

As Passed by the Senate

127th General Assembly  
Regular Session  
2007-2008

Sub. S. B. No. 370

Senator Seitz

Cosponsors: Senators Buehrer, Cates, Goodman, Harris, Schaffer, Stivers,  
Amstutz, Schuler

—

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) 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 commencing 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, 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 shall provide any amendment under division (A)(2) of this section

within thirty days of filing an asbestos trust claim with, or 80  
submitting an asbestos trust claim to, any additional asbestos 81  
trust. 82

(3) With respect to any asbestos trust claim that a claimant 83  
disclosed under division (A)(2) of this section in an amendment to 84  
the sworn statement, the claimant shall provide to all of the 85  
parties in the asbestos tort action all trust claims material 86  
pertaining to each additional asbestos trust claim identified in 87  
that amendment. The claimant shall provide the trust claims 88  
materials under division (A)(3) of this section within thirty days 89  
of filing or submitting each additional asbestos trust claim. 90

(B) Failure to provide to all parties in the asbestos tort 91  
action all trust claims material as required by this section in a 92  
timely manner shall constitute grounds for the court to extend the 93  
date set for trial. 94

(C) Nothing in this section shall prevent a court of 95  
competent jurisdiction from requiring disclosures in addition to 96  
the disclosures required under this section. 97

**Sec. 2307.953.** (A) Any defendant in an asbestos tort action 98  
may file a motion with the court, with notice to the claimant and 99  
to all of the parties in the action, for an order to stay the 100  
proceedings. A defendant's motion to stay the proceedings shall 101  
set forth all of the following: 102

(1) The identities of all asbestos trusts not previously 103  
disclosed by the claimant pursuant to section 2307.952 of the 104  
Revised Code against which the claimant has not made any asbestos 105  
trust claims but against which the defendant in good faith 106  
believes the claimant may make a successful asbestos trust claim; 107

(2) The information that the defendant believes supports the 108  
additional asbestos trust claims described in division (A)(1) of 109

this section; 110

(3) A description of the information sufficient to meet the 111  
asbestos trust claim requirements of the asbestos trusts described 112  
in division (A)(1) of this section. 113

(B) Within fourteen days after the filing of the defendant's 114  
motion for an order to stay the proceedings under division (A) of 115  
this section, the claimant may do the following: 116

(1) File the asbestos trust claims with or submit them to the 117  
asbestos trusts identified in the defendant's motion for an order 118  
to stay the proceedings. The submission to the court and to all of 119  
the parties in the asbestos tort action of proof demonstrating 120  
that the asbestos trust claims identified in the defendant's 121  
motion to stay the proceedings have been filed with or submitted 122  
to the appropriate asbestos trusts is dispositive of the 123  
defendant's motion for an order to stay the proceedings. 124  
Alternatively, the defendant may withdraw the motion brought under 125  
this section. 126

(2) File with the court a response to the defendant's motion 127  
for an order to stay the proceedings requesting a determination by 128  
the court that the information supporting the asbestos trust 129  
claims against the asbestos trusts identified in the defendant's 130  
motion for an order to stay the proceedings should be modified 131  
prior to the filing of an asbestos trust claim with, or the 132  
submission of an asbestos trust claim to, an asbestos trust, that 133  
there is insufficient information to file or submit the asbestos 134  
trust claim identified in the defendant's motion for an order to 135  
stay the proceedings, or that the reasonably anticipated recovery 136  
from the asbestos trust claim will be exceeded by the costs of 137  
filing the asbestos trust claim. 138

(C) If the claimant files a response pursuant to division 139  
(B)(2) of this section, the court shall determine if an asbestos 140

trust claim could be submitted in good faith to each asbestos 141  
trust identified in the defendant's motion for an order to stay 142  
the proceedings brought pursuant to division (A) of this section. 143  
The claimant has the burden of proof, by a preponderance of the 144  
evidence, to demonstrate that the information set forth by the 145  
defendant pursuant to divisions (A)(2) and (3) of this section 146  
should be modified prior to the filing of an asbestos trust claim 147  
with, or the submission of an asbestos trust claim to, each 148  
asbestos trust, that the asbestos trust claims should not be filed 149  
with or submitted to the asbestos trust because the claims cannot 150  
be made in good faith, or that the reasonably anticipated recovery 151  
from the asbestos trust claim will be exceeded by the costs of 152  
filing the asbestos trust claim. 153

