

HCS HB 512 -- ASBESTOS AND SILICA CLAIMS PRIORITIES ACT

SPONSOR: Pratt

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 6 to 5.

This substitute establishes the Asbestos and Silica Claims Priorities Act. In its main provisions, the substitute:

(1) Defines "claimant," "asbestos claim," "asbestosis," "silica claim," "silicosis," and "qualified physician";

(2) Requires the exposure of asbestos or silica to be a substantial factor to the physical impairment of the exposed person;

(3) Disallows asbestos- or silica-related claims brought on behalf of a class or group except in claims relating to the exposed person and members of his or her household;

(4) Requires a tort action alleging an asbestos claim based upon the nonmalignant condition of an exposed person to show that the exposed person has a physical impairment where exposure to the defendant's asbestos is a substantial factor to the physical impairment;

(5) Requires that a detailed narrative medical report and diagnosis by a qualified physician be included on behalf of a plaintiff's asbestos- or silica-related claim;

(6) Specifies that no prima facie showing is required for any asbestos claim related to alleged mesothelioma;

(7) Specifies that any evidence relating to the prima facie showing of physical impairment related to the defendant's asbestos or silica exposure will not be conclusive as to the liability of the defendant;

(8) Requires evidence relating to physical impairment to comply with technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the American Medical Association's Guides to the Evaluation of Permanent Impairment;

(9) Requires evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable cause;

(10) Requires specific medical testing procedures for a showing of physical impairment; and

(11) Specifies that an asbestos- or silica-related claim arising out of a nonmalignant condition is a distinct cause of action from a claim for an asbestos- or silica-related cancer.

FISCAL NOTE: Estimated Income on General Revenue Fund of Less than \$40,000 in FY 2008, FY 2009, and FY 2010. No impact on Other State Funds in FY 2008, FY 2009, and FY 2010.

PROPOSERS: Supporters say that asbestos litigation in the United States has become a crisis. Lawsuits have increased in the last several years; and because of the number of lawsuits, the potential for fraud is growing. Because of the rate of cases filed, many employers have been forced into bankruptcy, and payments to those with valid claims are threatened. The vast majority of claims filed are by claimants who are not currently impaired and likely never will be. Many attorneys have developed screening programs that are used to generate asbestos claims.

Testifying for the bill were Representative Pratt; Robert Glenn; Mark Behrens; Missouri Chamber of Commerce and Industry; Missouri Insurance Coalition; Harry Gallagher, Property and Casualty Insurance Association of America; Missouri Merchants and Manufacturers Association; Associated Builders and Contractors, Heart of America Chapter; Associated Industries of Missouri; and Brad James.

OPPOSERS: Those who oppose the bill say that there is no asbestos claim crisis in Missouri. Evidence shows that the number of claims filed are decreasing. In 2005, 119 claims were filed; in 2006, 43 claims were filed and only 34 claims in 2007. The bill attempts to solve a problem that doesn't exist in Missouri. It will make claims for those individuals with verifiable problems more difficult. Since attorneys cannot pay for an expert medical opinion in an asbestos or silica claim, the requirement to obtain a narrative medical history from a physician is difficult to satisfy. The bill puts numerous obstacles in the way of cancer cases that would otherwise be brought against asbestos companies.

Testifying against the bill were Missouri Association of Trial Attorneys; United Steelworkers District 11; and Missouri AFL-CIO.