

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 292

Representative Oelslager

A BILL

To amend sections 1701.76 and 1701.82 and to enact 1
sections 2307.91 to 2307.97 of the Revised Code to 2
establish minimum medical requirements for filing 3
certain asbestos claims and to establish 4
limitations on successor asbestos-related 5
liabilities relating to corporations. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1701.76 and 1701.82 be amended and 7
sections 2307.91, 2307.92, 2307.93, 2307.94, 2307.95, 2307.96, and 8
2307.97 of the Revised Code be enacted to read as follows: 9

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. 10
of the Revised Code do not prevent the transaction from being 11
effected, a lease, sale, exchange, transfer, or other disposition 12
of all, or substantially all, of the assets, with or without the 13
good will, of a corporation, if not made in the usual and regular 14
course of its business, may be made upon ~~such~~ the terms and 15
conditions and for ~~such~~ the consideration, ~~which~~ that may consist, 16
in whole or in part, of money or other property of any 17
description, including shares or other securities or promissory 18
obligations of any other corporation, domestic or foreign, ~~as~~ that 19
may be authorized as follows: 20

(a) By the directors, either before or after authorization by the shareholders as required in this section; and

(b) At a meeting of the shareholders held for ~~such~~ that purpose, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on ~~such~~ the proposal, or, if the articles so provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of ~~such~~ the voting power, and by ~~such~~ the affirmative vote of the holders of shares of any particular class ~~as~~ that is required by the articles.

(2) At the shareholder meeting described in division (A)(1)(b) of this section or at any subsequent shareholder meeting, shareholders, by the same vote that is required to authorize the lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of the corporation, may grant authority to the directors to establish or amend any of the terms and conditions of the transaction, except that the shareholders shall not authorize the directors to do any of the following:

(a) Alter or change the amount or kind of shares, securities, money, property, or rights to be received in exchange for the assets;

(b) Alter or change to any material extent the amount or kind of liabilities to be assumed in exchange for the assets;

(c) Alter or change any other terms and conditions of the transaction if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the shareholders or the corporation.

(3) Notice of the meeting of the shareholders described in division (A)(1)(b) of this section shall be given to all shareholders whether or not entitled to vote at the meeting and

shall be accompanied by a copy or summary of the terms of the 52
transaction. 53

(B) The corporation by its directors may abandon ~~such the~~ 54
transaction under this section, subject to the contract rights of 55
other persons, if the power of abandonment is conferred upon the 56
directors either by the terms of the transaction or by the same 57
vote of shareholders and at the same meeting of shareholders as 58
that referred to in division (A)(1)(b) of this section or at any 59
subsequent meeting. 60

(C) Dissenting holders of shares of any class, whether or not 61
entitled to vote, shall be entitled to relief under section 62
1701.85 of the Revised Code. 63

(D) An action to set aside a conveyance by a corporation, on 64
the ground that any section of the Revised Code applicable to the 65
lease, sale, exchange, transfer, or other disposition of all, or 66
substantially all, of the assets of ~~such that~~ corporation has not 67
been complied with, shall be brought within ninety days after ~~such~~ 68
that transaction, or ~~such the~~ action shall be forever barred. 69

(E) If a resolution of dissolution is adopted pursuant to 70
section 1701.86 of the Revised Code, the directors may dispose of 71
all, or substantially all, of the corporation's assets without the 72
necessity of a shareholders' authorization under this section. 73

(F) The terms and conditions of any transaction under this 74
section shall be subject to the limitations specified in section 75
2307.96 of the Revised Code. 76

Sec. 1701.82. (A) When a merger or consolidation becomes 77
effective, all of the following apply: 78

(1) The separate existence of each constituent entity other 79
than the surviving entity in a merger shall cease, except that 80
whenever a conveyance, assignment, transfer, deed, or other 81

instrument or act is necessary to vest property or rights in the 82
surviving or new entity, the officers, general partners, or other 83
authorized representatives of the respective constituent entities 84
shall execute, acknowledge, and deliver ~~such~~ those instruments and 85
do ~~such~~ those acts. For these purposes, the existence of the 86
constituent entities and the authority of their respective 87
officers, directors, general partners, or other authorized 88
representatives is continued notwithstanding the merger or 89
consolidation. 90

(2) In the case of a consolidation, the new entity exists 91
when the consolidation becomes effective and, if it is a domestic 92
corporation, the articles contained in or provided for in the 93
agreement of consolidation shall be its original articles. In the 94
case of a merger in which the surviving entity is a domestic 95
corporation, the articles of the domestic surviving corporation in 96
effect immediately prior to the time the merger becomes effective 97
shall continue as its articles after the merger except as 98
otherwise provided in the agreement of merger. 99

