

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 720

INTRODUCER: Judiciary Committee and Senator Hutson

SUBJECT: Asbestos and Silica Claims

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 720 increases the information required to be included in the initial pleading filed by a plaintiff alleging injury from exposure to asbestos or silica. Current law requires specific information regarding the claim and the claimant; the bill adds the requirement to disclose more. The bill adds: the exposed person’s smoking history, the name and address of persons knowledgeable about the exposure, and the occupation and employer of any person by which the exposed person alleges the exposure occurred where the exposure was other than direct or bystander exposure. The evidence supporting each claim against each defendant must be specified. The bill makes clear that failure to link a defendant to a specific exposure, or to furnish the required information, is grounds for dismissal of the defendant or the case, as appropriate.

The bill is effective July 1, 2024.

II. Present Situation:

In 2005, the Legislature enacted the “Asbestos and Silica Compensation Fairness Act.”¹ The purposes of the act are to:

- Give priority to true victims of asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;
- Fully preserve the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;

¹ Section 774.201, F.S.

- Enhance the ability of the judicial system to supervise and control asbestos and silica litigation; and
- Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.²

The act accomplishes its purposes by prohibiting speculative claims and focusing on persons who can demonstrate an actual physical impairment caused by asbestos.³ One means of doing so is through requirements that the plaintiff provide detailed information regarding the claim at the outset of the litigation.

In order to file a case governed by the act, the plaintiff must supply a number of facts regarding the exposure to the asbestos and the resultant injuries. The complaint must include a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related physical impairment.⁴ In addition to the written report, the plaintiff must include with the complaint a sworn information form containing:

- The claimant's name, address, date of birth, and marital status;
- If the claimant alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the claimant alleges exposure, hereinafter the "index person," and the claimant's relationship to each such person;
- The specific location of each alleged exposure;
- The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the plaintiff and each index person;
- The occupation and name of the employer of the exposed person at the time of each alleged exposure;
- The specific condition related to asbestos or silica claimed to exist; and
- Any supporting documentation of the condition claimed to exist.

The statute does not specify what a trial court should do if the plaintiff fails to comply with the pleading requirements. Thus, the general Florida Civil Rules of Procedure govern the court's response to a failure to comply with the statutory pleading requirements. In general, case law interpreting the rules of procedure requires a trial court to give the Plaintiff at least one chance to amend the complaint before dismissing the lawsuit.

III. Effect of Proposed Changes:

CS/SB 720 changes the term "claimant" to the more accurate "exposed person" and changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to add:

- A requirement that the sworn information form specify the evidence that supports each claim against each defendant.

² Section 774.202, F.S.

³ Section 774.204(1), F.S.

⁴ Section 774.205(2), F.S. The proof must meet the requirements of s. 774.204(2), (3), (5), or (6), F.S. The details of such proof are not relevant to this analysis.

- A requirement to disclose the exposed person's smoking history.
- A requirement to disclose the name and address of each person who is knowledgeable about the exposed person's exposure to asbestos or silica.
- A requirement to list the occupation and employer of the index person related to the exposure.

The bill provides that the sworn information form is inadmissible at the trial and may not be relied upon by any witness.

A court must dismiss a defendant from the case if that defendant's product or premises is not specifically identified in the sworn information form. A court must dismiss the case as to a specific defendant, or in its entirety for the benefit of all defendants, if the claimant fails to comply with the pleading requirements of the section. Before filing a motion to dismiss, a defendant must confer with, or reasonably attempt to confer with, the plaintiff regarding dismissal or to have the plaintiff amend the sworn information form to comply with the requirements of s. 774.205, F.S. A defendant's motion to dismiss must certify that the defendant conferred with, or made a reasonable attempt to confer with, the plaintiff.

The dismissal of a claim for the failure to provide the information required on the sworn information form is without prejudice, meaning that the claim may be refiled with a properly completed sworn information form.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill discourages the current practice of naming defendants in an asbestos or silica lawsuit who have no link to the exposure that caused the injury. The bill may thereby lower or eliminate some attorney's fees and costs currently being spent on defending claims that are without merit.

C. Government Sector Impact:

The bill may reduce court expenditures to the extent that fewer parties are involved in asbestos litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 774.205 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 5, 2024:

The amendment removes from the bill a requirement to disclose the specific product related to an exposure. The amendment also adds that the sworn information form may not be relied upon by any witness at trial.

B. Amendments:

None.