

As Reported by the Senate Judiciary--Civil Justice Committee

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Senator Seitz

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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 49

documents that set forth in the plan of reorganization and related 50
orders, terms, conditions, distribution procedures, payment 51
schedules and matrixes, evaluation paradigms and adjustment 52
formulas, and all other policies and procedures that are utilized 53
to determine a claimant's eligibility for, and the amounts or 54
levels of, payment to a claimant by an asbestos trust. 55

Sec. 2307.952. (A)(1)(a) Within thirty days of commencing an 56
asbestos tort action that is not otherwise barred or deferred 57
under applicable law, or within thirty days of the effective date 58
of this section with respect to asbestos tort actions that are 59
pending on that effective date, a claimant shall provide to all of 60
the parties in the action a sworn statement by the claimant, under 61
penalty of perjury, identifying all existing asbestos trust claims 62
made by or on behalf of the claimant. The sworn statement shall 63
disclose the date on which each asbestos trust claim against the 64
relevant asbestos trust was made and whether any request for a 65
deferral, delay, suspension, or tolling of the asbestos trust 66
claims process has been submitted. 67

(b) The submission of the sworn statement under division 68
(A)(1)(a) of this section shall be in addition to any disclosure 69
requirements otherwise imposed by law, civil rule, court order or 70
ruling, applicable agreement or stipulation, local rule, or case 71
management order. 72

(2) If the claimant, subsequent to the submission of the 73
sworn statement under division (A)(1)(a) of this section files or 74
submits any additional asbestos trust claims not previously 75
disclosed, the claimant shall provide to all of the parties in the 76
asbestos tort action an amendment updating the statement and 77
identifying the additional asbestos trust claims. The claimant 78
shall provide any amendment under division (A)(2) of this section 79
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 asbestos trust claim requirements of the asbestos trusts described in division (A)(1) of this section. 111
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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: 114
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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. 117
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Alternatively, the defendant may withdraw the motion brought under this section. 125
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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, 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, or that the reasonably anticipated recovery from the asbestos trust claim will be exceeded by the costs of filing the asbestos trust claim. 127
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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 139
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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 173
trust and subsequently filed an asbestos tort action based on a 174

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

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

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