

AN ACT

relating to lawsuits arising outside or brought by persons who reside outside of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 71.051, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 71.051. FORUM NON CONVENIENS. (a) With respect to a plaintiff [claimant] who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice a claim or [an] action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the claim or action in whole or in part on any conditions that may be just.

(b) With respect to a plaintiff [claimant] who is a legal resident of the United States, on written motion of a party, a claim or [an] action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that:

(1) an alternative forum exists in which the claim or  
action may be heard in a forum outside this state is a more

~~[(A) offers a remedy for the causes of action brought by a party to which this section applies;~~

~~[(B) as a result of the submission of the parties or otherwise, can exercise jurisdiction over all parties and claims properly joined in the action by the claimant; and~~

~~[(C) would provide a place of trial that is fair, reasonable, and convenient to the parties];~~

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party [and the balance of the private interests of all the parties and the public interest of the state predominates in favor of the action being brought in the other forum];

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) ~~[(3)]~~ the stay or dismissal would not [in reasonable probability] result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties

to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection [No stay or dismissal shall be granted under Subsection (b) until all properly joined defendants file with the clerk of the court a written stipulation that each defendant will:

(1) submit to the personal jurisdiction of the courts of the other forum; and

(2) waive any defense based on the statute of limitations applicable in the other forum with respect to all causes of action brought by a party to which this section applies].

(d) [The court may, on motion and notice to the parties, modify an order granting a stay or dismissal under this section and take any further action in the proceeding as the interests of justice may require. If the moving party violates a stipulation required by Subsection (c), the court shall withdraw the order staying or dismissing the action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for the purposes of this subsection.]

(e) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. [Otherwise, any objection under this section to the

~~court's exercise of jurisdiction is waived;~~ A motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(c) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(f) A court may not stay or dismiss a claim or [an] action pursuant to Subsection (b) if

~~[if] -- if -- a claimant -- in -- the -- action -- who is properly~~

~~deemed is a legal resident of this state;~~

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(b) ~~(2)~~ if a party opposing the motion under Subsection that alleges and makes a prima facie showing that an act or omission that was a proximate or producing cause of the injury or death occurred in this state. ~~The [Notwithstanding Subsection (b) said]~~ prima facie showing need not be made by a preponderance of the evidence and shall be deemed to be satisfied if the ~~[said]~~ party produces credible evidence in support of the pleading, which evidence need not be in admissible form and may include affidavits, deposition testimony, discovery responses, or other verified evidence{ }

~~(3) -- in an action brought under the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.) or the federal Safety Appliance Act (45 U.S.C. Section 1 et seq.) or the federal Boiler Inspection Act (45 U.S.C. Section 22 et seq.);~~

~~(4) -- in an action in which it is alleged that the personal injury or death was caused by a means of air transportation operated in this state or occurred while traveling in or on a means of air transportation during a trip originating from or destined for a location in this state; or~~

~~(5) -- in an action in which it is alleged that harm was caused by exposure to asbestos fibers].~~

(g) ~~[This section does not apply if the personal injury or death that is the subject of the cause of action resulted from a violation of the laws of this state or of the United States;~~

including but not limited to exposure to a substance referred to in Section 33-013(c)(3) that was transported out of this state or the United States in violation of the laws of this state or the United States.

(h) The burden is on the party opposing a motion under Subsection (b) to assert and prove by a preponderance of the evidence an exception provided by Subsection (f), if applicable. If a party opposing a motion under Subsection (b) fails to timely raise an exception under Subsection (f), that party's right to raise such exception is waived, but such waiver does not relieve the moving party as to any requirement of this section. An exception filed not less than seven days before the hearing on a motion made under Subsection (b) shall be deemed to be timely.

(i) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) (j) In this section:

(1) "Legal resident" means an individual [a person] who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's [person's] country of citizenship or national origin. The term does not include an individual [a person] who adopts a residence in the specified political subdivision in bad faith for purposes of

avoiding the application of this section.

(2) "Plaintiff" [~~"claimant"~~] means a party [~~including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff~~] seeking recovery of damages for personal injury or wrongful death. In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" [~~"claimant"~~] includes both that other person and the party seeking such recovery. The term does not include a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section.

(i) [~~(k)~~] This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.

SECTION 2. Subchapter D, Chapter 71, Civil Practice and Remedies Code, is amended by adding Section 71.052 to read as follows:

Sec. 71.052. JURISDICTION; ELECTION; STIPULATIONS.

(a) This section applies only to a claim for personal injury or wrongful death in which:

(1) the plaintiff was not a resident of this state at

the time the claim arose;

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(2) the plaintiff's claim arose outside this state;  
and

(3) the plaintiff's claim alleges that harm was caused  
by exposure to asbestos fibers.

(b) The court, on motion of a defendant, shall dismiss each  
claim against the defendant that is subject to this section and was  
filed in this state on or after January 1, 1997, on the filing of a  
stipulation by the defendant that, for the purposes of limitations,  
the filing of the claim in another forum would relate back to the  
date each plaintiff filed his claim in this state.

(c) The court, on motion of a defendant, shall dismiss each  
claim against the defendant that is subject to this section and was  
commenced in this state on or after August 1, 1995, but before  
January 1, 1997, unless the plaintiff files a written statement  
electing to:

(1) abate the plaintiff's claim against the defendant  
for a period of 180 days from the date the court disposes of the  
defendant's motion, to afford the plaintiff an opportunity to file  
a new action on the claims in another state of the United States;  
or

(2) retain the plaintiff's claims against the  
defendant in this state and limit the plaintiff's recovery on the  
claims for exemplary damages, if any, against the defendant to an  
amount not to exceed the greater of:

(A) two times the amount of economic damages plus an amount equal to any noneconomic damages found by the trier of fact, not to exceed \$750,000; or

(B) \$200,000.