(3) The surviving or new entity possesses all assets and 100
property of every description, and every interest in the assets 101
and property, wherever located, and the rights, privileges, 102
immunities, powers, franchises, and authority, of a public as well 103
as of a private nature, of each constituent entity, and, subject 104
to the limitations specified in section 2307.96 of the Revised 105
Code, all obligations belonging to or due to each constituent 106
entity, all of which are vested in the surviving or new entity 107
without further act or deed. Title to any real estate or any 108
interest in the real estate vested in any constituent entity shall 109
not revert or in any way be impaired by reason of such merger or 110
consolidation. 111

(4) The Subject to the limitations specified in section 112
2307.96 of the Revised Code, the surviving or new entity is liable 113

for all the obligations of each constituent entity, including 114
liability to dissenting shareholders. Any claim existing or any 115
action or proceeding pending by or against any constituent entity 116
may be prosecuted to judgment, with right of appeal, as if the 117
merger or consolidation had not taken place, or the surviving or 118
new entity may be substituted in its place. 119

(5) ~~All~~ Subject to the limitations specified in section 120
2307.96 of the Revised Code, all the rights of creditors of each 121
constituent entity are preserved unimpaired, and all liens upon 122
the property of any constituent entity are preserved unimpaired, 123
on only the property affected by ~~such~~ those liens immediately 124
prior to the effective date of the merger or consolidation. If a 125
general partner of a constituent partnership is not a general 126
partner of the entity surviving or the new entity resulting from 127
the merger or consolidation, then the former general partner shall 128
have no liability for any obligation incurred after the merger or 129
consolidation except to the extent that a former creditor of the 130
constituent partnership in which the former general partner was a 131
partner extends credit to the surviving or new entity reasonably 132
believing that the former general partner continued as a general 133
partner of the surviving or new entity. 134

(B) If a general partner of a constituent partnership is not 135
a general partner of the entity surviving or the new entity 136
resulting from the merger or consolidation, the provisions of 137
division (B) of section 1782.434 of the Revised Code shall apply. 138

(C) In the case of a merger of a domestic constituent 139
corporation into a foreign surviving corporation, limited 140
liability company, or limited partnership that is not licensed or 141
registered to transact business in this state or in the case of a 142
consolidation of a domestic constituent corporation into a new 143
foreign corporation, limited liability company, or limited 144
partnership, if the surviving or new entity intends to transact 145

business in this state and the certificate of merger or 146
consolidation is accompanied by the information described in 147
division (B)(4) of section 1701.81 of the Revised Code, then, on 148
the effective date of the merger or consolidation, the surviving 149
or new entity shall be considered to have complied with the 150
requirements for procuring a license or for registering to 151
transact business in this state as a foreign corporation, limited 152
liability company, or limited partnership, as the case may be. In 153
such a case, a copy of the certificate of merger or consolidation 154
certified by the secretary of state constitutes the license 155
certificate prescribed by the laws of this state for a foreign 156
corporation transacting business in this state or the application 157
for registration prescribed for a foreign limited partnership or 158
limited liability company. 159

(D) Any action to set aside any merger or consolidation on 160
the ground that any section of the Revised Code applicable to the 161
merger or consolidation has not been complied with shall be 162
brought within ninety days after the effective date of ~~such~~ that 163
merger or consolidation or be forever barred. 164

(E) As used in this section, "corporation" or "entity" 165
applies to both domestic and foreign corporations and entities 166
where the context so permits. In the case of a foreign constituent 167
entity or a foreign new entity, this section is subject to the 168
laws of the state under the laws of which the entity exists or in 169
which it has property. 170

Sec. 2307.91. As used in sections 2307.91 to 2307.95 of the 171
Revised Code: 172

(A) "AMA guides to the evaluation of permanent impairment" 173
means the American medical association's guides to the evaluation 174
of permanent impairment (fifth edition 2000) as may be modified by 175
the American medical association. 176

(B) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered. 177
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(C) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos. 181
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(D) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers. 191
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(E) "Board-certified internist" means a medical doctor who is currently certified by the American board of internal medicine. 193
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(F) "Board-certified oncologist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of medical oncology. 195
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(G) "Board-certified pathologist" means a medical doctor who is currently certified by the American board of pathology. 198
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(H) "Board-certified pulmonary specialist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of pulmonary medicine. 200
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(I) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as amended. 203
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(J) "Civil action" means all suits or claims of a civil 206

