

As Introduced

127th General Assembly
Regular Session
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H. B. No. 631

Representative Blessing

—

A BILL

To enact sections 2307.951, 2307.952, 2307.953, and 1
2307.954 of the Revised Code to require claimants 2
in asbestos tort actions to make certain 3
disclosures pertaining to asbestos trust claims 4
that have been submitted to asbestos trust 5
entities for the purpose of compensating the 6
claimant for asbestos exposure. 7

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

Section 1. That sections 2307.951, 2307.952, 2307.953, and 8
2307.954 of the Revised Code be enacted to read as follows: 9

Sec. 2307.951. As used in this section and sections 2307.952 10
to 2307.954 of the Revised Code: 11

(A) "Asbestos," "asbestos claim," and "tort action" have the 12
same meanings as in section 2307.91 of the Revised Code. 13

(B) "Asbestos tort action" means a tort action based on an 14
asbestos claim. 15

(C) "Asbestos trust" means and encompasses all trust 16
entities, claims agents, or claims processing facilities created 17
pursuant to the jurisdiction of a United States bankruptcy court 18
and section 524(g) of Chapter 11 of the United States Bankruptcy 19

Code, 11 U.S.C. 524(q), or other applicable provision of law and 20
formed for the purpose of compensating claimants asserting 21
eligible asbestos claims. 22

(D) "Asbestos trust claim" means any claim for compensation 23
by an exposed person or the exposed person's asserted 24
representative against any asbestos trust. 25

(E) "Cancer" means a malignant condition. 26

(F) "Claimant" means any person asserting an asbestos claim 27
or asbestos trust claim. "Claimant" includes a plaintiff, 28
counterclaimant, cross-claimant, or third-party plaintiff. 29

(G) "Exposed person" means any person whose exposure to 30
asbestos or to asbestos-containing products is the basis for an 31
asbestos claim. 32

(H) "Non-cancer" means a nonmalignant condition. 33

(I) "Proof of claim" means any form of documentation that a 34
potential claimant against an asbestos trust submits or provides 35
to the asbestos trust that attests to or asserts the existence of 36
any liquidated or unliquidated asbestos claim that the claimant 37
may have against the asbestos trust or its predecessors under any 38
theory of law. 39

(J) "Trust claims material" means documents constituting an 40
asbestos trust claim, including, but not limited to, claim forms, 41
proofs of claim, and informational material required by an 42
asbestos trust to be submitted by a claimant in order to have the 43
claim evaluated by the asbestos trust and relied upon by the 44
asbestos trust in making its compensation determination. 45

(K) "Trust governance documents" means and encompasses all 46
documents that set forth in the plan of reorganization and related 47
orders, terms, conditions, distribution procedures, payment 48
schedules and matrixes, evaluation paradigms and adjustment 49

formulas, and all other policies and procedures that are utilized 50
to determine a claimant's eligibility for, and the amounts or 51
levels of, payment to a claimant by an asbestos trust. 52

Sec. 2307.952. (A)(1)(a) Within thirty days of commencing an 53
asbestos tort action that is not otherwise barred or deferred 54
under applicable law, or within thirty days of the effective date 55
of this section with respect to asbestos tort actions that are 56
pending on that effective date, a claimant shall provide to all of 57
the parties in the action a sworn statement by the claimant, under 58
penalty of perjury, identifying all existing asbestos trust claims 59
made by or on behalf of the claimant. The sworn statement shall 60
disclose the date on which each asbestos trust claim against the 61
relevant asbestos trust was made and whether any request for a 62
deferral, delay, suspension, or tolling of the asbestos trust 63
claims process has been submitted. 64

(b) The submission of the sworn statement under division 65
(A)(1)(a) of this section shall be in addition to any disclosure 66
requirements otherwise imposed by law, civil rule, court order or 67
ruling, applicable agreement or stipulation, local rule, or case 68
management order. 69

(2) If the claimant, subsequent to the submission of the 70
sworn statement under division (A)(1)(a) of this section, files or 71
submits any additional asbestos trust claims not previously 72
disclosed, the claimant shall provide to all of the parties in the 73
asbestos tort action an amendment updating the statement and 74
identifying the additional asbestos trust claims. The claimant 75
shall provide any amendment under division (A)(2) of this section 76
within thirty days of filing an asbestos trust claim with, or 77
submitting an asbestos trust claim to, any additional asbestos 78
trust. 79

