

As Reported by the House Judiciary Committee

127th General Assembly

Regular Session

2007-2008

Sub. H. B. No. 631

Representative Blessing

Cosponsors: Representatives Coley, Mecklenborg

—

A B I L L

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) Except as otherwise provided in division (E) of section 16
2307.954 of the Revised Code, "asbestos trust" means and 17
encompasses all trust entities, claims agents, or claims 18

processing facilities that are created pursuant to the 19
jurisdiction of a United States bankruptcy court and section 20
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 21
U.S.C. 524(g), or other applicable provision of law, that are 22
formed for the purpose of compensating claimants asserting 23
eligible asbestos claims, and that are in existence on the date 24
initially set for trial in the asbestos tort action. 25

(D) "Asbestos trust claim" means any claim for compensation 26
by an exposed person or the exposed person's asserted 27
representative against any asbestos trust. 28

(E) "Cancer" means a malignant condition. 29

(F) "Claimant" means any person asserting an asbestos claim 30
or asbestos trust claim. "Claimant" includes a plaintiff, 31
counterclaimant, cross-claimant, or third-party plaintiff. 32

(G) "Exposed person" means any person whose exposure to 33
asbestos or to asbestos-containing products is the basis for an 34
asbestos claim. 35

(H) "Non-cancer" means a nonmalignant condition. 36

(I) "Proof of claim" means any form of documentation that a 37
potential claimant against an asbestos trust submits or provides 38
to the asbestos trust that attests to or asserts the existence of 39
any liquidated or unliquidated asbestos claim that the claimant 40
may have against the asbestos trust or its predecessors under any 41
theory of law. 42

(J) "Trust claims material" means documents constituting an 43
asbestos trust claim, including, but not limited to, claim forms, 44
proofs of claim, and informational material required by an 45
asbestos trust to be submitted by a claimant in order to have the 46
claim evaluated by the asbestos trust and relied upon by the 47
asbestos trust in making its compensation determination. 48

(K) "Trust governance documents" means and encompasses all documents that set forth in the plan of reorganization and related orders, terms, conditions, distribution procedures, payment schedules and matrixes, evaluation paradigms and adjustment formulas, and all other policies and procedures that are utilized to determine a claimant's eligibility for, and the amounts or levels of, payment to a claimant by an asbestos trust.

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

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

(2) If the claimant, subsequent to the submission of the sworn statement under division (A)(1)(a) of this section, files or submits any additional asbestos trust claims not previously disclosed, the claimant shall provide to all of the parties in the asbestos tort action an amendment updating the statement and

identifying the additional asbestos trust claims. The claimant 80
shall provide any amendment under division (A)(2) of this section 81
within thirty days of filing an asbestos trust claim with, or 82
submitting an asbestos trust claim to, any additional asbestos 83
trust. 84

(3) With respect to any asbestos trust claim that a claimant 85
disclosed under division (A)(2) of this section in an amendment to 86
the sworn statement, the claimant shall provide to all of the 87
parties in the asbestos tort action all trust claims material 88
pertaining to each additional asbestos trust claim identified in 89
that amendment. The claimant shall provide the trust claims 90
materials under division (A)(3) of this section within thirty days 91
of filing or submitting each additional asbestos trust claim. 92

(B) Failure to provide to all parties in the asbestos tort 93
action all trust claims material as required by this section in a 94
timely manner shall constitute grounds for the court to extend the 95
date set for trial. 96

(C) Nothing in this section shall prevent a court of 97
competent jurisdiction from requiring disclosures in addition to 98
the disclosures required under this section. 99

Sec. 2307.953. (A) Any defendant in an asbestos tort action 100
may file a motion with the court, with notice to the claimant and 101
to all of the parties in the action, for an order to stay the 102
proceedings. A defendant's motion to stay the proceedings shall 103
set forth credible evidence that demonstrates all of the 104
following: 105

(1) The identities of all asbestos trusts not previously 106
disclosed by the claimant pursuant to section 2307.952 of the 107
Revised Code against which the claimant has not made any asbestos 108
trust claims but against which the defendant in good faith 109
believes the claimant may make a successful asbestos trust claim; 110

(2) The information that the defendant believes supports the additional asbestos trust claims described in division (A)(1) of this section; 111
112
113

(3) A description of the information sufficient to meet the asbestos trust claim requirements of the asbestos trusts described in division (A)(1) of this section. 114
115
116

(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: 117
118
119

(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. 120
121
122
123
124
125
126
127
128
129

(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. 130
131
132
133
134
135
136
137
138
139

(C) If the defendant has not met its burden under division (A) of this section and if the claimant files a response pursuant 140
141

to division (B)(2) of this section, the court shall determine if a 142
successful asbestos trust claim could be submitted in good faith 143
to each asbestos trust identified in the defendant's motion for an 144
order to stay the proceedings brought pursuant to division (A) of 145
this section. The claimant has the burden of proof, by a 146
preponderance of the evidence, to demonstrate that the information 147
set forth by the defendant pursuant to divisions (A)(2) and (3) of 148
this section should be modified prior to the filing of an asbestos 149
trust claim with, or the submission of an asbestos trust claim to, 150
each asbestos trust, that the asbestos trust claims should not be 151
filed with or submitted to the asbestos trust because a successful 152
asbestos trust claim cannot be made in good faith, or that the 153
reasonably anticipated recovery from the asbestos trust claim 154
renders the filing of the asbestos trust claim economically 155
imprudent. 156