<u>nature in state or federal court, whether cognizable as cases at</u>	207
<u>law or in equity or admiralty. The term "civil action" does not</u>	208
<u>include an action relating to any workers' compensation law.</u>	209
<u>(K) "Exposed person" means any person whose exposure to</u>	210
<u>asbestos or to asbestos-containing products is the basis for an</u>	211
<u>asbestos claim.</u>	212
<u>(L) "Exposure years" means the following:</u>	213
<u>(1) Each single year of exposure prior to 1972 will be</u>	214
<u>counted as one year.</u>	215
<u>(2) Each single year of exposure from 1972 through 1979 will</u>	216
<u>be counted as one-half year.</u>	217
<u>(3) Exposure after 1979 will not be counted, except that each</u>	218
<u>year from 1972 forward for which the plaintiff can establish</u>	219
<u>exposure exceeding the occupational safety and health</u>	220
<u>administration (OSHA) limit for eight-hour time-weighted average</u>	221
<u>airborne concentration for a substantial portion of the year will</u>	222
<u>count as one year.</u>	223
<u>(M) "FEV1" means forced expiratory volume in the first</u>	224
<u>second, which is the maximal volume of air expelled in one second</u>	225
<u>during performance of simple spirometric tests.</u>	226
<u>(N) "FVC" means forced vital capacity that is maximal volume</u>	227
<u>of air expired with maximum effort from a position of full</u>	228
<u>inspiration.</u>	229
<u>(O) "ILO scale" means the system for the classification of</u>	230
<u>chest x-rays set forth in the international labour office's</u>	231
<u>guidelines for the use of ILO international classification of</u>	232
<u>radiographs of pneumoconioses (1980), as amended.</u>	233
<u>(P) "Lung cancer" means a malignant tumor in which the</u>	234
<u>primary site of origin of the cancer is inside the lungs, but that</u>	235
<u>term does not include an asbestos claim based upon mesothelioma.</u>	236

(O) "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using standardized and accepted criteria of microscopic morphology and appropriate staining techniques. 237
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(R) "Nonmalignant condition" means a condition that is caused or may be caused by asbestos other than a diagnosed cancer. 242
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(S) "Nonsmoker" means the exposed person has not smoked cigarettes or used any other tobacco products within the last fifteen years. 244
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(T) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis. 247
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(U) "Physical impairment" means a nonmalignant condition that meets the minimum requirements of division (B) of section 2307.92 of the Revised Code, lung cancer that meets the minimum requirements of division (C) of section 2307.92 of the Revised Code, or cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach that meets the minimum requirements of division (D) of section 2307.92 of the Revised Code. 254
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(V) "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA guides to the evaluation of permanent impairment. 261
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(W) "Qualified physician" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the 265
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<u>requirements of section 2307.92 of the Revised Code and who meets</u>	268
<u>the following requirements:</u>	269
<u>(1) The medical doctor is a board-certified internist,</u>	270
<u>pulmonary specialist, oncologist, or pathologist.</u>	271
<u>(2) The medical doctor is actually treating or has treated</u>	272
<u>the exposed person and has or had a doctor-patient relationship</u>	273
<u>with the person.</u>	274
<u>(3) The medical doctor spends not more than ten per cent of</u>	275
<u>the medical doctor's professional practice time in providing</u>	276
<u>consulting or expert services in connection with actual or</u>	277
<u>potential civil actions, and the medical doctor's medical group,</u>	278
<u>professional corporation, clinic, or other affiliated group earns</u>	279
<u>not more than twenty per cent of its revenues from providing those</u>	280
<u>services.</u>	281
<u>(4) The medical doctor is currently licensed to practice and</u>	282
<u>actively practices in the state where the plaintiff's civil action</u>	283
<u>was filed.</u>	284
<u>(5) The medical doctor receives or received payment for the</u>	285
<u>treatment of the exposed person from that person's HMO or other</u>	286
<u>medical provider.</u>	287
<u>(X) "Radiological evidence of asbestosis" means a chest x-ray</u>	288
<u>showing small, irregular opacities (s, t) graded by a certified</u>	289
<u>B-reader as at least 1/1 on the ILO scale.</u>	290
<u>(Y) "Radiological evidence of diffuse pleural thickening"</u>	291
<u>means a chest x-ray showing bilateral pleural thickening graded by</u>	292
<u>a certified B-reader as at least B2 on the ILO scale and blunting</u>	293
<u>of at least one costophrenic angle.</u>	294
<u>(Z) "Smoker" means a person who has smoked cigarettes or</u>	295
<u>other tobacco products within the last fifteen years.</u>	296
<u>(AA) "Spirometry" means the measurement of volume of air</u>	297

inhaled or exhaled by the lung. 298

(BB) "Substantial contributing factor" means all of the 299
following: 300

(1) Exposure to asbestos is the predominate cause of the 301
physical impairment alleged in the asbestos claim. 302

