

As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 292

Representatives Oelslager, Seitz, Widener

A B I L L

To amend sections 1701.76, 1701.82, and 2505.02 and 1
to enact sections 2307.91 to 2307.94, 2307.941, 2
and 2307.95 to 2307.98 of the Revised Code to 3
establish minimum medical requirements for filing 4
certain asbestos claims, to specify a plaintiff's 5
burden of proof in tort actions involving exposure 6
to asbestos, to establish premises liability in 7
relation to asbestos claims, to establish 8
limitations on successor asbestos-related 9
liabilities relating to corporations, and to 10
prescribe the requirements for shareholder 11
liability for asbestos claims under the doctrine 12
of piercing the corporate veil. 13

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

Section 1. That sections 1701.76, 1701.82, and 2505.02 be 14
amended and sections 2307.91, 2307.92, 2307.93, 2307.94, 2307.941, 15
2307.95, 2307.96, 2307.97, and 2307.98 of the Revised Code be 16
enacted to read as follows: 17

Sec. 1701.76. (A)(1) Provided the provisions of Chapter 1704. 18
of the Revised Code do not prevent the transaction from being 19
effected, a lease, sale, exchange, transfer, or other disposition 20

of all, or substantially all, of the assets, with or without the
good will, of a corporation, if not made in the usual and regular
course of its business, may be made upon ~~such~~ the terms and
conditions and for ~~such~~ the consideration, ~~which~~ that may consist,
in whole or in part, of money or other property of any
description, including shares or other securities or promissory
obligations of any other corporation, domestic or foreign, ~~as~~ that
may be authorized as follows:

(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;	52
(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.	53 54 55 56
(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 transaction.	57 58 59 60 61
(B) The corporation by its directors may abandon such the transaction <u>under this section</u> , subject to the contract rights of other persons, if the power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of shareholders and at the same meeting of shareholders as that referred to in division (A)(1)(b) of this section or at any subsequent meeting.	62 63 64 65 66 67 68
(C) Dissenting holders of shares of any class, whether or not entitled to vote, shall be entitled to relief under section 1701.85 of the Revised Code.	69 70 71
(D) An action to set aside a conveyance by a corporation, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets of such that corporation has not been complied with, shall be brought within ninety days after such that transaction, or such the action shall be forever barred.	72 73 74 75 76 77
(E) If a resolution of dissolution is adopted pursuant to section 1701.86 of the Revised Code, the directors may dispose of all, or substantially all, of the corporation's assets without the necessity of a shareholders' authorization under this section.	78 79 80 81
<u>(F) The terms and conditions of any transaction under this</u>	82

section shall be subject to the limitations specified in section 83
2307.97 of the Revised Code. 84

Sec. 1701.82. (A) When a merger or consolidation becomes 85
effective, all of the following apply: 86

(1) The separate existence of each constituent entity other 87
than the surviving entity in a merger shall cease, except that 88
whenever a conveyance, assignment, transfer, deed, or other 89
instrument or act is necessary to vest property or rights in the 90
surviving or new entity, the officers, general partners, or other 91
authorized representatives of the respective constituent entities 92
shall execute, acknowledge, and deliver ~~such~~ those instruments and 93
do ~~such~~ those acts. For these purposes, the existence of the 94
constituent entities and the authority of their respective 95
officers, directors, general partners, or other authorized 96
representatives is continued notwithstanding the merger or 97
consolidation. 98

(2) In the case of a consolidation, the new entity exists 99
when the consolidation becomes effective and, if it is a domestic 100
corporation, the articles contained in or provided for in the 101
agreement of consolidation shall be its original articles. In the 102
case of a merger in which the surviving entity is a domestic 103
corporation, the articles of the domestic surviving corporation in 104
effect immediately prior to the time the merger becomes effective 105
shall continue as its articles after the merger except as 106
otherwise provided in the agreement of merger. 107

(3) The surviving or new entity possesses all assets and 108
property of every description, and every interest in the assets 109
and property, wherever located, and the rights, privileges, 110
immunities, powers, franchises, and authority, of a public as well 111
as of a private nature, of each constituent entity, and, subject 112
to the limitations specified in section 2307.97 of the Revised 113

Code, all obligations belonging to or due to each constituent 114
entity, all of which are vested in the surviving or new entity 115
without further act or deed. Title to any real estate or any 116
interest in the real estate vested in any constituent entity shall 117
not revert or in any way be impaired by reason of such merger or 118
consolidation. 119

(4) ~~The~~ Subject to the limitations specified in section 120
2307.97 of the Revised Code, the surviving or new entity is liable 121
for all the obligations of each constituent entity, including 122
liability to dissenting shareholders. Any claim existing or any 123
action or proceeding pending by or against any constituent entity 124
may be prosecuted to judgment, with right of appeal, as if the 125
merger or consolidation had not taken place, or the surviving or 126
new entity may be substituted in its place. 127

(5) ~~All~~ Subject to the limitations specified in section 128
2307.97 of the Revised Code, all the rights of creditors of each 129
constituent entity are preserved unimpaired, and all liens upon 130
the property of any constituent entity are preserved unimpaired, 131
on only the property affected by ~~such~~ those liens immediately 132
prior to the effective date of the merger or consolidation. If a 133
general partner of a constituent partnership is not a general 134
partner of the entity surviving or the new entity resulting from 135
the merger or consolidation, then the former general partner shall 136
have no liability for any obligation incurred after the merger or 137
consolidation except to the extent that a former creditor of the 138
constituent partnership in which the former general partner was a 139
partner extends credit to the surviving or new entity reasonably 140
believing that the former general partner continued as a general 141
partner of the surviving or new entity. 142

(B) If a general partner of a constituent partnership is not 143
a general partner of the entity surviving or the new entity 144
resulting from the merger or consolidation, the provisions of 145

division (B) of section 1782.434 of the Revised Code shall apply. 146

(C) In the case of a merger of a domestic constituent 147
corporation into a foreign surviving corporation, limited 148
liability company, or limited partnership that is not licensed or 149
registered to transact business in this state or in the case of a 150
consolidation of a domestic constituent corporation into a new 151
foreign corporation, limited liability company, or limited 152
partnership, if the surviving or new entity intends to transact 153
business in this state and the certificate of merger or 154
consolidation is accompanied by the information described in 155
division (B)(4) of section 1701.81 of the Revised Code, then, on 156
the effective date of the merger or consolidation, the surviving 157
or new entity shall be considered to have complied with the 158
requirements for procuring a license or for registering to 159
transact business in this state as a foreign corporation, limited 160
liability company, or limited partnership, as the case may be. In 161
such a case, a copy of the certificate of merger or consolidation 162
certified by the secretary of state constitutes the license 163
certificate prescribed by the laws of this state for a foreign 164
corporation transacting business in this state or the application 165
for registration prescribed for a foreign limited partnership or 166
limited liability company. 167

(D) Any action to set aside any merger or consolidation on 168
the ground that any section of the Revised Code applicable to the 169
merger or consolidation has not been complied with shall be 170
brought within ninety days after the effective date of ~~such~~ that 171
merger or consolidation or be forever barred. 172

(E) As used in this section, "corporation" or "entity" 173
applies to both domestic and foreign corporations and entities 174
where the context so permits. In the case of a foreign constituent 175
entity or a foreign new entity, this section is subject to the 176
laws of the state under the laws of which the entity exists or in 177

which it has property. 178

Sec. 2307.91. As used in sections 2307.91 to 2307.96 of the 179
Revised Code: 180