(D) If the court determines that there is a good faith basis 157
for filing an asbestos trust claim with, or submitting an asbestos 158
trust claim to, an asbestos trust identified in the defendant's 159
motion for an order to stay the proceedings brought pursuant to 160
division (A) of this section, the court shall stay the proceedings 161
until the claimant files the asbestos trust claims with or submits 162
them to the asbestos trusts identified in the defendant's motion 163
for an order to stay the proceedings and has otherwise met the 164
obligations set forth in sections 2307.952 and 2307.953 of the 165
Revised Code. 166

Sec. 2307.954. (A) A non-cancer asbestos trust claim and a 167
cancer asbestos trust claim are based on distinct injuries caused 168
by a person's exposure to asbestos. A non-cancer asbestos trust 169
claim that is subject to disclosure under section 2307.952 or 170
2307.953 of the Revised Code or is identified in this section 171
means the non-cancer asbestos claim that is the subject of the 172
asbestos tort action in which the defendant seeks discovery 173

pursuant sections 2307.951 to 2307.954 of the Revised Code. If a 174
claimant previously filed a non-cancer asbestos trust claim with, 175
or submitted a non-cancer asbestos trust claim to, an asbestos 176
trust and subsequently filed an asbestos tort action based on a 177
cancer asbestos claim, a cancer asbestos trust claim that is 178
subject to disclosure under sections 2307.952 and 2307.953 of the 179
Revised Code or is identified in this section means both the 180
earlier filed non-cancer asbestos trust claim and the cancer 181
asbestos claim that is the subject of the subsequent asbestos tort 182
action. 183

(B) Asbestos trust claims and the information that is the 184
subject of disclosure under sections 2307.952 and 2307.953 of the 185
Revised Code are presumed to be authentic, relevant to, and 186
discoverable in, an asbestos tort action. Notwithstanding any 187
agreement or confidentiality provision, trust claims material are 188
presumed to not be privileged. The parties in the asbestos tort 189
action may introduce at trial any trust claims material to prove 190
alternative causation for the exposed person's claimed injury, 191
death, or loss to person, to prove a basis to allocate 192
responsibility for the claimant's claimed injury, death, or loss 193
to person, and to prove issues relevant to an adjudication of the 194
asbestos claim unless the exclusion of the trust claims material 195
is otherwise required by the rules of evidence. A claim rejected 196
by an asbestos trust may be excluded if required by the rules of 197
evidence. 198

(C) In addition to the disclosure requirements set forth in 199
sections 2307.952 and 2307.953 of the Revised Code, the parties to 200
the asbestos tort action may seek additional disclosure and 201
discovery of information relevant to the action by any mechanism 202
provided for by any applicable section of the Revised Code, the 203
Rules of Civil Procedure, any local rule, or any case management 204
order. In addition to the disclosure described in this division, 205

any defendant in the asbestos tort action also may seek discovery 206
of the claimant's asbestos trust claims directly from the asbestos 207
trusts involved. Within thirty days of assignment of an initial 208
trial date in an asbestos tort action that is not otherwise barred 209
or deferred under applicable law, or within thirty days of the 210
effective date of this section with respect to asbestos tort 211
actions that are pending on that effective date and that have been 212
assigned an initial trial date, a claimant shall provide to all of 213
the parties in the asbestos tort action the consent, 214
authorization, or permission that may be required by any asbestos 215
trust for the release of information and materials that are 216
subject to the disclosure requirements of sections 2307.952 and 217
2307.953 of the Revised Code or any additional disclosure under 218
this division. 219

(D) The court in an asbestos tort action, upon the filing by 220
a defendant or judgment debtor of an appropriate motion seeking 221
sanctions or other relief, may impose any sanction provided by a 222
law of this state, including, but not limited to, vacating a 223
judgment rendered in an asbestos tort action, for a claimant's 224
failure to comply with the disclosure requirements of sections 225
2307.952, 2307.953, and 2307.954 of the Revised Code. 226

(E)(1) If a claimant, subsequent to obtaining a judgment in 227
an asbestos tort action in this state, files any additional 228
asbestos trust claim with, or submits any additional asbestos 229
trust claim to, an asbestos trust that was in existence at the 230
time the claimant obtained that judgment, the trial court, upon 231
the filing by a defendant or judgment debtor of an appropriate 232
motion seeking sanctions or other relief, shall have jurisdiction 233
to reopen its judgment in the asbestos tort action and do either 234
of the following: 235

(a) Adjust the judgment by the amount of any subsequent 236
asbestos trust payments obtained by the claimant; 237

(b) Order any other relief to the parties that the court 238
considers just and proper. 239