(D) If the court determines that there is a good faith basis 154  
for filing an asbestos trust claim with, or submitting an asbestos 155  
trust claim to, an asbestos trust identified in the defendant's 156  
motion for an order to stay the proceedings brought pursuant to 157  
division (A) of this section, the court shall stay the proceedings 158  
until the claimant files the asbestos trust claims with or submits 159  
them to the asbestos trusts identified in the defendant's motion 160  
for an order to stay the proceedings and has otherwise met the 161  
obligations set forth in sections 2307.952 and 2307.953 of the 162  
Revised Code. 163

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

or submitted a non-cancer asbestos trust claim to, an asbestos trust and subsequently filed an asbestos tort action based on a cancer asbestos claim, a cancer asbestos trust claim that is subject to disclosure under sections 2307.952 and 2307.953 of the Revised Code or is identified in this section means both the earlier filed non-cancer asbestos trust claim and the cancer asbestos claim that is the subject of the subsequent asbestos tort action. 173  
174  
175  
176  
177  
178  
179  
180

(B) Asbestos trust claims and the information that is the subject of disclosure under sections 2307.952 and 2307.953 of the Revised Code are presumed to be authentic, relevant to, and discoverable in, an asbestos tort action. Notwithstanding any agreement or confidentiality provision, trust claims material are presumed to not be privileged. The parties in the asbestos tort action may introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to person, to prove a basis to allocate responsibility for the claimant's claimed injury, death, or loss to person, and to prove issues relevant to an adjudication of the asbestos claim unless the exclusion of the trust claims material is otherwise required by applicable rules of evidence. A claim rejected by an asbestos trust may be excluded if required by applicable rules of evidence. 181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195

(C) In addition to the disclosure requirements set forth in sections 2307.952 and 2307.953 of the Revised Code, the parties to the asbestos tort action may seek additional disclosure and discovery of information relevant to the action by any mechanism provided for by any applicable section of the Revised Code, the Rules of Civil Procedure, any local rule, or any case management order. In addition to the disclosure described in this division, any defendant in the asbestos tort action also may seek discovery of the claimant's asbestos trust claims directly from the asbestos 196  
197  
198  
199  
200  
201  
202  
203  
204

trusts involved. Within thirty days of commencing an asbestos tort 205  
action that is not otherwise barred or deferred under applicable 206  
law, or within thirty days of the effective date of this section 207  
with respect to asbestos tort actions that are pending on that 208  
effective date, a claimant shall provide to all of the parties in 209  
the asbestos tort action the consent, authorization, or permission 210  
that may be required by any asbestos trust for the release of 211  
information and materials that are subject to the disclosure 212  
requirements of sections 2307.952 and 2307.953 of the Revised Code 213  
or any additional disclosure under this division. 214

(D) The court in an asbestos tort action, upon the filing by 215  
a defendant or judgment debtor of an appropriate motion seeking 216  
sanctions or other relief, may impose any sanction provided by a 217  
law of this state, including, but not limited to, vacating a 218  
judgment rendered in an asbestos tort action, for a claimant's 219  
failure to comply with the disclosure requirements of sections 220  
2307.952, 2307.953, and 2307.954 of the Revised Code. 221

(E)(1) If a claimant, subsequent to obtaining a judgment in 222  
an asbestos tort action in this state, files any additional 223  
asbestos trust claim with, or submits any additional asbestos 224  
trust claim to, an asbestos trust that was in existence at the 225  
time the claimant obtained that judgment, the trial court, upon 226  
the filing by a defendant or judgment debtor of an appropriate 227  
motion seeking sanctions or other relief, shall have jurisdiction 228  
to reopen its judgment in the asbestos tort action and do either 229  
of the following: 230

(a) Adjust the judgment by the amount of any subsequent 231  
asbestos trust payments obtained by the claimant; 232

(b) Order any other relief to the parties that the court 233  
considers just and proper. 234

(2) As used in division (E) of this section, "asbestos trust" 235



means and encompasses all trust entities, claims agents, or claims 236  
processing facilities that are created pursuant to the 237  
jurisdiction of a United States bankruptcy court and section 238  
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 239  
U.S.C. 524(g), or other applicable provision of law and that are 240  
formed for the purpose of compensating claimants asserting 241  
eligible asbestos claims. 242

**Section 2.** Sections 2307.951 to 2307.954 of the Revised Code, 243  
as enacted by this act, apply to asbestos tort actions filed on or 244  
after the effective date of this act and to pending asbestos tort 245  
actions in which trial has not commenced as of the effective date 246  
of this act. 247

As used in this section, "asbestos tort action" has the same 248  
meaning as in section 2307.951 of the Revised Code, as enacted by 249  
this act. 250