(A) "AMA guides to the evaluation of permanent impairment" 181
means the American medical association's guides to the evaluation 182
of permanent impairment (fifth edition 2000) as may be modified by 183
the American medical association. 184

(B) "Asbestos" means chrysotile, amosite, crocidolite, 185
tremolite asbestos, anthophyllite asbestos, actinolite asbestos, 186
and any of these minerals that have been chemically treated or 187
altered. 188

(C) "Asbestos claim" means any claim for damages, losses, 189
indemnification, contribution, or other relief arising out of, 190
based on, or in any way related to asbestos. "Asbestos claim" 191
includes a claim made by or on behalf of any person who has been 192
exposed to asbestos, or any representative, spouse, parent, child, 193
or other relative of that person, for injury, including mental or 194
emotional injury, death, or loss to person, risk of disease or 195
other injury, costs of medical monitoring or surveillance, or any 196
other effects on the person's health that are caused by the 197
person's exposure to asbestos. 198

(D) "Asbestosis" means bilateral diffuse interstitial 199
fibrosis of the lungs caused by inhalation of asbestos fibers. 200

(E) "Board-certified internist" means a medical doctor who is 201
currently certified by the American board of internal medicine. 202

(F) "Board-certified occupational medicine specialist" means 203
a medical doctor who is currently certified by the American board 204
of internal medicine or the American board of preventive medicine 205
in the specialty of occupational medicine. 206

(G) "Board-certified oncologist" means a medical doctor who 207

is currently certified by the American board of internal medicine 208
in the subspecialty of medical oncology. 209

(H) "Board-certified pathologist" means a medical doctor who 210
is currently certified by the American board of pathology. 211

(I) "Board-certified pulmonary specialist" means a medical 212
doctor who is currently certified by the American board of 213
internal medicine in the subspecialty of pulmonary medicine. 214

(J) "Certified B-reader" means an individual qualified as a 215
"final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as 216
amended. 217

(K) "Civil action" means all suits or claims of a civil 218
nature in a state or federal court, whether cognizable as cases at 219
law or in equity or admiralty. "Civil action" does not include any 220
of the following: 221

(1) A civil action relating to any workers' compensation law; 222

(2) A civil action alleging any claim or demand made against 223
a trust established pursuant to 11 U.S.C. section 524(g); 224

(3) A civil action alleging any claim or demand made against 225
a trust established pursuant to a plan of reorganization confirmed 226
under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 227
Chapter 11. 228

(L) "Exposed person" means any person whose exposure to 229
asbestos or to asbestos-containing products is the basis for an 230
asbestos claim under section 2307.92 of the Revised Code. 231

(M) "FEV1" means forced expiratory volume in the first 232
second, which is the maximal volume of air expelled in one second 233
during performance of simple spirometric tests. 234

(N) "FVC" means forced vital capacity that is maximal volume 235
of air expired with maximum effort from a position of full 236
inspiration. 237

(O) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses (1980), as amended. 238
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(P) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs, but that term does not include mesothelioma. 242
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(Q) "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. 245
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(R) "Nonmalignant condition" means a condition that is caused or may be caused by asbestos other than a diagnosed cancer. 250
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(S) "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. 252
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(T) "Physical impairment" means a nonmalignant condition that meets the minimum requirements specified in division (B) of section 2307.92 of the Revised Code or lung cancer of an exposed person who is a smoker that meets the minimum requirements specified in division (C) of section 2307.92 of the Revised Code. 259
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(U) "Plethysmography" means a test for determining lung volume, also known as "body plethysmography," in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume changes. 264
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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. 268
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(W) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters. 272
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(X) "Competent medical authority" 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 requirements specified in section 2307.92 of the Revised Code and who meets the following requirements: 279
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(1) The medical doctor is a board-certified internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist. 284
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(2) The medical doctor is actually treating or has treated the exposed person and has or had a doctor-patient relationship with the person. 287
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(3) As the basis for the diagnosis, the medical doctor has not relied, in whole or in part, on any of the following: 290
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(a) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which that examination, test, or screening was conducted; 292
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(b) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that was conducted without clearly establishing a doctor-patient relationship with the claimant or medical personnel involved in the examination, test, or screening process; 298
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(c) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test, or screening. 304
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(4) The medical doctor spends not more than twenty-five per cent of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty per cent of its revenues from providing those services. 309
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(Y) "Radiological evidence of asbestosis" means a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale. 316
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(Z) "Radiological evidence of diffuse pleural thickening" means a chest x-ray showing bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO scale and blunting of at least one costophrenic angle. 319
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(AA) "Regular basis" means on a frequent or recurring basis. 323

(BB) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority pursuant to sections 2307.92 and 2307.93 of the Revised Code, during the last fifteen years. 324
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(CC) "Spirometry" means the measurement of volume of air 328
inhaled or exhaled by the lung. 329

(DD) "Substantial contributing factor" means both of the 330
following: 331

(1) Exposure to asbestos is the predominate cause of the 332
physical impairment alleged in the asbestos claim. 333

(2) A competent medical authority has determined with a 334
reasonable degree of medical certainty that without the asbestos 335
exposures the physical impairment of the exposed person would not 336
have occurred. 337

(EE) "Substantial occupational exposure to asbestos" means 338
employment for a cumulative period of at least five years in an 339
industry and an occupation in which, for a substantial portion of 340
a normal work year for that occupation, the exposed person did any 341
of the following: 342

(1) Handled raw asbestos fibers; 343

(2) Fabricated asbestos-containing products so that the 344
person was exposed to raw asbestos fibers in the fabrication 345
process; 346

(3) Altered, repaired, or otherwise worked with an 347
asbestos-containing product in a manner that exposed the person on 348
a regular basis to asbestos fibers; 349

(4) Worked in close proximity to other workers engaged in any 350
of the activities described in division (EE)(1), (2), or (3) of 351
this section in a manner that exposed the person on a regular 352
basis to asbestos fibers. 353

(FF) "Timed gas dilution" means a method for measuring total 354
lung capacity in which the subject breathes into a spirometer 355
containing a known concentration of an inert and insoluble gas for 356
a specific time, and the concentration of the inert and insoluble 357

gas in the lung is then compared to the concentration of that type 358
of gas in the spirometer. 359

(GG) "Tort action" means a civil action for damages for 360
injury, death, or loss to person. "Tort action" includes a product 361
liability claim that is subject to sections 2307.71 to 2307.80 of 362
the Revised Code or an asbestos claim that is subject to sections 363
2307.91 to 2307.95 of the Revised Code. "Tort action" does not 364
include a civil action for damages for a breach of contract or 365
another agreement between persons. 366

(HH) "Total lung capacity" means the volume of air contained 367
in the lungs at the end of a maximal inspiration. 368

(II) "Veterans' benefit program" means any program for 369
benefits in connection with military service administered by the 370
veterans' administration under title 38 of the United States Code. 371

(JJ) "Workers' compensation law" means Chapters 4121., 4123., 372
4127., and 4131. of the Revised Code. 373

Sec. 2307.92. (A) For purposes of section 2305.10 and 374
sections 2307.92 to 2307.95 of the Revised Code, "bodily injury 375
caused by exposure to asbestos" means physical impairment of the 376
exposed person, to which the person's exposure to asbestos is a 377
substantial contributing factor. 378

(B) No person shall bring or maintain a tort action alleging 379
an asbestos claim based on a nonmalignant condition in the absence 380
of a prima-facie showing, in the manner described in division (A) 381
of section 2307.93 of the Revised Code, that the exposed person 382
has a physical impairment, that the physical impairment is a 383
result of a medical condition, and that the person's exposure to 384
asbestos is a substantial contributing factor to the medical 385
condition. That prima-facie showing shall include all of the 386
following minimum requirements: 387

(1) Evidence verifying that a competent medical authority 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 principal 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 general nature, duration, and general level of the exposure.

