



## *Synopsis of Senate Committee Amendments\**

*Dennis M. Papp*

*Legislative Service Commission*

### **Sub. H.B. 292**

125th General Assembly  
(S. Judiciary)

Added provisions that: (1) prohibit a person from bringing or maintaining a tort action alleging an asbestos claim that is based upon a wrongful death of an exposed person in the absence of a prima-facie showing that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were a result of a medical condition, and that the deceased person's exposure to asbestos was a substantial contributing factor to the medical condition, (2) specify that the prima-facie showing described in clause (1) must include at a minimum a specified diagnosis and specified evidence that are similar to the diagnosis and evidence required under the House-passed version of the bill for the prima-facie showing in a tort action alleging an asbestos claim based upon lung cancer of an exposed person, (3) apply the prima-facie showing described in clause (1) to tort actions alleging an asbestos claim based on a wrongful death of an exposed person, alleging that the death was the result of living with another who would have met the requirements applicable under that clause to that other person, and alleging that the exposed person lived with the other person for a specified period of time, (4) prohibit any court from requiring or permitting the exhumation of a decedent to obtain evidence to make, or oppose, the required prima-facie showing described in clause (1), and (5) apply the requirements described in this paragraph to tort actions filed on or after the bill's effective date and to asbestos claims pending on the bill's effective date (R.C. 2307.91(C), 2307.92(D), 2307.93, and 2307.95(C)).

Removed the provisions that would limit the successor asbestos-related liabilities of certain corporations and all related provisions (removal from the bill of R.C. 1701.76, 1701.82, and 2307.97).

In the provisions that specify when the bill's prima-facie showing requirements do not apply to causes of action alleging an asbestos claim arising before the bill's effective date, replaced references to "alteration" of a party's substantive right with references to "impairment" of a party's substantive right (R.C. 2307.93(A)(2)).

---

\* This synopsis does not address amendments that may have been adopted on the Senate floor.

Specified that a finding made pursuant to R.C. 2307.93(A)(3) regarding a determination involving the application of the bill's prima-facie showing requirements to causes of action alleging an asbestos claim arising before the bill's effective date is a "provisional remedy" for purposes of the law granting a right to appeal a "final order" (final orders include orders that grant or deny a provisional remedy in specified circumstances) (R.C. 2505.02).

In the provisions that govern the determination of the potential liability of a premises owner for injuries to a person allegedly resulting from exposure to asbestos: (1) clarified that the findings that must be made for the presumption of nonliability to apply or for the presumption to be rebutted relate to acts and knowledge of the premises owner and person at the time of the alleged exposure, and (2) clarified which rules apply if the exposure to asbestos is alleged to have occurred *on* January 1, 1972 (R.C. 2307.941(A)).

Regarding the provisions that specify the plaintiff's burden of proof in a tort action alleging injury or loss to person resulting from exposure to asbestos: (1) clarified that the elements of proof required relate to the plaintiff's exposure to the defendant's asbestos (R.C. 2307.96(B)), and (2) replaced the uncodified law that stated the intent of the General Assembly in enacting the provisions with different uncodified law revising the statement of that intent (Section 5).

In the section containing the definitions that apply to most of the bill's provisions regarding tort actions alleging an asbestos claim (R.C. 2307.91): (1) removed from the definition of "board-certified occupational medicine specialist" a reference to the American Board of Internal Medicine as a certifying authority, (2) added definitions of "certified industrial hygienist" and "certified safety professional," (3) updated, from the 1980 edition to the 2000 edition, the reference to the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconiosis used in the definition of "ILO scale," (4) expanded the definition of "physical impairment" to conform it to the provisions added, as described above, regarding prima-facie showings in asbestos claims based upon a wrongful death of an exposed person, and (5) removed from the definition of "tort action" a reference to an asbestos claim that is subject to the bill's provisions.

Added a provision, in uncodified law, requesting the Supreme Court to collect data regarding the number of awards made to parties in civil actions in the courts of common pleas who were adversely affected by frivolous conduct or by the bringing of a civil action including a medical claim, dental claim, optometric claim, or chiropractic claim for which there was not a reasonable good faith basis (Section 8).

Made various technical, clarifying, and conforming changes.