**Section 3.** (A) If any provision that constitutes the whole or 251  
part of a section of the Revised Code enacted by this act or if 252  
any application of any provision that constitutes the whole or 253  
part of a section of the Revised Code enacted by this act is held 254  
invalid, the invalidity does not affect other provisions of the 255  
section or applications of other provisions of the section that 256  
can be given effect without the invalid provision or application. 257  
To this end, the provisions that constitute the whole or part of 258  
the sections of the Revised Code enacted by this act and their 259  
applications are independent and severable. 260

(B) If any provision that constitutes the whole or part of a 261  
section of the Revised Code enacted by this act or if any 262  
application of any provision that constitutes the whole or part of 263  
a section of the Revised Code enacted by this act is held to be 264  
preempted by federal law, the preemption does not affect other 265

provisions of the section or applications of other provisions of 266  
the section that can be given effect without the preempted 267  
provision or application. To this end, the provisions that 268  
constitute the whole or part of the sections of the Revised Code 269  
enacted by this act and their applications are independent and 270  
severable. 271

**Section 4.** The General Assembly makes the following 272  
statements of findings and intent: 273

(A) The United States Supreme Court has described asbestos 274  
litigation in this country as a crisis. 275

(B) Asbestos litigation has forced an estimated eighty-five 276  
employers into bankruptcy. The rate of asbestos-driven 277  
bankruptcies has accelerated in recent years. Between 2000 and 278  
2007, there were more asbestos-related bankruptcy filings than in 279  
either of the prior two decades. 280

(C) Personal injury lawyers have responded to these 281  
bankruptcies by expanding their search for solvent defendants. The 282  
number of asbestos defendants now includes over eight thousand 283  
five hundred companies, including many small and medium size 284  
companies, in industries that cover eighty-five per cent of the 285  
United States economy. 286

(D) Asbestos claimants often seek compensation for alleged 287  
asbestos-related conditions from civil defendants that remain 288  
solvent in civil court tort actions and from trusts or claims 289  
facilities formed in asbestos bankruptcy proceedings. 290

(E) There is limited coordination and transparency between 291  
these two paths to recovery. Ohio courts have already experienced 292  
the problem of instances of claimants failing to provide 293  
information and materials regarding asbestos trust claims that 294  
they have commenced. This lack of transparency creates a strong 295  
potential for abuse of the judicial process, as plaintiffs may 296

allege facts intended to maximize recoveries from trusts created 297  
through the bankruptcy system while also alleging different or 298  
conflicting facts to maximize recoveries from tort system 299  
defendants. 300

(F) It is in the interest of justice that there be 301  
transparency for claims made in the bankruptcy system and for 302  
claims made in civil asbestos litigation. Transparency will 303  
address the potential for abuse, fraud, and duplicate and 304  
inconsistent payments. 305

(G) Presentation of abusive, fraudulent, or inconsistent 306  
claims undermines the integrity of Ohio's judicial system. 307

(H) The current lack of transparency in the tort system may 308  
result in businesses in this state being unfairly penalized and 309  
deprived of their rights. 310

(I) New asbestos trusts are being formed and are anticipated 311  
to be funded with approximately thirty billion dollars in assets. 312  
As a consequence, it is critical to the interests of justice and 313  
to the economy of the state of Ohio that the distribution of these 314  
assets be made in a manner that incorporates full and consistent 315  
disclosure when recovery is sought through an asbestos tort action 316  
in Ohio against solvent companies or through a trust claim against 317  
a bankrupt entity. All relevant asbestos exposure information 318  
should be made available in a timely manner so that solvent 319  
companies do not unnecessarily absorb the liabilities of bankrupt 320  
trust entities that are not subject to tort actions. Transparency 321  
will help ensure that all responsible parties are allocated an 322  
equitable share of any liability and will encourage injured 323  
persons to promptly seek an appropriate recovery from all 324  
appropriate sources. 325

(J) The General Assembly has established apportionment of 326  
liability as a public policy. Pursuant to Ohio apportionment law, 327

bankrupt entities are currently assigned a proportion of liability 328  
by the trier of fact. As a consequence, this act furthers this 329  
existing public policy of the State of Ohio by ensuring that 330  
asbestos tort actions are resolved on the basis of all available 331  
evidence and on the full merits. With the advent of an increasing 332  
number of significant asbestos trusts, it is apparent that 333  
asbestos trusts and the claimants asserting claims against them 334  
will be primary sources of information and evidence that will 335  
ensure that Ohio's public policy of apportionment of liability and 336  
of civil trials based upon all available evidence will be 337  
protected and promoted. 338

(K) It is the intent of the General assembly that this act 339  
apply to claims made against any currently operating asbestos 340  
trusts and to any asbestos trusts created on and after the 341  
effective date of this act. 342