

As Reported by the Senate Judiciary Committee

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Sub. H. B. No. 380

Representative Blessing

**Cosponsors: Representatives Slaby, Hackett, McGregor, Adams, J., Amstutz,
Buchy, Wachtmann Speaker Batchelder**

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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 representative 27
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) "Noncancer" 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

Sec. 2307.952. (A)(1)(a) Within thirty days after the 49
commencement of discovery in an asbestos tort action that is not 50
otherwise barred or deferred under applicable law or within thirty 51
days of the effective date of this section with respect to an 52
asbestos tort action that is pending on that effective date and in 53
which discovery has commenced, a claimant shall provide to all of 54
the parties in the action a sworn statement by the claimant, under 55
penalty of perjury, identifying all existing asbestos trust claims 56
made by or on behalf of the claimant and all trust claims material 57
pertaining to each identified asbestos trust claim. The sworn 58
statement shall disclose the date on which each asbestos trust 59
claim against the relevant asbestos trust was made and whether any 60
request for a deferral, delay, suspension, or tolling of the 61
asbestos trust claims process has been submitted. 62

(b) The submission of the sworn statement under division 63
(A)(1)(a) of this section shall be in addition to any disclosure 64
requirements otherwise imposed by law, civil rule, court order or 65
ruling, applicable agreement or stipulation, local rule, or case 66
management order. 67

(2) If the claimant, subsequent to the submission of the 68
sworn statement under division (A)(1)(a) of this section, files 69
with or submits to any asbestos trust additional asbestos trust 70
claims not previously disclosed, the claimant shall provide to all 71
of the parties in the asbestos tort action an amendment updating 72
the sworn statement and identifying the additional asbestos trust 73
claims. The claimant shall provide any amendment under division 74
(A)(2) of this section within thirty days of filing an additional 75
asbestos trust claim with, or submitting an additional asbestos 76
trust claim to, any asbestos trust. 77

(3) With respect to any asbestos trust claim that a claimant 78
discloses under division (A)(2) of this section in an amendment to 79

the sworn statement, the claimant shall provide to all of the 80
parties in the asbestos tort action all trust claims material 81
pertaining to each additional asbestos trust claim identified in 82
that amendment. The claimant shall provide the trust claims 83
materials under division (A)(3) of this section within thirty days 84
of filing or submitting each additional asbestos trust claim. 85

(B) Failure to provide to all of the parties in the asbestos 86
tort action all trust claims material as required by this section 87
in a timely manner shall constitute grounds for the court to 88
decline to assign an initial trial date or extend the date set for 89
trial in the action. 90

(C) Nothing in this section prevents a court of competent 91
jurisdiction from requiring any disclosures in addition to the 92
disclosures required under this section. 93

Sec. 2307.953. (A) Not less than seventy-five days prior to 94
the commencement of trial, any defendant in an asbestos tort 95
action may file a motion with the court, with notice to the 96
claimant and to all of the parties in the action, for an order to 97
stay the proceedings. A defendant's motion to stay the proceedings 98
shall set forth credible evidence that demonstrates all of the 99
following: 100

(1) The identities of all asbestos trusts not previously 101
disclosed by the claimant pursuant to section 2307.952 of the 102
Revised Code against which the claimant has not made any asbestos 103
trust claims but against which the defendant in good faith 104
believes the claimant may make a successful asbestos trust claim; 105

(2) The information that the defendant believes supports the 106
additional asbestos trust claims described in division (A)(1) of 107
this section; 108

(3) A description of the information sufficient to meet the 109

asbestos trust claim requirements of the asbestos trusts described 110
in division (A)(1) of this section. 111

(B) Notwithstanding any other provision in this section, if 112
the claimant produces additional asbestos exposure information 113
that supports the filing of an additional asbestos trust claim, 114
the defendant may file a motion to stay the proceedings under 115
division (A) of this section within seven days of receiving the 116
additional asbestos exposure information. 117

(C)(1) Within fourteen days after the filing of the 118
defendant's motion for an order to stay the proceedings under 119
division (A) of this section, the claimant may do either of the 120
following: 121

(a) File the asbestos trust claims with or submit them to the 122
asbestos trusts identified in the defendant's motion for an order 123
to stay the proceedings. The submission to the court and to all of 124
the parties in the asbestos tort action of proof demonstrating 125
that the asbestos trust claims identified in the defendant's 126
motion to stay the proceedings have been filed with or submitted 127
to the appropriate asbestos trusts is dispositive of the 128
defendant's motion for an order to stay the proceedings. 129
Alternatively, the defendant may withdraw the motion brought under 130
division (A) of this section. 131

(b) File with the court a response to the defendant's motion 132
for an order to stay the proceedings requesting a determination by 133
the court that the information supporting the asbestos trust 134
claims against the asbestos trusts identified in the defendant's 135
motion for an order to stay the proceedings should be modified 136
prior to the filing of an asbestos trust claim with, or the 137
submission of an asbestos trust claim to, an asbestos trust or 138
that there is insufficient information to file or submit the 139
asbestos trust claim identified in the defendant's motion for an 140
order to stay the proceedings. 141