(2) Evidence verifying that a competent medical authority 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 competent medical authority, 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 either of the following:

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

(ii) If the exposed person has a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as only

a 1/0 on the ILO scale, then in order to establish that the 418
exposed person has asbestosis that is a substantial contributing 419
factor to the exposed person's physical impairment the plaintiff 420
must establish that the exposed person has both of the following: 421

(I) A forced vital capacity below the predicted lower limit 422
of normal and a ratio of FEV1 to FVC that is equal to or greater 423
than the predicted lower limit of normal; 424

(II) A total lung capacity, by plethysmography or timed gas 425
dilution, below the predicted lower limit of normal. 426

(c) Subject to division (B)(3)(b)(ii) of this section, the 427
asbestosis or diffuse pleural thickening described in division 428
(B)(3)(b) of this section, rather than solely chronic obstructive 429
pulmonary disease, is a substantial contributing factor to the 430
exposed person's physical impairment, based at a minimum on a 431
determination that the exposed person has any of the following: 432

(i) A forced vital capacity below the predicted lower limit 433
of normal and a ratio of FEV1 to FVC that is equal to or greater 434
than the predicted lower limit of normal; 435

(ii) A total lung capacity, by plethysmography or timed gas 436
dilution, below the predicted lower limit of normal; 437

(iii) A chest x-ray showing small, irregular opacities (s, t) 438
graded by a certified B-reader at least 2/1 on the ILO scale. 439

(C)(1) No person shall bring or maintain a tort action 440
alleging an asbestos claim based upon lung cancer of an exposed 441
person who is a smoker, in the absence of a prima-facie showing, 442
in the manner described in division (A) of section 2307.93 of the 443
Revised Code, that the exposed person has a physical impairment, 444
that the physical impairment is a result of a medical condition, 445
and that the person's exposure to asbestos is a substantial 446
contributing factor to the medical condition. That prima-facie 447

showing shall include all of the following minimum requirements: 448

(a) A diagnosis by a board-certified internist, 449
board-certified pathologist, board-certified pulmonary specialist, 450
board-certified oncologist, or board-certified occupational 451
medicine specialist that the exposed person has primary lung 452
cancer and that exposure to asbestos is a substantial contributing 453
factor to that cancer; 454

(b) Evidence that is sufficient to demonstrate that at least 455
ten years have elapsed from the date of the exposed person's first 456
exposure to asbestos until the date of diagnosis of the exposed 457
person's primary lung cancer. The ten-year latency period 458
described in this division is a rebuttable presumption, and the 459
plaintiff has the burden of proof to rebut the presumption. 460

(c) Either of the following: 461

(i) Evidence of the exposed person's substantial occupational 462
exposure to asbestos; 463

(ii) Evidence of the exposed person's exposure to asbestos at 464
least equal to 25 fiber per cc years as determined to a reasonable 465
degree of scientific probability by a scientifically valid 466
retrospective exposure reconstruction conducted by a certified 467
industrial hygienist or certified safety professional based upon 468
all reasonably available quantitative air monitoring data and all 469
other reasonably available information about the exposed person's 470
occupational history and history of exposure to asbestos. 471

(2) If a plaintiff files a tort action that alleges an 472
asbestos claim based upon lung cancer of an exposed person who is 473
a smoker and further alleges in the action that the plaintiff's 474
exposure to asbestos was the result of living with another person 475
who, if the tort action had been filed by the other person, would 476
have met the requirements specified in division (C)(1)(c) of this 477
section and that the plaintiff lived with the other person for the 478

period of time specified in division (EE) of section 2307.91 of 479
the Revised Code, the plaintiff is considered as having satisfied 480
the requirements specified in division (C)(1)(c) of this section. 481

(D) No prima-facie showing is required in a tort action 482
alleging an asbestos claim based upon mesothelioma. 483

(E) Evidence relating to physical impairment under this 484
section, including pulmonary function testing and diffusing 485
studies, shall comply with the technical recommendations for 486
examinations, testing procedures, quality assurance, quality 487
control, and equipment incorporated in the AMA guides to the 488
evaluation of permanent impairment and reported as set forth in 20 489
C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and 490
the interpretive standards set forth in the official statement of 491
the American thoracic society entitled "lung function testing: 492
selection of reference values and interpretive strategies" as 493
published in American review of respiratory disease, 494
1991:144:1202-1218. 495

(F) All of the following apply to the court's decision on the 496
prima-facie showing that meets the requirements of division (B) or 497
(C) of this section: 498

(1) The court's decision does not result in any presumption 499
at trial that the exposed person has a physical impairment that is 500
caused by an asbestos-related condition. 501

(2) The court's decision is not conclusive as to the 502
liability of any defendant in the case. 503

(3) The court's decision is not binding at trial. 504

Sec. 2307.93. (A)(1) The plaintiff in any tort action who 505
alleges an asbestos claim shall file, within thirty days after 506
filing the complaint or other initial pleading, a written report 507
and supporting test results constituting prima-facie evidence of 508

the exposed person's physical impairment that meets the minimum requirements specified in division (B) or (C) of section 2307.92 of the Revised Code, whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B) or (C) of section 2307.92 of the Revised Code. The defendant has one hundred twenty days from the date the prima-facie evidence of the exposed person's physical impairment is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (X)(1), (3), and (4) of section 2307.91 of the Revised Code.

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(2) With respect to any asbestos claim that is pending on the effective date of this section, the plaintiff shall file the written report and supporting test results described in division (A)(1) of this section within one hundred twenty days following the effective date of this section. Upon motion and for good cause shown, the court may extend the one hundred twenty-day period described in this division.

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(3)(a) For any cause of action that arises before the effective date of this section, the provisions set forth in divisions (B) and (C) of section 2307.92 of the Revised Code are to be applied unless the court that has jurisdiction over the case finds both of the following:

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(i) A substantive right of a party to the case has been altered.

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(ii) That alteration is otherwise in violation of Section 28 of Article II, Ohio Constitution.

