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Senator Seitz

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

Amstutz, Schuler

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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 all of the following: 104

(1) The identities of all asbestos trusts not previously 105
disclosed by the claimant pursuant to section 2307.952 of the 106
Revised Code against which the claimant has not made any asbestos 107
trust claims but against which the defendant in good faith 108
believes the claimant may make a successful asbestos trust claim; 109

(2) The information that the defendant believes supports the additional asbestos trust claims described in division (A)(1) of this section; 110
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(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. 113
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(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: 116
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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. 119
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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. 129
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(C) If the defendant has not met its burden under division (A) of this section and if the claimant files a response pursuant 139
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to division (B)(2) of this section, the court shall determine if a 141
successful asbestos trust claim could be submitted in good faith 142
to each asbestos trust identified in the defendant's motion for an 143
order to stay the proceedings brought pursuant to division (A) of 144
this section. The claimant has the burden of proof, by a 145
preponderance of the evidence, to demonstrate that the information 146
set forth by the defendant pursuant to divisions (A)(2) and (3) of 147
this section should be modified prior to the filing of an asbestos 148
trust claim with, or the submission of an asbestos trust claim to, 149
each asbestos trust, that the asbestos trust claims should not be 150
filed with or submitted to the asbestos trust because a successful 151
asbestos trust claim cannot be made in good faith, or that the 152
reasonably anticipated recovery from the asbestos trust claim 153
renders the filing of the asbestos trust claim economically 154
imprudent. 155

(D) If the court determines that there is a good faith basis 156
for filing an asbestos trust claim with, or submitting an asbestos 157
trust claim to, an asbestos trust identified in the defendant's 158
motion for an order to stay the proceedings brought pursuant to 159
division (A) of this section, the court shall stay the proceedings 160
until the claimant files the asbestos trust claims with or submits 161
them to the asbestos trusts identified in the defendant's motion 162
for an order to stay the proceedings and has otherwise met the 163
obligations set forth in sections 2307.952 and 2307.953 of the 164
Revised Code. 165

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

pursuant sections 2307.951 to 2307.954 of the Revised Code. If a 173
claimant previously filed a non-cancer asbestos trust claim with, 174
or submitted a non-cancer asbestos trust claim to, an asbestos 175
trust and subsequently filed an asbestos tort action based on a 176
cancer asbestos claim, a cancer asbestos trust claim that is 177
subject to disclosure under sections 2307.952 and 2307.953 of the 178
Revised Code or is identified in this section means both the 179
earlier filed non-cancer asbestos trust claim and the cancer 180
asbestos claim that is the subject of the subsequent asbestos tort 181
action. 182

(B) Asbestos trust claims and the information that is the 183
subject of disclosure under sections 2307.952 and 2307.953 of the 184
Revised Code are presumed to be authentic, relevant to, and 185
discoverable in, an asbestos tort action. Notwithstanding any 186
agreement or confidentiality provision, trust claims material are 187
presumed to not be privileged. The parties in the asbestos tort 188
action may introduce at trial any trust claims material to prove 189
alternative causation for the exposed person's claimed injury, 190
death, or loss to person, to prove a basis to allocate 191
responsibility for the claimant's claimed injury, death, or loss 192
to person, and to prove issues relevant to an adjudication of the 193
asbestos claim unless the exclusion of the trust claims material 194
is otherwise required by the rules of evidence. A claim rejected 195
by an asbestos trust may be excluded if required by the rules of 196
evidence. 197

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

any defendant in the asbestos tort action also may seek discovery 205
of the claimant's asbestos trust claims directly from the asbestos 206
trusts involved. Within thirty days of assignment of an initial 207
trial date in an asbestos tort action that is not otherwise barred 208
or deferred under applicable law, or within thirty days of the 209
effective date of this section with respect to asbestos tort 210
actions that are pending on that effective date and that have been 211
assigned an initial trial date, a claimant shall provide to all of 212
the parties in the asbestos tort action the consent, 213
authorization, or permission that may be required by any asbestos 214
trust for the release of information and materials that are 215
subject to the disclosure requirements of sections 2307.952 and 216
2307.953 of the Revised Code or any additional disclosure under 217
this division. 218

(D) The court in an asbestos tort action, upon the filing by 219
a defendant or judgment debtor of an appropriate motion seeking 220
sanctions or other relief, may impose any sanction provided by a 221
law of this state, including, but not limited to, vacating a 222
judgment rendered in an asbestos tort action, for a claimant's 223
failure to comply with the disclosure requirements of sections 224
2307.952, 2307.953, and 2307.954 of the Revised Code. 225

(E)(1) If a claimant, subsequent to obtaining a judgment in 226
an asbestos tort action in this state, files any additional 227
asbestos trust claim with, or submits any additional asbestos 228
trust claim to, an asbestos trust that was in existence at the 229
time the claimant obtained that judgment, the trial court, upon 230
the filing by a defendant or judgment debtor of an appropriate 231
motion seeking sanctions or other relief, shall have jurisdiction 232
to reopen its judgment in the asbestos tort action and do either 233
of the following: 234

(a) Adjust the judgment by the amount of any subsequent 235
asbestos trust payments obtained by the claimant; 236

(b) Order any other relief to the parties that the court 237
considers just and proper. 238