(2) The exposure to asbestos took place on a regular basis 303
over an extended period of time and in close proximity to the 304
exposed person. 305

(3) A qualified physician has determined with a reasonable 306
degree of medical certainty that the physical impairment of the 307
exposed person would not have occurred but for the asbestos 308
exposures. 309

(CC) "Veterans' benefit program" means any program for 310
benefits in connection with military service administered by the 311
veterans' administration under title 38 of the United States Code. 312

(DD) "Workers' compensation law" means Chapters 4121., 4123., 313
4127., and 4131. of the Revised Code. 314

Sec. 2307.92. (A) Physical impairment of the exposed person, 315
to which the person's exposure to asbestos is a substantial 316
contributing factor, shall be an essential element of an asbestos 317
claim. 318

(B) No person shall bring or maintain a civil action alleging 319
an asbestos claim based on a nonmalignant condition in the absence 320
of a prima-facie showing that the exposed person has a physical 321
impairment, that the physical impairment is a result of a medical 322
condition, and that the person's exposure to asbestos is a 323
substantial contributing factor to the medical condition. That 324
prima-facie showing shall include all of the following minimum 325
requirements: 326

(1) Evidence verifying that a qualified physician has taken a detailed occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the asbestos claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and exposures to airborne contaminants;

(b) Whether each place of employment involved exposures to airborne contaminants, including, but not limited to, asbestos fibers or other disease causing dusts, that can cause pulmonary impairment and, if that type of exposure is involved, the nature, duration, and level of the exposure.

(2) Evidence verifying that a qualified physician has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a qualified physician, based on a medical examination and pulmonary function testing of the exposed person, that all of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) The exposed person has asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening.

(c) The asbestosis or diffuse pleural thickening described in division (B)(3)(b) of this section, rather than solely chronic

obstructive pulmonary disease, is a substantial contributing 357
factor to the exposed person's physical impairment, based at a 358
minimum on a determination that the exposed person has either of 359
the following: 360

(i) A forced vital capacity below the predicted lower limit 361
of normal and a ratio of FEV1 to FVC that is equal to or greater 362
than the predicted lower limit of normal; 363

(ii) A chest x-ray showing small, irregular opacities (s, t) 364
graded by a certified B-reader at least 2/1 on the ILO scale. 365

(C) No person shall bring or maintain a civil action alleging 366
an asbestos claim based upon lung cancer in the absence of a 367
prima-facie showing of all of the following minimum requirements: 368

(1) A diagnosis by a board-certified pathologist, 369
board-certified pulmonary specialist, or board-certified 370
oncologist that the exposed person has primary lung cancer and 371
that exposure to asbestos is a substantial contributing factor to 372
that cancer; 373

(2) Evidence that is sufficient to demonstrate that at least 374
ten years have elapsed between the date of the exposed person's 375
first exposure to asbestos and the date of diagnosis of the 376
exposed person's primary lung cancer; 377

(3) Either of the following: 378

(a) In the case of an exposed person who is a nonsmoker, 379
either of the following requirements: 380

(i) Radiological or pathological evidence of asbestosis or 381
radiological evidence of diffuse pleural thickening; 382

(ii) Evidence of the exposed person's occupational exposure 383
to asbestos for any of the applicable minimum exposure periods in 384
the occupations as specified in divisions (D)(3)(b)(i), (ii), and 385
(iii) of this section. 386

(b) In the case of an exposed person who is a smoker, both of 387
the requirements specified in divisions (C)(3)(a)(i) and (ii) of 388
this section. 389

(D) No person shall bring or maintain a civil action alleging 390
an asbestos claim based upon cancer of the colon, rectum, larynx, 391
pharynx, esophagus, or stomach, in the absence of a prima-facie 392
showing of all of the following minimum requirements: 393

(1) A diagnosis by a board-certified pathologist, 394
board-certified pulmonary specialist, or board-certified 395
oncologist, whichever is appropriate for the type of cancer 396
claimed, that the exposed person has primary cancer of the colon, 397
rectum, larynx, pharynx, esophagus, or stomach and that exposure 398
to asbestos was a substantial contributing factor to that 399
particular cancer; 400

(2) Evidence that is sufficient to demonstrate that at least 401
ten years have elapsed between the date of the exposed person's 402
first exposure to asbestos and the date of diagnosis of the 403
exposed person's particular cancer; 404

(3) Either of the following requirements: 405

(a) Radiological or pathological evidence of asbestosis or 406
radiological evidence of diffuse pleural thickening; 407

(b) Evidence of the exposed person's occupational exposure to 408
asbestos for any of the following applicable minimum exposure 409
periods in the specified occupations: 410