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(b) If a finding under division (A)(2)(a) of this section is 539
made by the court that has jurisdiction over the case, then the 540
court shall determine whether the plaintiff has failed to provide 541
sufficient evidence to support the plaintiff's cause of action or 542
the right to relief under the law that is in effect prior to the 543
effective date of this section. 544

(c) If the court that has jurisdiction of the case finds that 545
the plaintiff has failed to provide sufficient evidence to support 546
the plaintiff's cause of action or right to relief under division 547
(A)(2)(b) of this section, the court shall administratively 548
dismiss the plaintiff's claim without prejudice. The court shall 549
maintain its jurisdiction over any case that is administratively 550
dismissed under this division. Any plaintiff whose case has been 551
administratively dismissed under this division may move to 552
reinstate the plaintiff's case if the plaintiff provides 553
sufficient evidence to support the plaintiff's cause of action or 554
the right to relief under the law that was in effect when the 555
plaintiff's cause of action arose. 556

(B) If the defendant challenges the adequacy of the 557
prima-facie evidence of the exposed person's physical impairment 558
as provided in division (A)(1) of this section, the court shall 559
determine from all of the evidence submitted whether the proffered 560
prima-facie evidence meets the minimum requirements specified in 561
division (B) or (C) of section 2307.92 of the Revised Code. The 562
court shall resolve the issue of whether the plaintiff has made 563
the prima-facie showing required by division (B) or (C) of section 564
2307.92 of the Revised Code by applying the standard for resolving 565
a motion for summary judgment. 566

(C) The court shall administratively dismiss the plaintiff's 567
claim without prejudice upon a finding of failure to make the 568
prima-facie showing required by division (B) or (C) of section 569
2307.92 of the Revised Code. The court shall maintain its 570

jurisdiction over any case that is administratively dismissed 571
under this division. Any plaintiff whose case has been 572
administratively dismissed under this division may move to 573
reinstate the plaintiff's case if the plaintiff makes a 574
prima-facie showing that meets the minimum requirements specified 575
in division (B) or (C) of section 2307.92 of the Revised Code. 576

Sec. 2307.94. (A) Notwithstanding any other provision of the 577
Revised Code, with respect to any asbestos claim based upon a 578
nonmalignant condition that is not barred as of the effective date 579
of this section, the period of limitations shall not begin to run 580
until the exposed person has a cause of action for bodily injury 581
pursuant to section 2305.10 of the Revised Code. An asbestos claim 582
based upon a nonmalignant condition that is filed before the cause 583
of action for bodily injury pursuant to that section arises is 584
preserved for purposes of the period of limitations. 585

(B) An asbestos claim that arises out of a nonmalignant 586
condition shall be a distinct cause of action from an asbestos 587
claim relating to the same exposed person that arises out of 588
asbestos-related cancer. No damages shall be awarded for fear or 589
risk of cancer in any tort action asserting only an asbestos claim 590
for a nonmalignant condition. 591

(C) No settlement of an asbestos claim for a nonmalignant 592
condition that is concluded after the effective date of this 593
section shall require, as a condition of settlement, the release 594
of any future claim for asbestos-related cancer. 595

Sec. 2307.941. (A) The following apply to all tort actions 596
for asbestos claims brought against a premises owner to recover 597
damages or other relief for exposure to asbestos on the premises 598
owner's property: 599

(1) A premises owner is not liable for any injury to any 600

individual resulting from asbestos exposure unless that
individual's alleged exposure occurred while the individual was at
the premises owner's property.

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(2) If exposure to asbestos is alleged to have occurred
before January 1, 1972, it is presumed that a premises owner knew
that this state had adopted safe levels of exposure for asbestos
and that products containing asbestos were used on its property
only at levels below those safe levels of exposure. To rebut this
presumption, the plaintiff must prove by a preponderance of the
evidence that the premises owner knew or should have known that
the levels of asbestos in the immediate breathing zone of the
plaintiff regularly exceeded the threshold limit values adopted by
this state and that the premises owner allowed that condition to
persist.

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(3)(a) A premises owner is presumed to be not liable for any
injury to any invitee who is engaged to work with, install, or
remove asbestos products on the premises owner's property if the
invitee's employer holds itself out as qualified to perform the
work. To rebut this presumption, the plaintiff must prove by a
preponderance of the evidence that the premises owner has actual
knowledge of the potential dangers of the asbestos products that
is superior to the knowledge of both the invitee and the invitee's
employer.

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(b) A premises owner that hired a contractor before January
1, 1972, to perform the type of work at the premises owner's
property that the contractor was qualified to perform cannot be
liable for any injury to any individual resulting from asbestos
exposure caused by any of the contractor's employees or agents on
the premises owner's property unless the premises owner directed
the activity that resulted in the injury or gave or denied
permission for the critical acts that led to the individual's
injury.

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(c) If exposure to asbestos is alleged to have occurred after 633
January 1, 1972, a premises owner is not liable for any injury to 634
any individual resulting from that exposure caused by a 635
contractor's employee or agent on the premises owner's property 636
unless the plaintiff establishes the premises owner's intentional 637
violation of an established safety standard that is in effect at 638
the time of the exposure and that the alleged violation was in the 639
plaintiff's breathing zone and was the proximate cause of the 640
plaintiff's medical condition. 641

(B) As used in this section: 642

(1) "Threshold limit values" means that, for the years 1946 643
through 1971, the concentration of asbestos in a worker's 644
breathing zone did not exceed the following maximum allowable 645
exposure limits for the eight-hour time-weighted average airborne 646
concentration: 647

(a) Asbestos: five million particles per cubic foot; 648

(b) Cadmium: 0.10 milligrams per cubic meter; 649

(c) Chromic acid and chromates (calculated as chromic oxide): 650
0.10 milligrams per cubic meter; 651

(d) Lead: 0.15 milligrams per cubic meter; 652

(e) Manganese: 6.0 milligrams per cubic meter; 653

(f) Mercury: 0.10 milligrams per cubic meter; 654

(g) Zinc oxide: 15.0 milligrams per cubic meter; 655

(h) Chlorinated diphenyls: 1.0 milligram per cubic meter; 656

(i) Chlorinated naphthalenes (trichlornaphthalene): 5.0 657
milligrams per cubic meter; 658

(j) Chlorinated naphthalenes (pentachlornaphthalene): 0.50 659
milligrams per cubic meter. 660

(2) "Established safety standard" means that, for the years 661

after 1971, the concentration of asbestos in the breathing zone of 662
a worker does not exceed the maximum allowable exposure limits for 663
the eight-hour time-weighted average airborne concentration as 664
promulgated by the occupational safety and health administration 665
(OSHA) in effect at the time of the alleged exposure. 666

(3) "Employee" means an individual who performs labor or 667
provides construction services pursuant to a construction contract 668
as defined in section 4123.79 of the Revised Code, or a remodeling 669
or repair contract, whether written or oral, if at least ten of 670
the following criteria apply: 671

(a) The individual is required to comply with instructions 672
from the other contracting party regarding the manner or method of 673
performing services. 674

(b) The individual is required by the other contracting party 675
to have particular training. 676

(c) The individual's services are integrated into the regular 677
functioning of the other contracting party. 678

(d) The individual is required to perform the work 679
personally. 680

(e) The individual is hired, supervised, or paid by the other 681
contracting party. 682

(f) A continuing relationship exists between the individual 683
and the other contracting party that contemplates continuing or 684
recurring work even if the work is not full time. 685

(g) The individual's hours of work are established by the 686
other contracting party. 687

(h) The individual is required to devote full time to the 688
business of the other contracting party. 689

(i) The person is required to perform the work on the 690
premises of the other contracting party. 691

(j) The individual is required to follow the order of work set by the other contracting party. 692
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(k) The individual is required to make oral or written reports of progress to the other contracting party. 694
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(l) The individual is paid for services on a regular basis, including hourly, weekly, or monthly. 696
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(m) The individual's expenses are paid for by the other contracting party. 698
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(n) The individual's tools and materials are furnished by the other contracting party. 700
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(o) The individual is provided with the facilities used to perform services. 702
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(p) The individual does not realize a profit or suffer a loss as a result of the services provided. 704
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(q) The individual is not performing services for a number of employers at the same time. 706
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(r) The individual does not make the same services available to the general public. 708
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(s) The other contracting party has a right to discharge the individual. 710
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(t) The individual has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement. 712
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Sec. 2307.95. (A) Nothing in sections 2307.92 to 2307.95 of the Revised Code is intended to do, and nothing in any of those sections shall be interpreted to do, either of the following: 715
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(1) Affect the rights of any party in bankruptcy proceedings; 718