(3) With respect to any asbestos trust claim that a claimant 80

disclosed under division (A)(2) of this section in an amendment to 81
the sworn statement, the claimant shall provide to all of the 82
parties in the asbestos tort action all trust claims material 83
pertaining to each additional asbestos trust claim identified in 84
that amendment. The claimant shall provide the trust claims 85
materials under division (A)(3) of this section within thirty days 86
of filing or submitting each additional asbestos trust claim. 87

(B) No asbestos tort action shall proceed to trial earlier 88
than one hundred eighty days after the claimant has exchanged with 89
all of the parties in the asbestos tort action all of the 90
information specified in this section. 91

(C) Nothing in this section shall prevent a court of 92
competent jurisdiction from requiring disclosures in addition to 93
the disclosures required under this section. 94

Sec. 2307.953. (A) Any defendant in an asbestos tort action 95
may file a motion with the court, with notice to the claimant and 96
to all of the parties in the action, for an order to stay the 97
proceedings. A defendant's motion to stay the proceedings shall 98
set forth all of the following: 99

(1) The identities of all asbestos trusts not previously 100
disclosed by the claimant pursuant to section 2307.952 of the 101
Revised Code against which the claimant has not made any asbestos 102
trust claims but against which the defendant in good faith 103
believes the claimant may make a successful asbestos trust claim; 104

(2) The information that the defendant believes supports the 105
additional asbestos trust claims described in division (A)(1) of 106
this section; 107

(3) A description of the information sufficient to meet the 108
asbestos trust claim requirements of the asbestos trusts described 109
in division (A)(1) of this section. 110

(B) Within fourteen days after the filing of the defendant's motion for an order to stay the proceedings under division (A) of this section, the claimant may do the following: 111
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(1) File the asbestos trust claims with or submit them to the asbestos trusts identified in the defendant's motion for an order to stay the proceedings. The submission to the court and to all of the parties in the asbestos tort action of proof demonstrating that the asbestos trust claims identified in the defendant's motion to stay the proceedings have been filed with or submitted to the appropriate asbestos trusts is dispositive of the defendant's motion for an order to stay the proceedings. Alternatively, the defendant may withdraw the motion brought under this section. 114
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(2) File with the court a response to the defendant's motion for an order to stay the proceedings requesting a determination by the court that the information supporting the asbestos trust claims against the asbestos trusts identified in the defendant's motion for an order to stay the proceedings should be modified prior to the filing of an asbestos trust claim with, or the submission of an asbestos trust claim to, an asbestos trust or that there is insufficient information to file or submit the asbestos trust claim identified in the defendant's motion for an order to stay the proceedings. 124
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(C) If the claimant files a response pursuant to division (B)(2) of this section, the court shall determine if an asbestos trust claim could be submitted in good faith to each asbestos trust identified in the defendant's motion for an order to stay the proceedings brought pursuant to division (A) of this section. The claimant has the burden of proof, by a preponderance of the evidence, to demonstrate that the information set forth by the defendant pursuant to divisions (A)(2) and (3) of this section should be modified prior to the filing of an asbestos trust claim 134
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with, or the submission of an asbestos trust claim to, each 143
asbestos trust or that the asbestos trust claims should not be 144
filed with or submitted to the asbestos trust because the claims 145
cannot be made in good faith. 146

(D) If the court determines that there is a good faith basis 147
for filing an asbestos trust claim with, or submitting an asbestos 148
trust claim to, an asbestos trust identified in the defendant's 149
motion for an order to stay the proceedings brought pursuant to 150
division (A) of this section, the court shall stay the proceedings 151
until the claimant files the asbestos trust claims with or submits 152
them to the asbestos trusts identified in the defendant's motion 153
for an order to stay the proceedings and has otherwise met the 154
obligations set forth in sections 2307.952 and 2307.953 of the 155
Revised Code. 156

