

As Introduced

129th General Assembly
Regular Session
2011-2012

H. B. No. 380

Representative Blessing

Cosponsors: Representatives Slaby, Hackett, McGregor, Adams, J.

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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

(K) "Trust governance documents" means and encompasses all documents that are 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 after filing the complaint or other initial pleading 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, 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 80
claims. The claimant shall provide any amendment under division 81
(A)(2) of this section within thirty days of filing an additional 82
asbestos trust claim with, or submitting an additional asbestos 83
trust claim to, any asbestos trust. 84

(3) With respect to any asbestos trust claim that a claimant 85
discloses 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 of the parties in the asbestos 93
tort action all trust claims material as required by this section 94
in a timely manner shall constitute grounds for the court to 95
decline to assign an initial trial date or extend the date set for 96
trial in the action. 97

(C) Nothing in this section prevents a court of competent 98
jurisdiction from requiring any disclosures in addition to the 99
disclosures required under this section. 100

Sec. 2307.953. (A) Any defendant in an asbestos tort action 101
may file a motion with the court, with notice to the claimant and 102
to all of the parties in the action, for an order to stay the 103
proceedings. A defendant's motion to stay the proceedings shall 104
set forth credible evidence that demonstrates all of the 105
following: 106

(1) The identities of all asbestos trusts not previously 107
disclosed by the claimant pursuant to section 2307.952 of the 108
Revised Code against which the claimant has not made any asbestos 109
trust claims but against which the defendant in good faith 110

believes the claimant may make a successful asbestos trust claim; 111

(2) The information that the defendant believes supports the 112
additional asbestos trust claims described in division (A)(1) of 113
this section; 114

(3) A description of the information sufficient to meet the 115
asbestos trust claim requirements of the asbestos trusts described 116
in division (A)(1) of this section. 117

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

(1) File the asbestos trust claims with or submit them to the 121
asbestos trusts identified in the defendant's motion for an order 122
to stay the proceedings. The submission to the court and to all of 123
the parties in the asbestos tort action of proof demonstrating 124
that the asbestos trust claims identified in the defendant's 125
motion to stay the proceedings have been filed with or submitted 126
to the appropriate asbestos trusts is dispositive of the 127
defendant's motion for an order to stay the proceedings. 128
Alternatively, the defendant may withdraw the motion brought under 129
division (A) of this section. 130

(2) File with the court a response to the defendant's motion 131
for an order to stay the proceedings requesting a determination by 132
the court that the information supporting the asbestos trust 133
claims against the asbestos trusts identified in the defendant's 134
motion for an order to stay the proceedings should be modified 135
prior to the filing of an asbestos trust claim with, or the 136
submission of an asbestos trust claim to, an asbestos trust or 137
that there is insufficient information to file or submit the 138
asbestos trust claim identified in the defendant's motion for an 139
order to stay the proceedings. 140

(C) If the defendant has not met its burden under division 141

(A) of this section and if the claimant files a response pursuant 142
to division (B)(2) of this section, the court shall determine if a 143
successful asbestos trust claim could be submitted in good faith 144
to each asbestos trust identified in the defendant's motion for an 145
order to stay the proceedings brought under division (A) of this 146
section. The claimant has the burden of proof, by a preponderance 147
of the evidence, to demonstrate that the information set forth by 148
the defendant pursuant to divisions (A)(2) and (3) of this section 149
should be modified prior to the filing of an asbestos trust claim 150
with, or the submission of an asbestos trust claim to, each 151
asbestos trust identified in the defendant's motion or that the 152
asbestos trust claim should not be filed with or submitted to the 153
asbestos trust because a successful asbestos trust claim cannot be 154
made in good faith. 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 under division 159
(A) of this section, the court shall stay the proceedings until 160
the claimant files the asbestos trust claims with or submits them 161
to the asbestos trusts identified in the defendant's motion for an 162
order to stay the proceedings and has otherwise met the 163
obligations set forth in this section and section 2307.952 of the 164
Revised Code. 165

Sec. 2307.954. (A) A noncancer 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 noncancer 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 noncancer asbestos claim that is the subject of the 171
asbestos tort action in which the defendant seeks discovery 172
pursuant to sections 2307.951 to 2307.954 of the Revised Code. If 173

a claimant previously filed a noncancer asbestos trust claim with, 174
or submitted a noncancer 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 section 2307.952 or 2307.953 of the 178
Revised Code or is identified in this section means both the 179
earlier filed noncancer 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 section 2307.952 or 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. An asbestos trust 195
claim rejected by an asbestos trust may be excluded as evidence if 196
the exclusion is required by the rules of 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 by any applicable section of the Revised Code, the Rules 202
of Civil Procedure, any local rule, or any case management order. 203
In addition to the disclosure described in this division, any 204
defendant in the asbestos tort action also may seek discovery of 205

the claimant's asbestos trust claims directly from the asbestos trusts involved. 206
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(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. 208
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(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: 216
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(a) Adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the claimant; 224
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(b) Order any other relief to the parties that the court considers just and proper. 226
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(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. 228
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Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 236
as enacted by this act, apply to asbestos tort actions filed on or 237
after the effective date of this act and to pending asbestos tort 238
actions in which trial has not commenced as of the effective date 239
of this act. 240