(2) Affect the ability of any person who is able to make a 719

showing that the person satisfies the claim criteria for 720
compensable claims or demands under a trust established pursuant 721
to a plan of reorganization under Chapter 11 of the United States 722
Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand 723
against that trust. 724

(B) Sections 2307.91 to 2307.95 of the Revised Code shall not 725
affect the scope or operation of any workers' compensation law or 726
veterans' benefit program or the exclusive remedy of subrogation 727
under the provisions of that law or program and shall not 728
authorize any lawsuit that is barred by any provision of any 729
workers' compensation law. 730

(C) Nothing in sections 2307.92, 2307.93, 2307.94, and 731
2307.95 of the Revised Code is intended, and nothing in any of 732
those sections shall be interpreted, to affect any wrongful death 733
claims. 734

Sec. 2307.96. (A) If a plaintiff in a tort action alleges any 735
injury or loss to person resulting from exposure to asbestos as a 736
result of the tortious act of one or more defendants, in order to 737
maintain a cause of action against any of those defendants based 738
on that injury or loss, the plaintiff must prove that the conduct 739
of that particular defendant was a substantial factor in causing 740
the injury or loss on which the cause of action is based. 741

(B) A plaintiff in a tort action who alleges any injury or 742
loss to person resulting from exposure to asbestos has the burden 743
of proving that the plaintiff was exposed to asbestos that was 744
manufactured, supplied, installed, or used by the defendant in the 745
action and that the exposure to asbestos was a substantial factor 746
in causing the plaintiff's injury or loss. In determining whether 747
exposure to asbestos was a substantial factor in causing the 748
plaintiff's injury or loss, the trier of fact in the action shall 749
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<u>consider, without limitation, all of the following:</u>	751
<u>(1) The manner in which the plaintiff was exposed to asbestos;</u>	752
<u>(2) The proximity of asbestos to the plaintiff when the exposure to asbestos occurred;</u>	754
<u>(3) The frequency and length of the plaintiff's exposure to asbestos;</u>	755
<u>(4) Any factors that mitigated or enhanced the plaintiff's exposure to asbestos.</u>	757
<u>(C) This section applies only to tort actions that allege any injury or loss to person resulting from exposure to asbestos and that are brought on or after the effective date of this section.</u>	758
<u>Sec. 2307.97. (A) As used in this section and section 2307.98 of the Revised Code:</u>	759
<u>(1) "Asbestos" has the same meaning as in section 2307.91 of the Revised Code.</u>	760
<u>(2) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes any of the following:</u>	761
<u>(a) 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;</u>	762
<u>(b) A claim for damage or loss to property that is caused by the installation, presence, or removal of asbestos.</u>	763
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(3) "Corporation" means a corporation for profit, including 780
the following: 781

(a) A domestic corporation that is organized under the laws 782
of this state; 783

(b) A foreign corporation that is organized under laws other 784
than the laws of this state and that has had a certificate of 785
authority to transact business in this state or has done business 786
in this state. 787

(4) "Successor" means a corporation or a subsidiary of a 788
corporation that assumes or incurs, or had assumed or incurred, 789
successor asbestos-related liabilities or had successor 790
asbestos-related liabilities imposed on it by court order. 791

(5)(a) "Successor asbestos-related liabilities" means any 792
liabilities, whether known or unknown, asserted or unasserted, 793
absolute or contingent, accrued or unaccrued, liquidated or 794
unliquidated, or due or to become due, if the liabilities are 795
related in any way to asbestos claims and either of the following 796
applies: 797

(i) The liabilities are assumed or incurred by a successor as 798
a result of or in connection with an asset purchase, stock 799
purchase, merger, consolidation, or agreement providing for an 800
asset purchase, stock purchase, merger, or consolidation, 801
including a plan of merger. 802

(ii) The liabilities were imposed by court order on a 803
successor. 804

(b) "Successor asbestos-related liabilities" includes any 805
liabilities described in division (A)(5)(a)(i) of this section 806
that, after the effective date of the asset purchase, stock 807
purchase, merger, or consolidation, are paid, otherwise 808
discharged, committed to be paid, or committed to be otherwise 809

discharged by or on behalf of the successor, or by or on behalf of 810
a transferor, in connection with any judgment, settlement, or 811
other discharge of those liabilities in this state or another 812
jurisdiction. 813

(6) "Transferor" means a corporation or its shareholders from 814
which successor asbestos-related liabilities are or were assumed 815
or incurred by a successor or were imposed by court order on a 816
successor. 817

(B) The limitations set forth in division (C) of this section 818
apply to a corporation that is either of the following: 819

(1) A successor that became a successor prior to July 30, 820
1977, if either of the following applies: 821

(a) In the case of a successor in a stock purchase or an 822
asset purchase, the successor paid less than fifteen million 823
dollars for the stock or assets of the transferor. 824

(b) In the case of a successor in a merger or consolidation, 825
the fair market value of the total gross assets of the transferor, 826
at the time of the merger or consolidation, excluding any 827
insurance of the transferor, was less than fifty million dollars. 828

(2) Any successor to a prior successor if the prior successor 829
met the requirements of division (B)(1)(a) or (b) of this section, 830
whichever is applicable. 831

(C)(1) Except as otherwise provided in division (C)(2) of 832
this section, the cumulative successor asbestos-related 833
liabilities of a corporation shall be limited to either of the 834
following: 835

(a) In the case of a corporation that is a successor in a 836
stock purchase or an asset purchase, the fair market value of the 837
acquired stock or assets of the transferor, as determined on the 838
effective date of the stock or asset purchase; 839

(b) In the case of a corporation that is a successor in a merger or consolidation, the fair market value of the total gross assets of the transferor, as determined on the effective date of the merger or consolidation. 840
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(2)(a) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior purchase of assets or stock involving a prior transferor, the fair market value of the assets or stock purchased from the prior transferor, determined as of the effective date of the prior purchase of the assets or stock, shall be substituted for the limitation set forth in division (C)(1)(a) of this section for the purpose of determining the limitation of the liability of a corporation. 844
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(b) If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a merger or consolidation involving a prior transferor, the fair market value of the total gross assets of the prior transferor, determined as of the effective date of the prior merger or consolidation, shall be substituted for the limitation set forth in division (C)(1)(b) of this section for the purpose of determining the limitation of the liability of a corporation. 852
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(3) A corporation described in division (C)(1) or (2) of this section shall have no responsibility for any successor asbestos-related liabilities in excess of the limitation of those liabilities as described in the applicable division. 860
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(D)(1) A corporation may establish the fair market value of assets, stock, or total gross assets under division (C) of this section by means of any method that is reasonable under the circumstances, including by reference to their going-concern value, to the purchase price attributable to or paid for them in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be 864
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determined, to their value recorded on a balance sheet. Assets and 871
total gross assets shall include intangible assets. A showing by 872
the successor of a reasonable determination of the fair market 873
value of assets, stock, or total gross assets is prima-facie 874
evidence of their fair market value. 875