Sec. 2307.954. (A) A non-cancer asbestos trust claim and a 157
cancer asbestos trust claim are based on distinct injuries caused 158
by a person's exposure to asbestos. A non-cancer asbestos trust 159
claim that is subject to disclosure under section 2307.952 or 160
2307.953 of the Revised Code or is identified in this section 161
means the non-cancer asbestos claim that is the subject of the 162
asbestos tort action in which the defendant seeks discovery 163
pursuant sections 2307.951 to 2307.954 of the Revised Code. If a 164
claimant previously filed a non-cancer asbestos trust claim with, 165
or submitted a non-cancer asbestos trust claim to, an asbestos 166
trust and subsequently filed an asbestos tort action based on a 167
cancer asbestos claim, a cancer asbestos trust claim that is 168
subject to disclosure under sections 2307.952 and 2307.953 of the 169
Revised Code or is identified in this section means both the 170
earlier filed non-cancer asbestos trust claim and the cancer 171
asbestos claim that is the subject of the subsequent asbestos tort 172
action. 173

(B) Asbestos trust claims and the information that is the 174
subject of disclosure under sections 2307.952 and 2307.953 of the 175
Revised Code are presumed to be authentic, relevant to, and 176
discoverable in, an asbestos tort action. Notwithstanding any 177
other provision of law or agreement, no claim of privilege shall 178
apply to asbestos trust claims and trust claims material. The 179
parties in the asbestos tort action may introduce at trial any 180
trust claims material to prove alternative causation for the 181
exposed person's claimed injury, death, or loss to person, to 182
prove a basis to allocate responsibility for the claimant's 183
claimed injury, death, or loss to person, and to prove issues 184
relevant to an adjudication of the asbestos claim. 185

(C) In addition to the disclosure requirements set forth in 186
sections 2307.952 and 2307.953 of the Revised Code, the parties to 187
the asbestos tort action may seek additional disclosure and 188
discovery of information relevant to the action by any mechanism 189
provided for by any applicable section of the Revised Code, the 190
Rules of Civil Procedure, any local rule, or any case management 191
order. In addition to the disclosure described in this division, 192
any defendant in the asbestos tort action also may seek discovery 193
of the claimant's asbestos trust claims directly from the asbestos 194
trusts involved. Within thirty days of commencing an asbestos tort 195
action that is not otherwise barred or deferred under applicable 196
law, or within thirty days of the effective date of this section 197
with respect to asbestos tort actions that are pending on that 198
effective date, a claimant shall provide to all of the parties in 199
the asbestos tort action the consent, authorization, or permission 200
that may be required by any asbestos trust for the release of 201
information and materials that are subject to the disclosure 202
requirements of sections 2307.952 and 2307.953 of the Revised Code 203
or any additional disclosure under this division. 204

(D) The court in an asbestos tort action, upon the filing by 205

a defendant or judgment debtor of an appropriate motion seeking 206
sanctions or other relief, may impose any sanction provided by a 207
law of this state, including, but not limited to, vacating a 208
judgment rendered in an asbestos tort action, for a claimant's 209
failure to comply with the disclosure requirements of sections 210
2307.952, 2307.953, and 2307.954 of the Revised Code. 211

(E) If a claimant, subsequent to obtaining a judgment in an 212
asbestos tort action in this state, files any additional asbestos 213
trust claim with, or submits any additional asbestos trust claim 214
to, an asbestos trust that was in existence at the time the 215
claimant obtained that judgment, the trial court, upon the filing 216
by a defendant or judgment debtor of an appropriate motion seeking 217
sanctions or other relief, shall have jurisdiction to reopen its 218
judgment in the asbestos tort action and do either of the 219
following: 220

(1) Adjust the judgment by the amount of any subsequent 221
asbestos trust payments obtained by the claimant; 222

(2) Order any other relief to the parties that the court 223
considers just and proper. 224

Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 225
as enacted by this act, apply to asbestos tort actions filed on or 226
after the effective date of this act and to pending asbestos tort 227
actions in which trial has not commenced as of the effective date 228
of this act. 229

As used in this section, "asbestos tort action" has the same 230
meaning as in section 2307.951 of the Revised Code, as enacted by 231
this act. 232

Section 3. (A) If any provision that constitutes the whole or 233
part of a section of the Revised Code enacted by this act or if 234
any application of any provision that constitutes the whole or 235

part of a section of the Revised Code enacted by this act is held 236
invalid, the invalidity does not affect other provisions of the 237
section or applications of other provisions of the section that 238
can be given effect without the invalid provision or application. 239
To this end, the provisions that constitute the whole or part of 240
the sections of the Revised Code enacted by this act and their 241
applications are independent and severable. 242

