

HB 741 -- Tort Actions for Asbestos Claims

Sponsor: Byrd

This bill establishes the requirements for a tort action based on an asbestos claim. In its main provisions, the bill:

(1) Requires the plaintiff to prove exposure to asbestos was either manufactured, supplied, installed, or used by the defendant and that the defendant's exposure was a substantial factor in causing the injury or loss on which the cause of action is based;

(2) Requires the plaintiff to file within 30 days after filing a complaint, a written report and supporting test results as evidence for a prima facie case. The defendant has 120 days to challenge the adequacy of the plaintiff's evidence;

(3) Requires the plaintiff on any claim pending on August 28, 2005, to file a written report with any supporting test results within 120 days. Any cause of action that arises before August 28, 2005, is required to follow the same procedure, unless a substantive right of a party has been impaired or it is a violation of the Missouri Constitution;

(4) Requires a tort action alleging an asbestos claim based upon a nonmalignant condition or lung cancer of an exposed person who is a smoker to show that the exposed person has a physical impairment which is a result of a medical condition, and the exposure to asbestos is a substantial contributing factor to the medical condition;

(5) Requires an asbestos claim based upon a wrongful death to show that the death of the exposed person was the result of a physical impairment, the death and physical impairment were a result of a medical condition, and the exposure to asbestos was a substantial contributing factor to the medical condition;

(6) Specifies that the minimum requirements to prove a prima facie case for lung cancer and wrongful death include a diagnosis by a competent medical authority, evidence to demonstrate that at least 10 years have elapsed from the date of the first exposure until the diagnosis or death, evidence of the exposed person's substantial occupational exposure, and evidence of exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability;

(7) Specifies that no court will require or allow a decedent's body to be exhumed for the purpose of obtaining evidence to make or oppose a prima facie case;

- (8) Specifies that no prima facie showing is required in an asbestos claim based upon mesothelioma;
- (9) Requires evidence relating to physical impairments to comply with the testing procedures, quality assurance, quality control, and equipment incorporated in the American Medical Association's guidelines;
- (10) Specifies that when a court renders a decision on the prima facie showing, the court's decision is not admissible at trial, is not conclusive as to the liability of the defendant, and does not result in the presumption that the exposed person has a physical impairment that is caused by an asbestos-related condition;
- (11) Requires the court to dismiss a suit without prejudice if a court finds that the plaintiff has failed to provide sufficient evidence to support a case;
- (12) Specifies that the statute of limitations will not begin to run until the exposed person has a cause of action for bodily injury;
- (13) Specifies that no settlement of an asbestos claim for a nonmalignant condition after August 28, 2005, will require the individual to sign a release of any future claim for asbestos-related cancer;
- (14) Specifies that a holder is not obligated in an asbestos claim unless the plaintiff can illustrate that the holder exerted such control over the entity that it had no separate mind, will, or existence of its own; the holder used the entity as a means of perpetrating an actual fraud on the plaintiff; and the plaintiff sustained an injury or unjust loss; and
- (15) Defines the terms "corporation," "covered entity," "holder," and "piercing the corporate veil."