(c) File with the court a response to the defendant's motion 142
for an order to stay the proceedings requesting a determination by 143
the court that the claimant's or attorney's fees and expenses to 144
prepare the asbestos claim form and file or submit the asbestos 145
trust claim identified in the defendant's motion for an order to 146
stay the proceedings exceed the claimant's reasonably anticipated 147
recovery from the asbestos trust claim. 148

(2) A submission by the claimant under division (C)(1)(b) or 149
(c) of this section does not constitute a waiver of the 150
attorney-client privilege or work product privilege. 151

(D)(1) If the defendant has met its burden under division (A) 152
of this section and if the claimant files a response pursuant to 153
division (C)(1)(b) of this section, the court shall determine by a 154
preponderance of the evidence if a successful asbestos trust claim 155
could be submitted in good faith to each asbestos trust identified 156
in the defendant's motion for an order to stay the proceedings 157
brought under division (A) of this section. The claimant has the 158
burden of proof, by a preponderance of the evidence, to 159
demonstrate that the information set forth by the defendant 160
pursuant to divisions (A)(2) and (3) of this section should be 161
modified prior to the filing of an asbestos trust claim with, or 162
the submission of an asbestos trust claim to, each asbestos trust 163
identified in the defendant's motion or that the asbestos trust 164
claim should not be filed with or submitted to the asbestos trust 165
because a successful asbestos trust claim cannot be made in good 166
faith. 167

(2) If the defendant files a motion to stay the proceedings 168
and if the claimant files a response pursuant to division 169
(C)(1)(c) of this section, the court shall determine if the 170
claimant's or attorney's fees and expenses to prepare the asbestos 171
claim form and file or submit the asbestos trust claim identified 172
in the defendant's motion for an order to stay the proceedings 173

exceed the claimant's reasonably anticipated recovery from the 174
asbestos trust claim. If the court determines that the claimant's 175
or attorney's fees and expenses exceed the claimant's reasonably 176
anticipated recovery from the asbestos trust claim, the court 177
shall require the claimant to file with the court a verified 178
statement of the claimant's exposure history to the asbestos 179
products covered by that asbestos trust. 180

(E) If the court determines that there is a good faith basis 181
for filing an asbestos trust claim with, or submitting an asbestos 182
trust claim to, an asbestos trust identified in the defendant's 183
motion for an order to stay the proceedings brought under division 184
(A) of this section, the court shall stay the proceedings until 185
the claimant files the asbestos trust claims with or submits them 186
to the asbestos trusts identified in the defendant's motion for an 187
order to stay the proceedings and has otherwise met the 188
obligations set forth in this section and section 2307.952 of the 189
Revised Code. 190

Sec. 2307.954. (A) A noncancer asbestos trust claim and a 191
cancer asbestos trust claim are based on distinct injuries caused 192
by a person's exposure to asbestos. A noncancer asbestos trust 193
claim that is subject to disclosure under section 2307.952 or 194
2307.953 of the Revised Code or is identified in this section 195
means the noncancer asbestos claim that is the subject of the 196
asbestos tort action in which the defendant seeks discovery 197
pursuant to sections 2307.951 to 2307.954 of the Revised Code. If 198
a claimant previously filed a noncancer asbestos trust claim with, 199
or submitted a noncancer asbestos trust claim to, an asbestos 200
trust and subsequently filed an asbestos tort action based on a 201
cancer asbestos claim, a cancer asbestos trust claim that is 202
subject to disclosure under section 2307.952 or 2307.953 of the 203
Revised Code or is identified in this section means both the 204
earlier filed noncancer asbestos trust claim and the cancer 205

asbestos claim that is the subject of the subsequent asbestos tort 206
action. 207

(B) Asbestos trust claims and the information that is the 208
subject of disclosure under section 2307.952 or 2307.953 of the 209
Revised Code are presumed to be authentic, relevant to, and 210
discoverable in an asbestos tort action. Notwithstanding any 211
agreement or confidentiality provision, trust claims material are 212
presumed to not be privileged. The parties in the asbestos tort 213
action may introduce at trial any trust claims material to prove 214
alternative causation for the exposed person's claimed injury, 215
death, or loss to person, to prove a basis to allocate 216
responsibility for the claimant's claimed injury, death, or loss 217
to person, and to prove issues relevant to an adjudication of the 218
asbestos claim, unless the exclusion of the trust claims material 219
is otherwise required by the rules of evidence. 220

(C) In addition to the disclosure requirements set forth in 221
sections 2307.952 and 2307.953 of the Revised Code, the parties to 222
the asbestos tort action may seek additional disclosure and 223
discovery of information relevant to the action by any mechanism 224
provided by any applicable section of the Revised Code, the Rules 225
of Civil Procedure, any local rule, or any case management order. 226
In addition to the disclosure described in this division, any 227
defendant in the asbestos tort action also may seek discovery of 228
the claimant's asbestos trust claims directly from the asbestos 229
trusts involved. 230