(B) If any provision that constitutes the whole or part of a 243
section of the Revised Code enacted by this act or if any 244
application of any provision that constitutes the whole or part of 245
a section of the Revised Code enacted by this act is held to be 246
preempted by federal law, the preemption does not affect other 247
provisions of the section or applications of other provisions of 248
the section that can be given effect without the preempted 249
provision or application. To this end, the provisions that 250
constitute the whole or part of the sections of the Revised Code 251
enacted by this act and their applications are independent and 252
severable. 253

Section 4. The General Assembly makes the following 254
statements of findings and intent: 255

(A) The United States Supreme Court has described asbestos 256
litigation in this country as a crisis. 257

(B) Asbestos litigation has forced an estimated eighty-five 258
employers into bankruptcy. The rate of asbestos-driven 259
bankruptcies has accelerated in recent years. Between 2000 and 260
2007, there were more asbestos-related bankruptcy filings than in 261
either of the prior two decades. 262

(C) Personal injury lawyers have responded to these 263
bankruptcies by expanding their search for solvent defendants. The 264
number of asbestos defendants now includes over eight thousand 265
five hundred companies, including many small and medium size 266

companies, in industries that cover eighty-five per cent of the 267
United States economy. 268

(D) Asbestos claimants often seek compensation for alleged 269
asbestos-related conditions from civil defendants that remain 270
solvent in civil court tort actions and from trusts or claims 271
facilities formed in asbestos bankruptcy proceedings. 272

(E) There is limited coordination and transparency between 273
these two paths to recovery. Ohio courts have already experienced 274
the problem of instances of claimants failing to provide 275
information and materials regarding asbestos trust claims that 276
they have commenced. This lack of transparency creates a strong 277
potential for abuse of the judicial process, as plaintiffs may 278
allege facts intended to maximize recoveries from trusts created 279
through the bankruptcy system while also alleging different or 280
conflicting facts to maximize recoveries from tort system 281
defendants. 282

(F) It is in the interest of justice that there be 283
transparency for claims made in the bankruptcy system and for 284
claims made in civil asbestos litigation. Transparency will 285
address the potential for abuse, fraud, and duplicate and 286
inconsistent payments. 287

(G) Presentation of abusive, fraudulent, or inconsistent 288
claims undermines the integrity of Ohio's judicial system. 289

(H) The current lack of transparency in the tort system may 290
result in businesses in this state being unfairly penalized and 291
deprived of their rights. 292

(I) New asbestos trusts are being formed and are anticipated 293
to be funded with approximately thirty billion dollars in assets. 294
As a consequence, it is critical to the interests of justice and 295
to the economy of the state of Ohio that the distribution of these 296
assets be made in a manner that incorporates full and consistent 297

disclosure when recovery is sought through an asbestos tort action 298
in Ohio against solvent companies or through a trust claim against 299
a bankrupt entity. All relevant asbestos exposure information 300
should be made available in a timely manner so that solvent 301
companies do not unnecessarily absorb the liabilities of bankrupt 302
trust entities that are not subject to tort actions. Transparency 303
will help ensure that all responsible parties are allocated an 304
equitable share of any liability and will encourage injured 305
persons to promptly seek an appropriate recovery from all 306
appropriate sources. 307

(J) The General Assembly has established apportionment of 308
liability as a public policy. Pursuant to Ohio apportionment law, 309
bankrupt entities are currently assigned a proportion of liability 310
by the trier of fact. As a consequence, this act furthers this 311
existing public policy of the State of Ohio by ensuring that 312
asbestos tort actions are resolved on the basis of all available 313
evidence and on the full merits. With the advent of an increasing 314
number of significant asbestos trusts, it is apparent that 315
asbestos trusts and the claimants asserting claims against them 316
will be primary sources of information and evidence that will 317
ensure that Ohio's public policy of apportionment of liability and 318
of civil trials based upon all available evidence will be 319
protected and promoted. 320

(K) It is the intent of the General assembly that this act 321
apply to claims made against any currently operating asbestos 322
trusts and to any asbestos trusts created on and after the 323
effective date of this act. 324