(i) Five exposure years for insulators, shipyard workers, 411
workers in manufacturing plants handling raw asbestos, 412
boilermakers, shipfitters, steamfitters, or other trades 413
performing similar functions; 414

(ii) Ten exposure years for utility and power house workers, 415
secondary manufacturing workers, or other trades performing 416

similar functions; 417

(iii) Fifteen exposure years for general construction, 418
maintenance workers, chemical and refinery workers, marine engine 419
room personnel and other personnel on vessels, stationary 420
engineers and firefighters, railroad engine repair workers, or 421
other trades performing similar functions. 422

(E) No prima-facie showing is required in a civil action 423
alleging an asbestos claim based upon mesothelioma. 424

(F) Evidence relating to physical impairment under this 425
section, including pulmonary function testing and diffusing 426
studies, shall comply with the technical recommendations for 427
examinations, testing procedures, quality assurance, quality 428
control, and equipment incorporated in the AMA guides to the 429
evaluation of permanent impairment and reported as set forth in 20 430
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 431
the interpretive standards set forth in the official statement of 432
the American thoracic society entitled "lung function testing: 433
selection of reference values and interpretive strategies" as 434
published in American review of respiratory disease, 435
1991:144:1202-1218. 436

(G) All of the following apply to the presentation of 437
prima-facie evidence that meets the requirements of division (B), 438
(C), or (D) of this section: 439

(1) It does not result in any presumption at trial that the 440
exposed person has a physical impairment that is caused by an 441
asbestos-related condition. 442

(2) It is not conclusive as to the liability of any defendant 443
in the case. 444

(3) It is not admissible at trial. 445

Sec. 2307.93. The plaintiff in any civil action who alleges 446

an asbestos claim shall file together with the complaint or other 447
initial pleading a written report and supporting test results 448
constituting prima-facie evidence of the exposed person's physical 449
impairment that meets the minimum requirements of division (B), 450
(C), or (D) of section 2307.92 of the Revised Code, whichever is 451
applicable. With respect to any asbestos claim that is pending on 452
the effective date of this section, the plaintiff shall file the 453
written report and supporting test results described in this 454
section sixty days following the effective date of this section or 455
thirty days prior to trial, whichever is earlier. The defendant in 456
the case shall be afforded a reasonable opportunity to challenge 457
the adequacy of the proffered prima-facie evidence of the physical 458
impairment. The court shall dismiss the plaintiff's claim without 459
prejudice upon a finding of failure to make the prima-facie 460
showing required by division (B), (C), or (D) of section 2307.92 461
of the Revised Code. 462

Sec. 2307.94. (A) Notwithstanding any other provision of the 463
Revised Code, with respect to any asbestos claim based upon a 464
nonmalignant condition that is not barred as of the effective date 465
of this section, the period of limitations shall not begin to run 466
until the exposed person discovers, or through the exercise of 467
reasonable diligence should have discovered, that the person has a 468
physical impairment due to a nonmalignant condition. 469

(B) An asbestos claim that arises out of a nonmalignant 470
condition shall be a distinct cause of action from an asbestos 471
claim relating to the same exposed person that arises out of 472
asbestos-related cancer. No damages shall be awarded for fear or 473
risk of cancer in any civil action asserting only an asbestos 474
claim for a nonmalignant condition. 475

(C) No settlement of an asbestos claim for a nonmalignant 476

condition that is concluded after the effective date of this 477
section shall require, as a condition of settlement, the release 478
of any future claim for asbestos-related cancer. 479

Sec. 2307.95. Sections 2307.91 to 2307.95 of the Revised Code 480
shall not affect the scope or operation of any workers' 481
compensation law or veterans' benefit program or the exclusive 482
remedy of subrogation under the provisions of that law or program 483
and shall not authorize any lawsuit that is barred by any 484
provision of any workers' compensation law. 485

Sec. 2307.96. (A) As used in this section and section 2307.97 486
of the Revised Code: 487

(1) "Asbestos" has the same meaning as in section 2307.91 of 488
the Revised Code. 489

(2) "Asbestos claim" means any claim for damages, losses, 490
indemnification, contribution, or other relief arising out of, 491
based on, or in any way related to asbestos. "Asbestos claim" 492
includes any of the following: 493

(a) A claim made by or on behalf of any person who has been 494
exposed to asbestos, or any representative, spouse, parent, child, 495
or other relative of that person, for injury, including mental or 496
emotional injury, death, or loss to person, risk of disease or 497
other injury, costs of medical monitoring or surveillance, or any 498
other effects on the person's health that are caused by the 499
person's exposure to asbestos; 500

(b) A claim for damage or loss to property that is caused by 501
the installation, presence, or removal of asbestos. 502

