

ASBESTOS AND SILICOSIS CLAIMS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5851

Sponsor: Rep. Edward Gaffney, Jr.

Committee: Tort Reform

Complete to 4-24-06

A PRELIMINARY SUMMARY OF HOUSE BILL 5851 AS INTRODUCED 3-9-06

The bill would add a Chapter 30 to the Revised Judicature Act to address civil actions that include asbestos and silica claims; the new chapter would apply to actions for which trials commence after the bill's effective date. It would delineate the conditions under which claims could be brought, would limit noneconomic damages, prohibit punitive damages, and restrict attorney fees.

In brief, the bill would do the following.

** Specify that a person is not entitled to assert an asbestos claim or a silica claim unless the exposed person has a physical impairment to which asbestos or silica exposure was a substantial contributing factor.

** Define "substantial contributing factor" to mean that 1) exposure to asbestos or silica is the predominate cause of the physical impairment alleged; 2) the exposure took place on a regular basis over an extended period of time and in close proximity to the exposed person; and 3) a qualified physician has determined with a reasonable degree of medical certainty that the physical impairment would not have occurred but for the exposure.

** Require persons bringing or maintaining civil actions alleging asbestos claims and silicosis and silica claims to make certain prima facie showings (which would vary by the type of claim).

** Allow a defendant to get a reasonable opportunity to challenge the adequacy of prima facie evidence.

** Provide that if a court determined a plaintiff had failed to make the prima facie showing required the new act, the plaintiff's claim would be dismissed without prejudice.

** Specify that a court ruling that a plaintiff had satisfactorily presented prima facie evidence would 1) not raise a presumption at trial that the exposed person was impaired by an asbestos-related or silica-related condition; 2) not be conclusive as to the liability of any defendant; and 3) would not be admissible at trial.

** Provide that a prima facie showing would not be required in a civil action alleging an asbestos claim based on mesothelioma. (Mesothelioma is defined in the bill as *a malignant tumor with a primary site in the pleura or the peritoneum that has been diagnosed by a physician board-certified in pathology using standardized and accepted criteria of microscopic morphology and/or appropriate staining techniques.*)

** Only allow civil actions alleging asbestos and silica claims to be brought in the state if the plaintiff is domiciled in the state or the exposure to asbestos or silica that is a substantial contributing factor to the physical impairment on which the claim is based occurred in the state.

** Allow courts to consolidate for trial any number and type of asbestos or silica claim if all the parties to the claim consent. If the parties do not consent, the consolidation could only involve claims relating to the same exposed person and members of the household.

** Limit the total damages for noneconomic loss in a civil action that includes an asbestos or silica claim to \$250,000 or three times the amount of economic loss, whichever is greater, regardless of the number of parties against whom the action is brought. Damages could not be awarded for fear or risk of cancer.

** Limit, for an asbestos claim based upon mesothelioma, the total amount of noneconomic damages to \$500,000 or three times the amount of economic loss, whichever is greater, regardless of the number of parties against whom the action is brought.

** Cap the amount an attorney or representative of an individual can receive in such cases at 20 percent of the amount awarded by way of settlement or judgment. An attorney or representative who violated this limit would be subject to a fine of \$5,000 or twice the amount received for services, whichever was greater.

** Specify the conditions under which a product seller other than a manufacturer could be liable to a plaintiff.

** Specify that an asbestos or silica claim arising out of a nonmalignant condition is a distinct cause of action from an asbestos or silica claim relating to the same exposed person arising out of asbestos-related or silica-related cancer.

** Provide that the settlement of a nonmalignant asbestos or silica claim concluded after the effective date of the bill could not require, as a condition of settlement, the release of any future claim for asbestos-related or silica-related cancer.

Prima Facie Showings. The bill would establish separate standards for prima facie showings for each of the following categories of claims: asbestos claims based on a nonmalignant condition; asbestos claims based on lung cancer; asbestos claims based on cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach; silicosis claims where exposure to silica was a substantial contributing factor to a medical condition leading to a physical impairment; and other silica claims.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the judiciary; any impact would depend on how it affected court dockets and use of judicial resources.

Legislative Analyst: Chris Couch
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.