(d) If a plaintiff files a written statement making an election under Subsection (c), the court shall deny the defendant's motion filed under Subsection (c) and shall enter an order in accordance with the plaintiff's election. If the plaintiff makes an election under Subsection (c), the election is effective as to all defendants and the court may not require the plaintiff to refile the election against any subsequent motion filed by a defendant under Subsection (c). If a plaintiff elects to abate the claim, the court shall dismiss each of the plaintiff's claims against the defendants at the end of the abatement period.

(e) A court may not abate or dismiss a claim under Subsection (c) against a defendant until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other states of the United States in which the claim was not barred by limitations at the time the claim was filed in this state as necessary to effect a tolling of the limitations periods in those states beginning on the date the claim was filed in this state and ending on the date the claim is dismissed or the period of abatement ends.

(f) The court may not abate or dismiss a claim under this section against a defendant until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff in another state of the United States, the plaintiff may elect that the plaintiff and the defendant may:

(1) rely on responses to discovery already provided under the Texas Rules of Civil Procedure, plus any additional discovery that may be conducted under the rules of civil procedure in the other state; or

(2) use responses to discovery already provided and conduct additional discovery as permitted under the rules of civil procedure in the other state.

(g) To comply with this section in relation to an action that involves both claims that arose in this state and claims that arose outside this state, a court shall consider each claim individually and shall sever from the action the claims that are subject to this section.

(h) A court shall determine that a claim arose in the jurisdiction in which the plaintiff was located at the time the plaintiff is alleged to have been exposed to asbestos fibers. If a plaintiff alleges that the plaintiff was exposed to asbestos fibers while located in more than one jurisdiction, the court shall determine, for purposes of this section, which of the jurisdictions is the most appropriate forum for the claim, considering the

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relative amounts and lengths of the plaintiff's exposure to  
asbestos fibers in each of the jurisdictions.

SECTION 3. Subsections (a) and (b), Section 71.031, Civil Practice and Remedies Code, are amended to read as follows:

(a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action; ~~and~~

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all ~~All~~ matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

SECTION 4. (a) Section 1 of this Act applies to:

(1) a civil action commenced on or after January 1, 1999, that is:

(A) an action against a railroad company brought under the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.), the federal Safety Appliance Act (45 U.S.C. Section 1 et seq.), or the federal Boiler Inspection Act (45 U.S.C. Section 22 et seq.); or

(B) an action in which it is alleged that the personal injury or death was caused by a means of air transportation operated in this state or occurred while traveling in or on a means of air transportation during a trip originating from or destined for a location in this state; and

(2) a civil action commenced on or after the effective date of this Act, other than an action described in Subdivision (1) of this section.

(b) Section 2 of this Act applies to a civil action that is pending on the effective date of this Act in which the plaintiff alleges that harm was caused by exposure to asbestos fibers. In an action commenced before the effective date of this Act, a trial of a plaintiff's action that was completed before that date, or that is in progress on that date, and a subsequent new trial or retrial of that plaintiff's action are governed with respect to the subject matter of Section 2 of this Act by the applicable law in effect immediately before that date, and that law is continued in effect

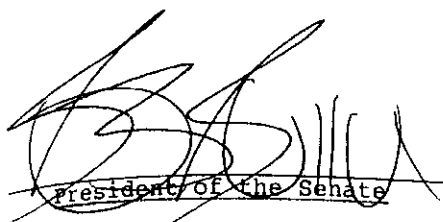
for that purpose.

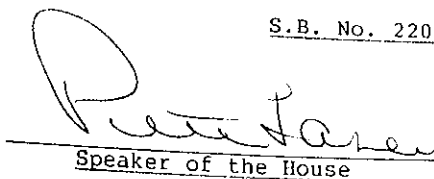
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(c) Section 3 of this Act applies to a civil action commenced on or after the effective date of this Act. A civil action commenced before the effective date of this Act is governed by the applicable law in effect immediately before that date as to all parties joined in that action before that date and as to other defendants properly joined after the effective date who could not have been joined in the action before the effective date because of the existence of an injunction prohibiting such joinder, and that law is continued in effect for that purpose.


SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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President of the Senate

  
Speaker of the House

I hereby certify that S.B. No. 220 passed the Senate on March 18, 1997, by the following vote: Yeas 27, Nays 4; and that the Senate concurred in House amendments on May 27, 1997, by the following vote: Yeas 28, Nays 3.

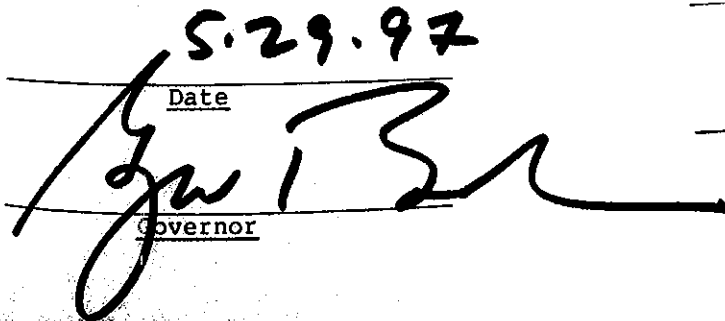
  
Secretary of the Senate

I hereby certify that S.B. No. 220 passed the House, with amendments, on May 24, 1997, by the following vote: Yeas 128, Nays 5, three present not voting.

  
Chief Clerk of the House

Approved:

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:15 pm O'CLOCK

5.29.97  
Date  
  
Governor

MAY 29 1997  
LOTT.  
Secretary of State