(2) As used in division (E) of this section, "asbestos trust" 240
means and encompasses all trust entities, claims agents, or claims 241
processing facilities that are created pursuant to the 242
jurisdiction of a United States bankruptcy court and section 243
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 244
U.S.C. 524(g), or other applicable provision of law and that are 245
formed for the purpose of compensating claimants asserting 246
eligible asbestos claims. 247

Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 248
as enacted by this act, apply to asbestos tort actions filed on or 249
after the effective date of this act and to pending asbestos tort 250
actions in which trial has not commenced as of the effective date 251
of this act. 252

As used in this section, "asbestos tort action" has the same 253
meaning as in section 2307.951 of the Revised Code, as enacted by 254
this act. 255

Section 3. (A) If any provision that constitutes the whole or 256
part of a section of the Revised Code enacted by this act or if 257
any application of any provision that constitutes the whole or 258
part of a section of the Revised Code enacted by this act is held 259
invalid, the invalidity does not affect other provisions of the 260
section or applications of other provisions of the section that 261
can be given effect without the invalid provision or application. 262
To this end, the provisions that constitute the whole or part of 263
the sections of the Revised Code enacted by this act and their 264
applications are independent and severable. 265

(B) If any provision that constitutes the whole or part of a 266
section of the Revised Code enacted by this act or if any 267

application of any provision that constitutes the whole or part of 268
a section of the Revised Code enacted by this act is held to be 269
preempted by federal law, the preemption does not affect other 270
provisions of the section or applications of other provisions of 271
the section that can be given effect without the preempted 272
provision or application. To this end, the provisions that 273
constitute the whole or part of the sections of the Revised Code 274
enacted by this act and their applications are independent and 275
severable. 276

Section 4. The General Assembly makes the following 277
statements of findings and intent: 278

(A) The United States Supreme Court has described asbestos 279
litigation in this country as a crisis. 280

(B) Asbestos litigation has forced an estimated eighty-five 281
employers into bankruptcy. The rate of asbestos-driven 282
bankruptcies has accelerated in recent years. Between 2000 and 283
2007, there were more asbestos-related bankruptcy filings than in 284
either of the prior two decades. 285

(C) Personal injury lawyers have responded to these 286
bankruptcies by expanding their search for solvent defendants. The 287
number of asbestos defendants now includes over eight thousand 288
five hundred companies, including many small and medium size 289
companies, in industries that cover eighty-five per cent of the 290
United States economy. 291

(D) Asbestos claimants often seek compensation for alleged 292
asbestos-related conditions from civil defendants that remain 293
solvent in civil court tort actions and from trusts or claims 294
facilities formed in asbestos bankruptcy proceedings. 295

(E) There is limited coordination and transparency between 296
these two paths to recovery. Ohio courts have already experienced 297
the problem of instances of claimants failing to provide 298

information and materials regarding asbestos trust claims that 299
they have commenced. This lack of transparency creates a strong 300
potential for abuse of the judicial process, as plaintiffs may 301
allege facts intended to maximize recoveries from trusts created 302
through the bankruptcy system while also alleging different or 303
conflicting facts to maximize recoveries from tort system 304
defendants. 305

(F) It is in the interest of justice that there be 306
transparency for claims made in the bankruptcy system and for 307
claims made in civil asbestos litigation. Transparency will 308
address the potential for abuse, fraud, and duplicate and 309
inconsistent payments. 310

(G) Presentation of abusive, fraudulent, or inconsistent 311
claims undermines the integrity of Ohio's judicial system. 312

(H) The current lack of transparency in the tort system may 313
result in businesses in this state being unfairly penalized and 314
deprived of their rights. 315

(I) New asbestos trusts are being formed and are anticipated 316
to be funded with approximately thirty billion dollars in assets. 317
As a consequence, it is critical to the interests of justice and 318
to the economy of the state of Ohio that the distribution of these 319
assets be made in a manner that incorporates full and consistent 320
disclosure when recovery is sought through an asbestos tort action 321
in Ohio against solvent companies or through a trust claim against 322
a bankrupt entity. All relevant asbestos exposure information 323
should be made available in a timely manner so that solvent 324
companies do not unnecessarily absorb the liabilities of bankrupt 325
trust entities that are not subject to tort actions. Transparency 326
will help ensure that all responsible parties are allocated an 327
equitable share of any liability and will encourage injured 328
persons to promptly seek an appropriate recovery from all 329
appropriate sources. 330

(J) The General Assembly has established apportionment of 331
liability as a public policy. Pursuant to Ohio apportionment law, 332
bankrupt entities are currently assigned a proportion of liability 333
by the trier of fact. As a consequence, this act furthers this 334
existing public policy of the State of Ohio by ensuring that 335
asbestos tort actions are resolved on the basis of all available 336
evidence and on the full merits. With the advent of an increasing 337
number of significant asbestos trusts, it is apparent that 338
asbestos trusts and the claimants asserting claims against them 339
will be primary sources of information and evidence that will 340
ensure that Ohio's public policy of apportionment of liability and 341
of civil trials based upon all available evidence will be 342
protected and promoted. 343

(K) It is the intent of the General assembly that this act 344
apply to claims made against any currently operating asbestos 345
trusts and to any asbestos trusts created on and after the 346
effective date of this act. 347