As used in this section, "asbestos tort action" has the same 241
meaning as in section 2307.951 of the Revised Code, as enacted by 242
this act. 243

Section 3. (A) If any provision that constitutes the whole or 244
part of a section of the Revised Code enacted by this act or if 245
any application of any provision that constitutes the whole or 246
part of a section of the Revised Code enacted by this act is held 247
invalid, the invalidity does not affect other provisions of the 248
section or applications of other provisions of the section that 249
can be given effect without the invalid provision or application. 250
To this end, the provisions that constitute the whole or part of 251
the sections of the Revised Code enacted by this act and their 252
applications are independent and severable. 253

(B) If any provision that constitutes the whole or part of a 254
section of the Revised Code enacted by this act or if any 255
application of any provision that constitutes the whole or part of 256
a section of the Revised Code enacted by this act is held to be 257
preempted by federal law, the preemption does not affect other 258
provisions of the section or applications of other provisions of 259
the section that can be given effect without the preempted 260
provision or application. To this end, the provisions that 261
constitute the whole or part of the sections of the Revised Code 262
enacted by this act and their applications are independent and 263
severable. 264

Section 4. The General Assembly makes the following 265

statements of findings and intent:	266
(A) The United States Supreme Court has described asbestos litigation in this country as a crisis.	267 268
(B) Asbestos litigation has forced an estimated eighty-five employers into bankruptcy. The rate of asbestos-driven bankruptcies has accelerated in recent years. Between 2000 and 2007, there were more asbestos-related bankruptcy filings than in either of the prior two decades.	269 270 271 272 273
(C) Personal injury lawyers have responded to these bankruptcies by expanding their search for solvent defendants. 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.	274 275 276 277 278 279
(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.	280 281 282 283
(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. This lack of transparency creates a strong potential for abuse of the judicial process, as plaintiffs may allege facts intended to maximize recoveries from trusts created through the bankruptcy system while also alleging different or conflicting facts to maximize recoveries from tort system defendants.	284 285 286 287 288 289 290 291 292 293
(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. Transparency will	294 295 296

address the potential for abuse, fraud, and duplicate and 297
inconsistent payments. 298

(G) Presentation of abusive, fraudulent, or inconsistent 299
claims undermines the integrity of Ohio's judicial system. 300

(H) The current lack of transparency in the tort system may 301
result in businesses in this state being unfairly penalized and 302
deprived of their rights. 303

(I) New asbestos trusts are being formed and are anticipated 304
to be funded with approximately thirty billion dollars in assets. 305
As a consequence, it is critical to the interests of justice and 306
to the economy of the state of Ohio that the distribution of these 307
assets be made in a manner that incorporates full and consistent 308
disclosure when recovery is sought through an asbestos tort action 309
in Ohio against solvent companies or through a trust claim against 310
a bankrupt entity. All relevant asbestos exposure information 311
should be made available in a timely manner so that solvent 312
companies do not unnecessarily absorb the liabilities of bankrupt 313
trust entities that are not subject to tort actions. Transparency 314
will help ensure that all responsible parties are allocated an 315
equitable share of any liability and will encourage injured 316
persons to promptly seek an appropriate recovery from all 317
appropriate sources. 318

(J) The General Assembly has established apportionment of 319
liability as a public policy. Pursuant to Ohio apportionment of 320
liability law, bankrupt entities are currently assigned a 321
proportion of liability by the trier of fact. As a consequence, 322
this act furthers this existing public policy of the State of Ohio 323
by ensuring that asbestos tort actions are resolved on the basis 324
of all available evidence and on the full merits. With the advent 325
of an increasing number of significant asbestos trusts, it is 326
apparent that asbestos trusts and the claimants asserting claims 327
against them will be primary sources of information and evidence 328

that will ensure that Ohio's public policy of apportionment of 329
liability and of civil trials based upon all available evidence 330
will be protected and promoted. 331

(K) It is the intent of the General Assembly that this act 332
apply to claims made against any currently operating asbestos 333
trusts and to any asbestos trusts created on and after the 334
effective date of this act. 335