

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

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

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

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

(C) Except as otherwise provided in division (E) of section 2307.954 of the Revised Code, "asbestos trust" means and encompasses all trust entities, claims agents, or claims processing facilities that are created pursuant to the jurisdiction of a United States bankruptcy court and section 524(g) of Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 524(g), or other applicable provision of law, that are formed for the purpose of compensating claimants asserting eligible asbestos claims, and that are in existence on the date initially set for trial in the asbestos tort action.

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

(E) "Cancer" means a malignant condition.

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

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

(H) "Noncancer" means a nonmalignant condition.

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

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

Sec. 2307.952. (A)(1)(a) Within thirty days after the commencement of discovery 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 an asbestos tort action that is pending on that effective date and in which discovery has commenced, 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 and all trust claims material pertaining to each identified asbestos trust claim. 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 with or submits to any asbestos trust 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 sworn 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 additional asbestos trust claim with, or submitting an additional asbestos trust claim to, any asbestos trust.

(3) With respect to any asbestos trust claim that a claimant discloses under division (A)(2) of this section in an amendment to the sworn statement, the claimant shall provide to all of the parties in the asbestos tort action all trust claims material pertaining to each additional asbestos trust claim identified in that amendment. The claimant shall provide the trust

claims materials under division (A)(3) of this section within thirty days of filing or submitting each additional asbestos trust claim.

(B) Failure to provide to all of the parties in the asbestos tort action all trust claims material as required by this section in a timely manner shall constitute grounds for the court to decline to assign an initial trial date or extend the date set for trial in the action.

(C) Nothing in this section prevents a court of competent jurisdiction from requiring any disclosures in addition to the disclosures required under this section.

Sec. 2307.953. (A) Not less than seventy-five days prior to the commencement of trial, any defendant in an asbestos tort action may file a motion with the court, with notice to the claimant and to all of the parties in the action, for an order to stay the proceedings. A defendant's motion to stay the proceedings shall set forth credible evidence that demonstrates all of the following:

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

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

(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.

(B) Notwithstanding any other provision in this section, if the claimant produces additional asbestos exposure information that supports the filing of an additional asbestos trust claim, the defendant may file a motion to stay the proceedings under division (A) of this section within seven days of receiving the additional asbestos exposure information.

(C)(1) 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 any of the following:

(a) 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 division (A) of this section.

(b) 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.

(c) 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 claimant's or attorney's fees and expenses to prepare the asbestos claim form and file or submit the asbestos trust claim identified in the defendant's motion for an order to stay the proceedings exceed the claimant's reasonably anticipated recovery from the asbestos trust claim.

(2) A submission by the claimant under division (C)(1)(b) or (c) of this section does not constitute a waiver of the attorney-client privilege or work product privilege.

(D)(1) If the defendant has met its burden under division (A) of this section and if the claimant files a response pursuant to division (C)(1)(b) of this section, the court shall determine by a preponderance of the evidence if a successful 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 under 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 with, or the submission of an asbestos trust claim to, each asbestos trust identified in the defendant's motion or that the asbestos trust claim should not be filed with or submitted to the asbestos trust because a successful asbestos trust claim cannot be made in good faith.

(2) If the defendant files a motion to stay the proceedings and if the claimant files a response pursuant to division (C)(1)(c) of this section, the court shall determine if the claimant's or attorney's fees and expenses to prepare the asbestos claim form and file or submit the asbestos trust claim identified in the defendant's motion for an order to stay the proceedings exceed the claimant's reasonably anticipated recovery from the asbestos trust claim. If the court determines that the claimant's or attorney's fees and expenses exceed the claimant's reasonably anticipated recovery from the

asbestos trust claim, the court shall require the claimant to file with the court a verified statement of the claimant's exposure history to the asbestos products covered by that asbestos trust.

(E) If the court determines that there is a good faith basis for filing an asbestos trust claim with, or submitting an asbestos trust claim to, an asbestos trust identified in the defendant's motion for an order to stay the proceedings brought under division (A) of this section, the court shall stay the proceedings until the claimant files the asbestos trust claims with or submits them to the asbestos trusts identified in the defendant's motion for an order to stay the proceedings and has otherwise met the obligations set forth in this section and section 2307.952 of the Revised Code.

Sec. 2307.954. (A) A noncancer asbestos trust claim and a cancer asbestos trust claim are based on distinct injuries caused by a person's exposure to asbestos. A noncancer asbestos trust claim that is subject to disclosure under section 2307.952 or 2307.953 of the Revised Code or is identified in this section means the noncancer asbestos claim that is the subject of the asbestos tort action in which the defendant seeks discovery pursuant to sections 2307.951 to 2307.954 of the Revised Code. If a claimant previously filed a noncancer asbestos trust claim with, or submitted a noncancer 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 section 2307.952 or 2307.953 of the Revised Code or is identified in this section means both the earlier filed noncancer asbestos trust claim and the cancer asbestos claim that is the subject of the subsequent asbestos tort action.

(B) Asbestos trust claims and the information that is the subject of disclosure under section 2307.952 or 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 the rules of evidence.

(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 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 trusts involved.

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

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

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

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

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

(F) A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than one year after the judgment was entered or taken.

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

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

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

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

SECTION 4. The General Assembly makes the following statements of findings and intent:

(A) The United States Supreme Court in *Amchem Products, Inc. v. Windsor* (1997), 521 U.S. 591 has described asbestos litigation in this country as a crisis.

(B) To date, approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability, as found in a 2011 report by the United States Government Accountability Office.

(C) These bankruptcies have resulted in the search for more solvent companies. Researchers for the RAND Corporation estimated in a 2005 report that the number of asbestos defendants now includes over eight thousand five hundred companies, including many small- and medium-sized companies, in industries that cover eighty-five per cent of the United States economy.

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

(E) There is limited coordination and transparency between these two

paths to recovery. Ohio courts have already experienced the problem of instances of claimants failing to provide information and materials regarding asbestos trust claims that they have commenced.

(F) It is in the interest of justice that there be transparency for claims made in the bankruptcy system and for claims made in civil asbestos litigation.

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

(H) New asbestos trusts continue to be formed. The 2011 report prepared by the United States Government Accountability Office estimated that current trusts control more than approximately thirty-six billion dollars in assets. As a consequence, it is critical to the interests of justice and to the economy of the state of Ohio that the distribution of these assets be made in a manner that incorporates full and consistent disclosure when recovery is sought through an asbestos tort action in Ohio against solvent companies or through a trust claim against a bankrupt entity. All relevant asbestos exposure information should be made available in a timely manner so that solvent companies do not unnecessarily absorb the liabilities of bankrupt trust entities that are not subject to tort actions. Transparency will help ensure that all responsible parties are allocated an equitable share of any liability and will encourage injured persons to promptly seek an appropriate recovery from all appropriate sources.

(I) The General Assembly has established apportionment of liability as a public policy as codified in section 2307.22 of the Revised Code and recognizes that defendants in an asbestos tort action have a substantive right to apportion damages among all potential wrongdoers. Pursuant to Ohio apportionment of liability law, bankrupt entities are currently assigned a proportion of liability by the trier of fact. As a consequence, this act furthers this existing public policy of the State of Ohio and defines and regulates a substantive right by ensuring that asbestos tort actions are resolved among all potential parties and trusts on the basis of all available evidence and on the full merits. With the advent of an increasing number of significant asbestos trusts, it is apparent that asbestos trusts and the claimants asserting claims against them will be primary sources of information and evidence that will ensure that Ohio's public policy of apportionment of liability and of civil trials based upon all available evidence will be protected and promoted.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 380

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____