(3) "Successor" means a domestic corporation or a subsidiary 503
of a domestic corporation that acquired any assets of or the stock 504
of a foreign business corporation, if all of the following apply: 505

<u>(a) The transaction occurred on or before July 29, 1977.</u>	506
<u>(b) The purchasing domestic corporation paid less than five million dollars for the acquisition.</u>	507 508
<u>(c) The principal place of business of the foreign corporation was located outside the state of Ohio.</u>	509 510
<u>(4)(a) "Successor asbestos-related liabilities," in relation to an asset purchase or a stock purchase by a successor means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, if the liabilities are related in any way to asbestos claims and are assumed or incurred by a successor as a result of or in connection with the asset purchase or stock purchase, merger, or consolidation, or the agreement of the asset purchase or stock purchase.</u>	511 512 513 514 515 516 517 518 519
<u>(b) "Successor asbestos-related liabilities" includes any liabilities described in division (A)(4)(a) of this section that, after the effective date of the asset purchase or stock purchase, are paid, otherwise discharged, committed to be paid, or committed to be otherwise discharged by or on behalf of the successor, or by or on behalf of a transferor, in connection with any judgment, settlement, or other discharge of those liabilities in this state or another jurisdiction.</u>	520 521 522 523 524 525 526 527
<u>(5) "Transferor" means a foreign corporation or its shareholders from which successor asbestos-related liabilities are assumed or incurred by the successor.</u>	528 529 530
<u>(B)(1) Except as otherwise provided in division (B)(2) of this section, the cumulative successor asbestos-related liabilities of a successor shall be limited to the fair market value of the acquired assets or stock as determined on the effective date of the asset purchase or stock purchase, merger, or consolidation.</u>	531 532 533 534 535 536

(2) If a transferor had assumed or incurred successor 537
asbestos-related liabilities in connection with a prior asset 538
purchase, stock purchase, merger, or consolidation involving a 539
prior transferor, the successor asbestos-related liabilities of 540
the successor described in division (B)(1) of this section shall 541
be limited to the fair market value of the previously acquired 542
assets or stock as determined on the effective date of the prior 543
asset purchase, stock purchase, merger, or consolidation. 544

(3) The successor described in division (B)(1) or (2) of this 545
section shall have no responsibility for any successor 546
asbestos-related liabilities in excess of the limitation of those 547
liabilities as described in the applicable division. 548

(C)(1) Except as otherwise provided in division (C)(2) of 549
this section, the assets of a successor shall be exempt from 550
restraint, attachment, or execution on any judgment entered in 551
this state or another jurisdiction related to any claim for 552
successor asbestos-related liabilities if the cumulative amounts 553
of those liabilities that, after the effective date of the asset 554
purchase or stock purchase that is covered by division (B) of this 555
section, are paid or committed to be paid by or on behalf of the 556
successor, or by or on behalf of the transferor, in connection 557
with any judgment, settlement, or other discharge of claims of 558
asbestos-related liabilities exceed the fair market value of the 559
assets or stock as determined on the effective date of the asset 560
purchase or stock purchase, merger, or consolidation. 561

(2) If a transferor had assumed or incurred successor 562
asbestos-related liabilities in connection with a prior asset 563
purchase, stock purchase, merger, or consolidation involving a 564
prior transferor, the assets of the successor described in 565
division (C)(1) of this section shall be exempt from restraint, 566
attachment, or execution on any judgment entered in this state or 567
another jurisdiction related to any claim for successor 568

asbestos-related liabilities if the cumulative amounts of those 569
liabilities that, after the effective date of the prior asset 570
purchase, stock purchase, merger, or consolidation, are paid or 571
committed to be paid by or on behalf of the successor, or by or on 572
behalf of the prior transferor, in connection with any judgment, 573
settlement, or other discharge of claims of asbestos-related 574
liabilities, exceed the fair market value of the previously 575
acquired assets or stock as determined on the effective date of 576
the prior asset purchase, stock purchase, merger, or 577
consolidation. 578

(D)(1) A successor may establish the fair market value of 579
total assets under division (B) or (C) of this section by means of 580
any method that is reasonable under the circumstances, including 581
by reference to the going-concern value of those assets, to the 582
purchase price attributable to or paid for the assets in an arm's 583
length transaction, or, in the absence of other readily available 584
information from which fair market value can be determined, to the 585
value of those assets recorded on a balance sheet. Total assets 586
shall include intangible assets. A showing by the successor of a 587
reasonable determination of the fair market value of total assets 588
is prima-facie evidence of the fair market value of those assets. 589

(2) After a successor has established a reasonable 590
determination of the fair market value of total assets under 591
division (D)(1) of this section, a claimant that disputes that 592
determination of the fair market value has the burden of 593
establishing a different fair market value of those assets. 594