(D) In an asbestos tort action, upon the filing by a 231
defendant or judgment debtor of an appropriate motion seeking 232
sanctions or other relief, the court may impose any sanction 233
provided by a law of this state, including, but not limited to, 234
vacating a judgment rendered in an asbestos tort action for a 235
claimant's failure to comply with the disclosure requirements of 236
this section and sections 2307.952 and 2307.953 of the Revised 237

Code. 238

(E)(1) If subsequent to obtaining a judgment in an asbestos 239
tort action in this state a claimant files any additional asbestos 240
trust claim with, or submits any additional asbestos trust claim 241
to, an asbestos trust that was in existence at the time the 242
claimant obtained that judgment, the trial court, upon the filing 243
by a defendant or judgment debtor of an appropriate motion seeking 244
sanctions or other relief, has jurisdiction to reopen its judgment 245
in the asbestos tort action and do either of the following: 246

(a) Adjust the judgment by the amount of any subsequent 247
asbestos trust payments obtained by the claimant; 248

(b) Order any other relief to the parties that the court 249
considers just and proper. 250

(2) As used in division (E) of this section, "asbestos trust" 251
means and encompasses all trust entities, claims agents, or claims 252
processing facilities that are created pursuant to the 253
jurisdiction of a United States bankruptcy court and section 254
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 255
U.S.C. 524(g), or other applicable provision of law and that are 256
formed for the purpose of compensating claimants asserting 257
eligible asbestos claims. 258

(F) A defendant or judgment debtor shall file any motion 259
under this section within a reasonable time and not more than one 260
year after the judgment was entered or taken. 261

Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 262
as enacted by this act, apply to asbestos tort actions filed on or 263
after the effective date of this act and to pending asbestos tort 264
actions in which trial has not commenced as of the effective date 265
of this act. 266

As used in this section, "asbestos tort action" has the same 267

meaning as in section 2307.951 of the Revised Code, as enacted by 268
this act. 269

Section 3. (A) If any provision that constitutes the whole or 270
part of a section of the Revised Code enacted by this act or if 271
any application of any provision that constitutes the whole or 272
part of a section of the Revised Code enacted by this act is held 273
invalid, the invalidity does not affect other provisions of the 274
section or applications of other provisions of the section that 275
can be given effect without the invalid provision or application. 276
To this end, the provisions that constitute the whole or part of 277
the sections of the Revised Code enacted by this act and their 278
applications are independent and severable. 279

(B) If any provision that constitutes the whole or part of a 280
section of the Revised Code enacted by this act or if any 281
application of any provision that constitutes the whole or part of 282
a section of the Revised Code enacted by this act is held to be 283
preempted by federal law, the preemption does not affect other 284
provisions of the section or applications of other provisions of 285
the section that can be given effect without the preempted 286
provision or application. To this end, the provisions that 287
constitute the whole or part of the sections of the Revised Code 288
enacted by this act and their applications are independent and 289
severable. 290

Section 4. The General Assembly makes the following 291
statements of findings and intent: 292

(A) The United States Supreme Court in *Amchem Products, Inc.* 293
v. Windsor (1997), 521 U.S. 591 has described asbestos litigation 294
in this country as a crisis. 295

(B) To date, approximately one hundred employers have 296
declared bankruptcy at least partially due to asbestos-related 297
liability, as found in a 2011 report by the United States 298

Government Accountability Office.	299
(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.	300 301 302 303 304 305
(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.	306 307 308 309
(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.	310 311 312 313 314
(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.	315 316 317
(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.	318 319 320
(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	321 322 323 324 325 326 327 328 329

a bankrupt entity. All relevant asbestos exposure information 330
should be made available in a timely manner so that solvent 331
companies do not unnecessarily absorb the liabilities of bankrupt 332
trust entities that are not subject to tort actions. Transparency 333
will help ensure that all responsible parties are allocated an 334
equitable share of any liability and will encourage injured 335
persons to promptly seek an appropriate recovery from all 336
appropriate sources. 337

(I) The General Assembly has established apportionment of 338
liability as a public policy as codified in section 2307.22 of the 339
Revised Code and recognizes that defendants in an asbestos tort 340
action have a substantive right to apportion damages among all 341
potential wrongdoers. Pursuant to Ohio apportionment of liability 342
law, bankrupt entities are currently assigned a proportion of 343
liability by the trier of fact. As a consequence, this act 344
furtheres this existing public policy of the State of Ohio and 345
defines and regulates a substantive right by ensuring that 346
asbestos tort actions are resolved among all potential parties and 347
trusts on the basis of all available evidence and on the full 348
merits. With the advent of an increasing number of significant 349
asbestos trusts, it is apparent that asbestos trusts and the 350
claimants asserting claims against them will be primary sources of 351
information and evidence that will ensure that Ohio's public 352
policy of apportionment of liability and of civil trials based 353
upon all available evidence will be protected and promoted. 354

(K) It is the intent of the General Assembly that this act 355
apply to claims made against any currently operating asbestos 356
trusts and to any asbestos trusts created on and after the 357
effective date of this act. 358