(2) For purposes of establishing the fair market value of 876
total gross assets under division (D)(1) of this section, the 877
total gross assets include the aggregate coverage under any 878
applicable liability insurance that was issued to the transferor 879
the assets of which are being valued for purposes of the 880
limitations set forth in division (C) of this section, if the 881
insurance has been collected or is collectable to cover the 882
successor asbestos-related liabilities involved. Those successor 883
asbestos-related liabilities do not include any compensation for 884
any liabilities arising from the exposure of workers to asbestos 885
solely during the course of their employment by the transferor. 886
Any settlement of a dispute concerning the insurance coverage 887
described in this division that is entered into by a transferor or 888
successor with the insurer of the transferor before the effective 889
date of this section is determinative of the aggregate coverage of 890
the liability insurance that is included in the determination of 891
the transferor's total gross assets. 892

(3) After a successor has established a reasonable 893
determination of the fair market value of assets, stock, or total 894
gross assets under divisions (D)(1) and (2) of this section, a 895
claimant that disputes that determination of the fair market value 896
has the burden of establishing a different fair market value. 897

(4)(a) Subject to divisions (D)(4)(b), (c), and (d) of this 898
section, the fair market value of assets, stock, or total gross 899
assets at the time of the asset purchase, stock purchase, merger, 900
or consolidation increases annually, at a rate equal to the sum of 901
the following: 902

(i) The prime rate as listed in the first edition of the wall street journal published for each calendar year since the effective date of the asset purchase, stock purchase, merger, or consolidation, or, if the prime rate is not published in that edition of the wall street journal, the prime rate as reasonably determined on the first business day of the year; 903
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(ii) One per cent. 909

(b) The rate that is determined pursuant to division (D)(4)(a) of this section shall not be compounded. 910
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(c) The adjustment of the fair market value of assets, stock, or total gross assets shall continue in the manner described in division (D)(4)(a) of this section until the adjusted fair market value is first exceeded by the cumulative amounts of successor asbestos-related liabilities that are paid or committed to be paid by or on behalf of a successor or prior transferor, or by or on behalf of a transferor, after the time of the asset purchase, stock purchase, merger, or consolidation for which the fair market value of assets, stock, or total gross assets is determined. 912
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(d) No adjustment of the fair market value of total gross assets as provided in division (D)(4)(a) of this section shall be applied to any liability insurance that is otherwise included in total gross assets as provided in division (D)(2) of this section. 921
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(E)(1) The limitations set forth in division (C) of this section shall apply to the following: 925
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(a) All asbestos claims, including asbestos claims that are pending on the effective date of this section, and all litigation involving asbestos claims, including litigation that is pending on the effective date of this section; 927
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(b) Successors of a corporation to which this section applies. 931
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(2) The limitations set forth in division (C) of this section 933
do not apply to any of the following: 934

(a) Workers' compensation benefits that are paid by or on 935
behalf of an employer to an employee pursuant to any provision of 936
Chapter 4121., 4123., 4127., or 4131. of the Revised Code or 937
comparable workers' compensation law of another jurisdiction; 938

(b) Any claim against a successor that does not constitute a 939
claim for a successor asbestos-related liability; 940

(c) Any obligations arising under the "National Labor 941
Relations Act," 49 Stat. 449, 29 U.S.C. 151 et seq., as amended, 942
or under any collective bargaining agreement; 943

(d) Any contractual rights to indemnification. 944

(F) The courts in this state shall apply, to the fullest 945
extent permissible under the Constitution of the United States, 946
this state's substantive law, including the provisions of this 947
section, to the issue of successor asbestos-related liabilities. 948

Sec. 2307.98. (A) A holder has no obligation to, and has no 949
liability to, the covered entity or to any person with respect to 950
any obligation or liability of the covered entity in an asbestos 951
claim under the doctrine of piercing the corporate veil unless the 952
person seeking to pierce the corporate veil demonstrates all of 953
the following: 954

(1) The holder exerted such control over the covered entity 955
that the covered entity had no separate mind, will, or existence 956
of its own. 957

(2) The holder caused the covered entity to be used for the 958
purpose of perpetrating, and the covered entity perpetrated, an 959
actual fraud on the person seeking to pierce the corporate veil 960
primarily for the direct pecuniary benefit of the holder. 961

(3) The person seeking to pierce the corporate veil sustained an injury or unjust loss as a direct result of the control described in division (A)(1) of this section and the fraud described in division (A)(2) of this section. 962
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(B) A court shall not find that the holder exerted such control over the covered entity that the covered entity did not have a separate mind, will, or existence of its own or to have caused the covered entity to be used for the purpose of perpetrating a fraud solely as a result of any of the following actions, events, or relationships: 966
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(1) The holder is an affiliate of the covered entity and provides legal, accounting, treasury, cash management, human resources, administrative, or other similar services to the covered entity, leases assets to the covered entity, or makes its employees available to the covered entity. 972
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(2) The holder loans funds to the covered entity or guarantees the obligations of the covered entity. 977
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(3) The officers and directors of the holder are also officers and directors of the covered entity. 979
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(4) The covered entity makes payments of dividends or other distributions to the holder or repays loans owed to the holder. 981
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(5) In the case of a covered entity that is a limited liability company, the holder or its employees or agents serve as the manager of the covered entity. 983
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(C) The person seeking to pierce the corporate veil has the burden of proof on each and every element of the person's claim and must prove each element by a preponderance of the evidence. 986
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(D) Any liability of the holder described in division (A) of this section for an obligation or liability that is limited by that division is exclusive and preempts any other obligation or 989
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liability imposed upon that holder for that obligation or 992
liability under common law or otherwise. 993

(E) This section is intended to codify the elements of the 994
common law cause of action for piercing the corporate veil and to 995
abrogate the common law cause of action and remedies relating to 996
piercing the corporate veil in asbestos claims. Nothing in this 997
section shall be construed as creating a right or cause of action 998
that did not exist under the common law as it existed on the 999
effective date of this section. 1000

(F) This section applies to all asbestos claims commenced on 1001
or after the effective date of this section or commenced prior to 1002
and pending on the effective date of this section. 1003

(G) This section applies to all actions asserting the 1004
doctrine of piercing the corporate veil brought against a holder 1005
if any of the following apply: 1006

(1) The holder is an individual and resides in this state. 1007

(2) The holder is a corporation organized under the laws of 1008
this state. 1009

(3) The holder is a corporation with its principal place of 1010
business in this state. 1011

(4) The holder is a foreign corporation that is authorized to 1012
conduct or has conducted business in this state. 1013

(5) The holder is a foreign corporation whose parent 1014
corporation is authorized to conduct business in this state. 1015

(6) The person seeking to pierce the corporate veil is a 1016
resident of this state. 1017