(2) As used in division (E) of this section, "asbestos trust" 239
means and encompasses all trust entities, claims agents, or claims 240
processing facilities that are created pursuant to the 241
jurisdiction of a United States bankruptcy court and section 242
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 243
U.S.C. 524(g), or other applicable provision of law and that are 244
formed for the purpose of compensating claimants asserting 245
eligible asbestos claims. 246

Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 247
as enacted by this act, apply to asbestos tort actions filed on or 248
after the effective date of this act and to pending asbestos tort 249
actions in which trial has not commenced as of the effective date 250
of this act. 251

As used in this section, "asbestos tort action" has the same 252
meaning as in section 2307.951 of the Revised Code, as enacted by 253
this act. 254

Section 3. (A) If any provision that constitutes the whole or 255
part of a section of the Revised Code enacted by this act or if 256
any application of any provision that constitutes the whole or 257
part of a section of the Revised Code enacted by this act is held 258
invalid, the invalidity does not affect other provisions of the 259
section or applications of other provisions of the section that 260
can be given effect without the invalid provision or application. 261
To this end, the provisions that constitute the whole or part of 262
the sections of the Revised Code enacted by this act and their 263
applications are independent and severable. 264

(B) If any provision that constitutes the whole or part of a 265
section of the Revised Code enacted by this act or if any 266

application of any provision that constitutes the whole or part of 267
a section of the Revised Code enacted by this act is held to be 268
preempted by federal law, the preemption does not affect other 269
provisions of the section or applications of other provisions of 270
the section that can be given effect without the preempted 271
provision or application. To this end, the provisions that 272
constitute the whole or part of the sections of the Revised Code 273
enacted by this act and their applications are independent and 274
severable. 275

Section 4. The General Assembly makes the following 276
statements of findings and intent: 277

(A) The United States Supreme Court has described asbestos 278
litigation in this country as a crisis. 279

(B) Asbestos litigation has forced an estimated eighty-five 280
employers into bankruptcy. The rate of asbestos-driven 281
bankruptcies has accelerated in recent years. Between 2000 and 282
2007, there were more asbestos-related bankruptcy filings than in 283
either of the prior two decades. 284

(C) Personal injury lawyers have responded to these 285
bankruptcies by expanding their search for solvent defendants. The 286
number of asbestos defendants now includes over eight thousand 287
five hundred companies, including many small and medium size 288
companies, in industries that cover eighty-five per cent of the 289
United States economy. 290

(D) Asbestos claimants often seek compensation for alleged 291
asbestos-related conditions from civil defendants that remain 292
solvent in civil court tort actions and from trusts or claims 293
facilities formed in asbestos bankruptcy proceedings. 294

(E) There is limited coordination and transparency between 295
these two paths to recovery. Ohio courts have already experienced 296
the problem of instances of claimants failing to provide 297

information and materials regarding asbestos trust claims that 298
they have commenced. This lack of transparency creates a strong 299
potential for abuse of the judicial process, as plaintiffs may 300
allege facts intended to maximize recoveries from trusts created 301
through the bankruptcy system while also alleging different or 302
conflicting facts to maximize recoveries from tort system 303
defendants. 304

(F) It is in the interest of justice that there be 305
transparency for claims made in the bankruptcy system and for 306
claims made in civil asbestos litigation. Transparency will 307
address the potential for abuse, fraud, and duplicate and 308
inconsistent payments. 309

(G) Presentation of abusive, fraudulent, or inconsistent 310
claims undermines the integrity of Ohio's judicial system. 311

(H) The current lack of transparency in the tort system may 312
result in businesses in this state being unfairly penalized and 313
deprived of their rights. 314

(I) New asbestos trusts are being formed and are anticipated 315
to be funded with approximately thirty billion dollars in assets. 316
As a consequence, it is critical to the interests of justice and 317
to the economy of the state of Ohio that the distribution of these 318
assets be made in a manner that incorporates full and consistent 319
disclosure when recovery is sought through an asbestos tort action 320
in Ohio against solvent companies or through a trust claim against 321
a bankrupt entity. All relevant asbestos exposure information 322
should be made available in a timely manner so that solvent 323
companies do not unnecessarily absorb the liabilities of bankrupt 324
trust entities that are not subject to tort actions. Transparency 325
will help ensure that all responsible parties are allocated an 326
equitable share of any liability and will encourage injured 327
persons to promptly seek an appropriate recovery from all 328
appropriate sources. 329

(J) The General Assembly has established apportionment of 330
liability as a public policy. Pursuant to Ohio apportionment law, 331
bankrupt entities are currently assigned a proportion of liability 332
by the trier of fact. As a consequence, this act furthers this 333
existing public policy of the State of Ohio by ensuring that 334
asbestos tort actions are resolved on the basis of all available 335
evidence and on the full merits. With the advent of an increasing 336
number of significant asbestos trusts, it is apparent that 337
asbestos trusts and the claimants asserting claims against them 338
will be primary sources of information and evidence that will 339
ensure that Ohio's public policy of apportionment of liability and 340
of civil trials based upon all available evidence will be 341
protected and promoted. 342

(K) It is the intent of the General assembly that this act 343
apply to claims made against any currently operating asbestos 344
trusts and to any asbestos trusts created on and after the 345
effective date of this act. 346