnosis of the cancer.

21 (c)1.a. Radiological or pathological evidence of
 22 asbestosis or diffuse pleural thickening or a qualified
 23 physician's diagnosis of asbestosis based on a chest x-ray
 24 graded by a certified B-reader as at least 1/0 on the ILO
 25 scale and high-resolution computed tomography supporting the
 26 diagnosis of asbestosis to a reasonable degree of medical
 27 certainty; or

28 b. Evidence of the exposed person's substantial
 29 occupational exposure to asbestos. If a plaintiff files a
 30 civil action alleging an asbestos-related claim based on
 31 cancer of the colon, rectum, or stomach, and that plaintiff

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1 alleges that his or her exposure to asbestos was the result of
2 extended contact with another exposed person who, if the civil
3 action had been filed by the other exposed person, would have
4 met the substantial occupational exposure requirement of this
5 subsection, and the plaintiff alleges that he or she had
6 extended contact with the exposed person during the time
7 period in which that exposed person met the substantial
8 occupational exposure requirement of this subsection, the
9 plaintiff has satisfied the requirements of this
10 sub-subparagraph. The plaintiff in such a civil action must
11 individually satisfy the requirements of this subsection.

12 2. In the case of an exposed person who is a smoker,
13 the criteria in sub-subparagraphs 1.a. and b. must be met.

14 3. If the exposed person is deceased, the qualified
15 physician, or someone working under the direct supervision and
16 control of a qualified physician, may obtain the evidence
17 required in sub-subparagraph 1.b. and paragraph (b) from the
18 person most knowledgeable about the alleged exposures that
19 form the basis of the asbestos claim.

20 (d) A conclusion by a qualified physician that the
21 exposed person's medical findings and impairment were not more
22 probably the result of causes other than the asbestos exposure
23 revealed by the exposed person's employment and medical
24 history. A conclusion that the medical findings and impairment
25 are "consistent with" or "compatible with" exposure to
26 asbestos does not meet the requirements of this subsection.

27 (6) In a civil action alleging an asbestos claim based
28 upon mesothelioma a prima facie showing of an impairment due
29 to asbestos exposure is not required.

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31 (Redesignate subsequent subsections.)