(H) As used in this section, unless the context otherwise 1018
requires: 1019

(1) "Affiliate" and "beneficial owner" have the same meanings 1020

<u>as in section 1704.01 of the Revised Code.</u>	1021
<u>(2) "Covered entity" means a corporation, limited liability company, limited partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign, in which the shareholders, owners, or members are generally not responsible for the debts and obligations of the entity. Nothing in this section limits or otherwise affects the liabilities imposed on a general partner of a limited partnership.</u>	1022 1023 1024 1025 1026 1027 1028
<u>(3) "Holder" means a person who is the holder or beneficial owner of, or subscriber to, shares or any other ownership interest of a covered entity, a member of a covered entity, or an affiliate of any person who is the holder or beneficial owner of, or subscriber to, shares or any other ownership interest of a covered entity.</u>	1029 1030 1031 1032 1033 1034
<u>(4) "Piercing the corporate veil" means any and all common law doctrines by which a holder may be liable for an obligation or liability of a covered entity on the basis that the holder controlled the covered entity, the holder is or was the alter ego of the covered entity, or the covered entity has been used for the purpose of actual or constructive fraud or as a sham to perpetrate a fraud or any other common law doctrine by which the covered entity is disregarded for purposes of imposing liability on a holder for the debts or obligations of that covered entity.</u>	1035 1036 1037 1038 1039 1040 1041 1042 1043
<u>(5) "Person" has the same meaning as in section 1701.01 of the Revised Code.</u>	1044 1045
Sec. 2505.02. (A) As used in this section:	1046
(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.	1047 1048 1049
(2) "Special proceeding" means an action or proceeding that	1050

is specially created by statute and that prior to 1853 was not 1051
denoted as an action at law or a suit in equity. 1052

(3) "Provisional remedy" means a proceeding ancillary to an 1053
action, including, but not limited to, a proceeding for a 1054
preliminary injunction, attachment, discovery of privileged 1055
matter, ~~or~~ suppression of evidence, or a prima-facie showing 1056
pursuant to section 2307.92 of the Revised Code. 1057

(B) An order is a final order that may be reviewed, affirmed, 1058
modified, or reversed, with or without retrial, when it is one of 1059
the following: 1060

(1) An order that affects a substantial right in an action 1061
that in effect determines the action and prevents a judgment; 1062

(2) An order that affects a substantial right made in a 1063
special proceeding or upon a summary application in an action 1064
after judgment; 1065

(3) An order that vacates or sets aside a judgment or grants 1066
a new trial; 1067

(4) An order that grants or denies a provisional remedy and 1068
to which both of the following apply: 1069

(a) The order in effect determines the action with respect to 1070
the provisional remedy and prevents a judgment in the action in 1071
favor of the appealing party with respect to the provisional 1072
remedy. 1073

(b) The appealing party would not be afforded a meaningful or 1074
effective remedy by an appeal following final judgment as to all 1075
proceedings, issues, claims, and parties in the action. 1076

(5) An order that determines that an action may or may not be 1077
maintained as a class action. 1078

(C) When a court issues an order that vacates or sets aside a 1079
judgment or grants a new trial, the court, upon the request of 1080

either party, shall state in the order the grounds upon which the 1081
new trial is granted or the judgment vacated or set aside. 1082

(D) This section applies to and governs any action, including 1083
an appeal, that is pending in any court on ~~the effective date of~~ 1084
~~this amendment July 22, 1998,~~ and all claims filed or actions 1085
commenced on or after ~~the effective date of this amendment July~~ 1086
22, 1998, notwithstanding any provision of any prior statute or 1087
rule of law of this state. 1088

Section 2. That existing sections 1701.76, 1701.82, and 1089
2505.02 of the Revised Code are hereby repealed. 1090

Section 3. (A) The General Assembly makes the following 1091
statement of findings and intent: 1092

(1) Asbestos claims have created an increased amount of 1093
litigation in state and federal courts that the United States 1094
Supreme Court has characterized as "an elephant mass" of cases. 1095

(2) The current asbestos personal injury litigation system is 1096
unfair and inefficient, imposing a severe burden on litigants and 1097
taxpayers alike. A recent RAND study estimates that a total of 1098
fifty-four billion dollars have already been spent on asbestos 1099
litigation and the costs continue to mount. Compensation for 1100
asbestos claims has risen sharply since 1993. The typical claimant 1101
in an asbestos lawsuit now names sixty to seventy defendants, 1102
compared with an average of twenty named defendants two decades 1103
ago. The RAND Report also suggests that at best, only one-half of 1104
all claimants have come forward and at worst, only one-fifth have 1105
filed claims to date. Estimates of the total cost of all claims 1106
range from two hundred to two hundred sixty-five billion dollars. 1107
Tragically, plaintiffs are receiving less than forty-three cents 1108
on every dollar awarded, and sixty-five per cent of the 1109
compensation paid, thus far, has gone to claimants who are not 1110

sick. 1111

(3) The extraordinary volume of nonmalignant asbestos cases 1112
continue to strain federal and state courts. 1113

(a) Today, it is estimated that there are more than two 1114
hundred thousand active asbestos cases in courts nationwide. 1115
According to a recent RAND study, over six hundred thousand people 1116
have filed asbestos claims for asbestos-related personal injuries 1117
through the end of 2000. 1118

(b) Before 1998, five states, Mississippi, New York, West 1119
Virginia, Texas, and Ohio, accounted for nine per cent of the 1120
cases filed. However, between 1998 and 2000, these same five 1121
states handled sixty-six per cent of all filings. Today, Ohio has 1122
become a haven for asbestos claims and, as a result, is one of the 1123
top five state court venues for asbestos filings. 1124

(c) According to testimony by Laura Hong, a partner at the 1125
law firm of Squire, Sanders & Dempsey who has been defending 1126
companies in asbestos personal injury litigation since 1985, there 1127
are at least thirty-five thousand asbestos personal injury cases 1128
pending in Ohio state courts today. 1129

(d) If the two hundred thirty-three Ohio state court general 1130
jurisdictional judges started trying these asbestos cases today, 1131
Ms. Hong noted, each would have to try over one hundred fifty 1132
cases before retiring the current docket. That figure 1133
conservatively computes to at least one hundred fifty trial weeks 1134
or more than three years per judge to retire the current docket. 1135

(e) The current docket, however, continues to increase at an 1136
exponential rate. According to Judge Leo Spellacy, one of two 1137
Cuyahoga County Common Pleas Court judges appointed by the Ohio 1138
Supreme Court to manage the Cuyahoga County case management order 1139
for asbestos cases, in 1999 there were approximately twelve 1140
thousand eight hundred pending asbestos cases in Cuyahoga County. 1141

However, by the end of October 2003, there were over thirty-nine
thousand pending asbestos cases. Approximately two hundred new
asbestos cases are filed in Cuyahoga County every month.

(4) Nationally, asbestos personal injury litigation has
already contributed to the bankruptcy of more than seventy
companies, including nearly all manufacturers of asbestos textile
and insulation products, and the ratio of asbestos-driven
bankruptcies is accelerating.

(a) As stated by Linda Woggon, Vice President of Governmental
Affairs of the Ohio Chamber of Commerce, a recent RAND study found
that during the first ten months of 2002, fifteen companies facing
significant asbestos-related liabilities filed for bankruptcy and
more than sixty thousand jobs have been lost because of these
bankruptcies. The RAND study estimates that the eventual cost of
asbestos litigation could reach as high as four hundred
twenty-three thousand jobs.

(b) Joseph Stiglitz, Nobel award-winning economist, in "The
Impact of Asbestos Liabilities on Workers in Bankrupt Firms,"
calculated that bankruptcies caused by asbestos have already
resulted in the loss of up to sixty thousand jobs and that each
displaced worker in the bankrupt companies will lose, on average,
an estimated twenty-five thousand to fifty thousand dollars in
wages over the worker's career, and at least a quarter of the
accumulated pension benefits.

(c) At least five Ohio-based companies have been forced into
bankruptcy because of an unending flood of asbestos cases brought
by claimants who are not sick.