(3) For the purpose of adjusting the limitations set forth in 595
division (B) or (C) of this section to account for the passage of 596
time, the fair market value of total assets on the effective date 597
of the applicable asset purchase or stock purchase under the 598
applicable division shall be increased annually, at the rate equal 599
to the prime rate as listed in the first edition of the Wall 600

Street Journal published for each calendar year since the asset 601
purchase or stock purchase plus one per cent, not compounded, 602
until the earlier of either of the following: 603

(a) The date of the judgment, settlement, or other discharge 604
of claims of successor asbestos-related liabilities to which the 605
limitations in division (B) or (C) of this section are being 606
applied; 607

(b) The date on which the adjusted fair market value of total 608
assets under division (D)(3) of this section is first exceeded by 609
the cumulative amounts of successor asbestos-related liabilities 610
that are paid or committed to be paid by or on behalf of the 611
successor, or by or on behalf of a transferor, after the effective 612
date of the asset purchase or stock purchase in connection with 613
any judgment, settlement, or other discharge of the successor 614
asbestos-related liabilities. 615

(E)(1) The limitations set forth in divisions (B) and (C) of 616
this section shall apply to the following: 617

(a) All asbestos claims, including asbestos claims that are 618
pending on the effective date of this section, and all litigation 619
involving asbestos claims, including litigation that is pending on 620
the effective date of this section; 621

(b) Successors of a successor to which this section applies. 622

(2) The limitations set forth in divisions (B) and (C) of 623
this section do not apply to any of the following: 624

(a) Workers' compensation benefits that are paid by or on 625
behalf of an employer to an employee pursuant to any provision of 626
Chapter 4121., 4123., 4127., or 4131. of the Revised Code or 627
comparable workers' compensation law of another jurisdiction; 628

(b) Any claim against a successor that does not constitute a 629
claim for a successor asbestos-related liability; 630

(c) An insurance corporation; 631

(d) Any obligations arising under the "National Labor 632
Relations Act," 49 Stat. 449, 29 U.S.C. 151 et seq., as amended, 633
or under any collective bargaining agreement. 634

Sec. 2307.97. (A) A holder of shares, an owner of any 635
beneficial interest in shares, or a subscriber for shares whose 636
subscription has been accepted, or any affiliate or holding 637
company of that holder, owner, or subscriber or of the 638
corporation, shall be under no obligation to, and shall have no 639
liability to, the corporation or to any person with respect to any 640
obligation or liability of the corporation relating in any way to 641
asbestos claims on the basis that the holder, owner, subscriber, 642
affiliate, or holding company described in division (A) of this 643
section controlled the corporation or is or was the alter ego of 644
the corporation, or on the basis of actual fraud or constructive 645
fraud, a sham to perpetrate a fraud, a fraudulent conveyance, 646
piercing the corporate veil, or any other similar theory, unless 647
the person demonstrates that the holder, owner, subscriber, 648
affiliate, or holding company caused the corporation to be used 649
for the purpose of perpetrating and did perpetrate an actual fraud 650
on the person primarily for the direct pecuniary benefit of the 651
holder, owner, subscriber, affiliate, or holding company, and then 652
only to the extent of that direct pecuniary benefit. 653

(B) Any liability of the holder, owner, or subscriber of 654
shares of a corporation described in division (A) of this section 655
or any affiliate or holding company of that holder, owner, or 656
subscriber or of the corporation for an obligation or liability 657
that is limited by that division is exclusive and preempts any 658
other obligation or liability imposed upon a holder, owner, or 659
subscriber of shares of a corporation described in that division 660
or any affiliate or holding company of that holder, owner, or 661

subscriber or of the corporation for that obligation or liability 662
under common law or otherwise. 663

Section 2. That existing sections 1701.76 and 1701.82 of the 664
Revised Code are hereby repealed. 665

Section 3. (A) The General Assembly makes the following 666
statement of findings and intent: 667

(1) Asbestos claims have created an increased amount of 668
litigation in state and federal courts that the United States 669
Supreme Court has characterized as "an elephant mass" of cases 670
that "defies customary judicial administration and calls for 671
national legislation." *Ortiz v. Fibreboard Corporation* (1999), 119 672
S.Ct. 2295, 2303. 673

(2) The current asbestos personal injury litigation system is 674
unfair and inefficient, imposing a severe burden on litigants and 675
taxpayers alike. 676

(3) The extraordinary volume of nonmalignant asbestos cases 677
continue to strain federal and state courts, with over two hundred 678
thousand cases pending and over fifty thousand new cases filed 679
each year. 680

(4) Asbestos personal injury litigation has already 681
contributed to the bankruptcy of more than sixty companies, 682
including nearly all manufacturers of asbestos textile and 683
insulation products, and the ratio of asbestos-driven bankruptcies 684
is accelerating. 685

(5) The General Assembly recognizes that the vast majority of 686
asbestos claims are filed by individuals who allege they have been 687
exposed to asbestos and who have some physical sign of exposure to 688
asbestos, but who do not suffer from an asbestos-related 689
impairment. 690

(6) The cost of compensating exposed individuals who are not ill jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future; threatens savings, retirement benefits, and jobs of the state's current and retired employees; adversely affects the communities in which these defendants operate; and impairs Ohio's economy.

