

CALIFORNIA SET TO IMPOSE TIME LIMITS ON DEPOSITIONS IN MANY ASBESTOS CASES

JULY 2017

Today, July 3, 2017, California's State Assembly will vote on a new law that could dramatically change the way depositions proceed in some asbestos actions filed in California.

SB 632 was introduced by Senate Majority Leader Bill Monning (D-Santa Cruz) in February of this year and is sponsored by the Consumer Attorneys of California.

The bill would impose on defense counsel a presumptive seven-hour time limit to complete the deposition of any asbestos plaintiff who meets the requirements generally considered for preferential trial setting in California.

State Senator Monning's bill would insert Section 2025.295 into the Code of Civil Procedure, stating "Notwithstanding Section 2025.290, in any civil action for injury or illness based upon exposure to asbestos, a deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to seven hours of total testimony if a licensed physician attests in a declaration served on the parties that either: (1) The deponent is over 70 years of age and his or her health is such that a deposition of more than seven hours will prejudice the deponent's well-being; or (2) Without regard to the age of the deponent, the deponent suffers from an illness or condition that raises substantial medical doubt of the survival of the deponent beyond six months."

The new law would also severely limit a trial judge's ability to extend that deadline. The new Code Section would allow a party to seek "up to seven hours of additional deposition testimony for no more than 14 hours of total testimony." That extension "shall not be granted unless a court makes a factual finding supporting the extension beyond seven hours, and determines that the health of the deponent does not appear to be endangered by the grant of additional time."

In California, where liberal "notice pleading" requirements allow asbestos plaintiff firms to file asbestos lawsuits against scores of manufacturers, contractors, and premises owners without a basic showing of what products or locations are alleged to be at issue, counsel for defendants are forced to spend hours in fact-finding depositions that frequently result in a large percentage of parties dismissed when it is eventually determined that many defendants were wrongly named in the suit. As drafted, SB 632 could severely prejudice business defendants by depriving them of the basic evidence needed to seek summary judgment and/or defend themselves at trial.

California Code of Civil Procedure Section 2025.290 currently limits deposition examination of any witness to seven hours, with certain exceptions, such as for cases determined to be "complex." Most venues, including the major dockets of Los Angeles (where San Diego, Orange, and Los Angeles County actions are coordinated under JCCP 4674), Alameda, and San Francisco counties consider asbestos litigation "complex" and exempt from the limits of 2025.290. These same courts have established case management orders that set soft time limits well in excess of seven hours. Los Angeles County's Coordinated Asbestos Case Management Order, for example, holds that if a plaintiff has sought or indicated he or she will seek a preferential trial-setting date, a presumptive 20-hour limit exists for defendants to complete their collective examination of the plaintiff. Courts have discretion to extend the length of the deposition based on several factors, including the number of named defendants, the complexity of the plaintiff's work history, the number of employers and job sites at issue, and ultimately the number and complexity of the exposures alleged. Similar extended time limits exist for cases in San Francisco and Alameda counties. SB 632 ignores the experience of California's judges and imposes a seven-hour limit for deposition in preference cases and severely limits courts' ability to allow any additional time without express medical findings that might justify a single seven-hour extension to no more than 14 hours. No deposition will be allowed to exceed 14 hours.

There has been little organized opposition to this bill, with only the American Insurance Association, Association of California Insurance Companies, California Association of Joint Powers Authorities, California Defense Counsel, and Civil Justice Association of California registered in opposition. Twenty-four major unions and/or interest groups have registered their support for the legislation, including (in part), the International Longshore & Warehouse Union, UNITE-HERE, AFL-CIO, Asbestos Workers Local 16 Retirees Club, California Conference of Machinists, California Labor Federation, Service Employees International Union California, State Building and Construction Trades Council of California, California Professional Firefighters, and the San Francisco Bay Area Physicians for Social Responsibility.

State Senator Monning's bill was passed by the State Senate on May 8, 2017. **It is now out of committee and scheduled for a vote of the full Assembly on Monday, July 3, 2017.** If passed, SB 632 could be on Governor Brown's desk later this week. If signed into law, the new rules would go into effect January 1, 2018.

INTERESTED IN EXPRESSING YOUR OPPOSITION TO SB 632?

Call your Assemblyperson's office this morning to make your concerns known:

- Assembly Member Gray (D-Merced): 916-319-2021
- Assembly Member Dababneh (D-Woodland Hills): 916-319-2045
- Assembly Member Salas (D-Bakersfield): 916-319-2032
- Assembly Member Friedman (D-Glendale): 916-319-2043
- Assembly Member Nazarian (D-Sherman Oaks): 916-319-2046
- Assembly Member Cooper (D-Elk Grove): 916-319-2009
- Assembly Member Irwin (D-Thousand Oaks): 916-319-2044
- Assembly Member Bloom (D-Santa Monica): 916-319-2050
- Assembly Member Bocanegra (D-Pacoima): 916-319-2039

Or contact Governor Brown's office at 916-445-2841.

ADDITIONAL INFORMATION

For more information, please contact:

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