(d) Owens Corning, a Toledo company, has been sued four
hundred thousand times by plaintiffs alleging asbestos-related
injury and as a result was forced to file bankruptcy. The type of
job and pension loss many Toledoans have faced because of the

Owens Corning bankruptcy also can be seen in nearby Licking County 1173
where, in 2000, Owens Corning laid off two hundred seventy-five 1174
workers from its Granville plant. According to a study conducted 1175
by NERA Economic Consulting in 2000, the ripple effect of those 1176
losses is predicted to result in a total loss of five hundred jobs 1177
and a fifteen-million to twenty-million dollar annual reduction in 1178
regional income. 1179

(e) According to testimony presented by Robert Bunda, a 1180
partner at the firm of Bunda, Stutz & DeWitt in Toledo, Ohio who 1181
has been involved with the defense of asbestos cases on behalf of 1182
Owens-Illinois for twenty-four years, at least five Ohio-based 1183
companies have gone bankrupt because of the cost of paying people 1184
who are not sick. Wage losses, pension losses, and job losses have 1185
significantly affected workers for the bankrupt companies like 1186
Owens Corning, Babcox & Wilcox, North American Refractories, and 1187
A-Best Corp. 1188

(5) The General Assembly recognizes that the vast majority of 1189
Ohio asbestos claims are filed by individuals who allege they have 1190
been exposed to asbestos and who have some physical sign of 1191
exposure to asbestos, but who do not suffer from an 1192
asbestos-related impairment. Eighty-nine per cent of asbestos 1193
claims come from people who do not have cancer. Sixty-six to 1194
ninety per cent of these non-cancer claimants are not sick. 1195
According to a Tillinghast-Towers Perrin study, ninety-four per 1196
cent of the fifty-two thousand nine hundred asbestos claims filed 1197
in 2000, concerned claimants who are not sick. As a result, the 1198
General Assembly recognizes that reasonable medical criteria are a 1199
necessary response to the asbestos litigation crisis in this 1200
state. Medical criteria will expedite the resolution of claims 1201
brought by those sick claimants and will ensure that resources are 1202
available for those who are currently suffering from 1203
asbestos-related illnesses and for those who may become sick in 1204

the future. As stated by Dr. James Allen, a pulmonologist, 1205
Professor and Vice-Chairman of the Department of Internal Medicine 1206
at The Ohio State University, the medical criteria included in 1207
Sub. H.B. 292 of the 125th General Assembly are reasonable 1208
criteria and are the first step toward ensuring that impaired 1209
plaintiffs are compensated. In fact, Dr. Allen noted that these 1210
criteria are minimum medical criteria. In his clinical practice, 1211
Dr. Allen stated that he always performs additional tests before 1212
assigning a diagnosis of asbestosis and would never rely solely on 1213
these medical criteria. 1214

(6) The cost of compensating exposed individuals who are not 1215
sick jeopardizes the ability of defendants to compensate people 1216
with cancer and other serious asbestos-related diseases, now and 1217
in the future; threatens savings, retirement benefits, and jobs of 1218
the state's current and retired employees; adversely affects the 1219
communities in which these defendants operate; and impairs Ohio's 1220
economy. 1221

(7) The public interest requires the deferring of claims of 1222
exposed individuals who are not sick in order to preserve, now and 1223
for the future, defendants' ability to compensate people who 1224
develop cancer and other serious asbestos-related injuries and to 1225
safeguard the jobs, benefits, and savings of the state's employees 1226
and the well being of the Ohio economy. 1227

(B) In enacting sections 2307.91 to 2307.98 of the Revised 1228
Code, it is the intent of the General Assembly to: (1) give 1229
priority to those asbestos claimants who can demonstrate actual 1230
physical harm or illness caused by exposure to asbestos; (2) fully 1231
preserve the rights of claimants who were exposed to asbestos to 1232
pursue compensation should those claimants become impaired in the 1233
future as a result of such exposure; (3) enhance the ability of 1234
the state's judicial systems and federal judicial systems to 1235
supervise and control litigation and asbestos-related bankruptcy 1236

proceedings; and (4) conserve the scarce resources of the 1237
defendants to allow compensation of cancer victims and others who 1238
are physically impaired by exposure to asbestos while securing the 1239
right to similar compensation for those who may suffer physical 1240
impairment in the future. 1241

Section 4. (A) As used in this section, "asbestos," "asbestos 1242
claim," "exposed person," and "substantial contributing factor" 1243
have the same meanings as in section 2307.91 of the Revised Code. 1244

(B) The General Assembly acknowledges the Court's authority 1245
in prescribing rules governing practice and procedure in the 1246
courts of this state, as provided by Section 5 of Article IV of 1247
the Ohio Constitution. 1248

(C) The General Assembly hereby requests the Supreme Court to 1249
adopt rules to specify procedures for venue and consolidation of 1250
asbestos claims brought pursuant to sections 2307.91 to 2307.95 of 1251
the Revised Code. 1252

(D) With respect to procedures for venue in regard to 1253
asbestos claims, the General Assembly hereby requests the Supreme 1254
Court to adopt a rule that requires that an asbestos claim meet 1255
specific nexus requirements, including the requirement that the 1256
plaintiff be domiciled in Ohio or that Ohio is the state in which 1257
the plaintiff's exposure to asbestos is a substantial contributing 1258
factor. 1259

(E) With respect to procedures for consolidation of asbestos 1260
claims, the General Assembly hereby requests the Supreme Court to 1261
adopt a rule that permits consolidation of asbestos claims only 1262
with the consent of all parties, and in absence of that consent, 1263
permits a court to consolidate for trial only those asbestos 1264
claims that relate to the same exposed person and members of the 1265
exposed person's household. 1266

Section 5. It is the intent of the General Assembly in 1267
enacting section 2307.96 of the Revised Code in this act to 1268
establish the judicial standard for the granting of summary 1269
judgment in tort actions involving exposure to asbestos that is 1270
consistent with the decision in *Lohrmann v. Pittsburgh Corning* 1271
Cor. (4th Cir. 1986), 782 F.2d 1156, and is contrary to paragraph 1272
2 of the syllabus of the Ohio Supreme Court in *Horton v. Harwick* 1273
Chemical Corp. (1995), 73 Ohio St.3d 679. The General Assembly 1274
recognizes that the courts of Ohio, prior to the *Horton* decision, 1275
generally followed the rationale of the *Lohrmann* decision in 1276
determining when summary judgment was appropriate in tort actions 1277
involving exposure to asbestos. A majority of the states have 1278
adopted a summary judgment standard in those types of actions that 1279
is similar to the standard in the *Lohrmann* decision. The *Lohrmann* 1280
standard provides litigants and the courts of Ohio an objective 1281
and easily applied standard for determining when summary judgment 1282
is appropriate in tort actions involving asbestos. 1283

Section 6. If any item of law that constitutes the whole or 1284
part of a section of law contained in this act, or if any 1285
application of any item of law that constitutes the whole or part 1286
of a section of law contained in this act, is held invalid, the 1287
invalidity does not affect other items of law or applications of 1288
items of law that can be given effect without the invalid item of 1289
law or application. To this end, the items of law of which the 1290
sections contained in this act are composed, and their 1291
applications, are independent and severable. 1292

Section 7. If any item of law that constitutes the whole or 1293
part of a section of law contained in this act, or if any 1294
application of any item of law contained in this act, is held to 1295
be preempted by federal law, the preemption of the item of law or 1296
its application does not affect other items of law or applications 1297

that can be given affect. The items of law of which the sections	1298
of this act are composed, and their applications, are independent	1299
and severable.	1300