(7) As stated in testimony by Robert Bunda, a trial lawyer who has been involved with the defense of asbestos claims on behalf of Owens-Illinois, Inc. for twenty-four years, there is something terribly wrong with the current civil justice system, evidenced by the fact that Owens-Illinois has been sued over three hundred thousand times for its brief involvement in manufacturing asbestos. According to Mr. Bunda, at least five Ohio-based companies have gone bankrupt because of the cost of paying people who are not sick. These bankruptcies have imperiled the availability of even modest compensation for the most seriously injured asbestos workers. They have also imperiled jobs, the health benefits, and the retirement funds of tens of thousands of blue-collar workers. New jobs are not being created in Ohio, and existing Ohio jobs are being destroyed.

(8) According to a study conducted by NERA Economic Consulting, in 2000, Owens-Corning laid off two hundred and seventy-five employees from its Granville, Ohio plant. The ripple effect of those job losses predicts total employment in the county of almost five hundred jobs and a fifteen million to twenty million dollar annual reduction in regional income.

(9) The public interest requires the deferring of claims of exposed individuals who are not ill in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state's employees

and the well being of the Ohio economy. 723

(B) In enacting sections 2307.91 to 2307.97 of the Revised 724
Code, it is the intent of the General Assembly to: (1) give 725
priority to those asbestos claimants who can demonstrate actual 726
physical harm or illness caused by exposure to asbestos; (2) fully 727
preserve the rights of claimants who were exposed to asbestos to 728
pursue compensation should those claimants become impaired in the 729
future as a result of such exposure; (3) enhance the ability of 730
the state's judicial systems and federal judicial systems to 731
supervise and control litigation and asbestos-related bankruptcy 732
proceedings; and (4) conserve the scarce resources of the 733
defendants to allow compensation of cancer victims and others who 734
are physically impaired by exposure to asbestos while securing the 735
right to similar compensation for those who may suffer physical 736
impairment in the future. 737

Section 4. (A) As used in this section, "asbestos," "asbestos 738
claim," "exposed person," and "substantial contributing factor" 739
have the same meanings as in section 2307.91 of the Revised Code. 740

(B) The General Assembly acknowledges the Court's authority 741
in prescribing rules governing practice and procedure in the 742
courts of this state, as provided by Section 5 of Article IV of 743
the Ohio Constitution. 744

(C) The General Assembly hereby requests the Supreme Court to 745
adopt rules to specify procedures for venue and consolidation of 746
asbestos claims brought pursuant to sections 2307.91 to 2307.95 of 747
the Revised Code. 748

(D) With respect procedures for venue in regard to asbestos 749
claims, the General Assembly hereby requests the Supreme Court to 750
adopt a rule that requires that an asbestos claim meet specific 751
nexus requirements, including the requirement that the plaintiff 752

be domiciled in Ohio or that Ohio is the state in which the 753
plaintiff's exposure to asbestos is a substantial contributing 754
factor. 755

(E) With respect to procedures for consolidation of asbestos 756
claims, the General Assembly hereby requests the Supreme Court to 757
adopt a rule that permits consolidation of asbestos claims only 758
with the consent of all parties, and in absence of that consent, 759
permits a court to consolidate for trial only those asbestos 760
claims that relate to the same exposed person and members of the 761
exposed person's household. 762

Section 5. If any item of law that constitutes the whole or 763
part of a section of law contained in this act, or if any 764
application of any item of law that constitutes the whole or part 765
of a section of law contained in this act, is held invalid, the 766
invalidity does not affect other items of law or applications of 767
items of law that can be given effect without the invalid item of 768
law or application. To this end, the items of law of which the 769
sections contained in this act are composed, and their 770
applications, are independent and severable. 771

Section 6. If any item of law that constitutes the whole or 772
part of a section of law contained in this act, or if any 773
application of any item of law contained in this act, is held to 774
be preempted by federal law, the preemption of the item of law or 775
its application does not affect other items of law or applications 776
that can be given affect. The items of law of which the sections 777
of this act are composed, and their applications, are independent 778
and severable. 779