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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

Sec. 2307.952. (A)(1)(a) Within thirty days after filing the 49
complaint or other initial pleading in an asbestos tort action 50
that is not otherwise barred or deferred under applicable law or 51
within thirty days of the effective date of this section with 52
respect to asbestos tort actions that are pending on that 53
effective date, a claimant shall provide to all of the parties in 54
the action a sworn statement by the claimant, under penalty of 55
perjury, identifying all existing asbestos trust claims made by or 56
on behalf of the claimant and all trust claims material pertaining 57
to each identified asbestos trust claim. The sworn statement shall 58
disclose the date on which each asbestos trust claim against the 59
relevant asbestos trust was made and whether any request for a 60
deferral, delay, suspension, or tolling of the asbestos trust 61
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) Any defendant in an asbestos tort action 94
may file a motion with the court, with notice to the claimant and 95
to all of the parties in the action, for an order to stay the 96
proceedings. A defendant's motion to stay the proceedings shall 97
set forth credible evidence that demonstrates all of the 98
following: 99

(1) The identities of all asbestos trusts not previously 100
disclosed by the claimant pursuant to section 2307.952 of the 101
Revised Code against which the claimant has not made any asbestos 102
trust claims but against which the defendant in good faith 103
believes the claimant may make a successful asbestos trust claim; 104

(2) The information that the defendant believes supports the 105
additional asbestos trust claims described in division (A)(1) of 106
this section; 107

(3) A description of the information sufficient to meet the 108
asbestos trust claim requirements of the asbestos trusts described 109

in division (A)(1) of this section. 110

(B) Within fourteen days after the filing of the defendant's 111
motion for an order to stay the proceedings under division (A) of 112
this section, the claimant may do either of the following: 113

(1) File the asbestos trust claims with or submit them to the 114
asbestos trusts identified in the defendant's motion for an order 115
to stay the proceedings. The submission to the court and to all of 116
the parties in the asbestos tort action of proof demonstrating 117
that the asbestos trust claims identified in the defendant's 118
motion to stay the proceedings have been filed with or submitted 119
to the appropriate asbestos trusts is dispositive of the 120
defendant's motion for an order to stay the proceedings. 121
Alternatively, the defendant may withdraw the motion brought under 122
division (A) of this section. 123

(2) File with the court a response to the defendant's motion 124
for an order to stay the proceedings requesting a determination by 125
the court that the information supporting the asbestos trust 126
claims against the asbestos trusts identified in the defendant's 127
motion for an order to stay the proceedings should be modified 128
prior to the filing of an asbestos trust claim with, or the 129
submission of an asbestos trust claim to, an asbestos trust or 130
that there is insufficient information to file or submit the 131
asbestos trust claim identified in the defendant's motion for an 132
order to stay the proceedings. 133

(C) If the defendant has not met its burden under division 134
(A) of this section and if the claimant files a response pursuant 135
to division (B)(2) of this section, the court shall determine if a 136
successful asbestos trust claim could be submitted in good faith 137
to each asbestos trust identified in the defendant's motion for an 138
order to stay the proceedings brought under division (A) of this 139
section. The claimant has the burden of proof, by a preponderance 140
of the evidence, to demonstrate that the information set forth by 141

the defendant pursuant to divisions (A)(2) and (3) of this section 142
should be modified prior to the filing of an asbestos trust claim 143
with, or the submission of an asbestos trust claim to, each 144
asbestos trust identified in the defendant's motion or that the 145
asbestos trust claim should not be filed with or submitted to the 146
asbestos trust because a successful asbestos trust claim cannot be 147
made in good faith. 148

(D) If the court determines that there is a good faith basis 149
for filing an asbestos trust claim with, or submitting an asbestos 150
trust claim to, an asbestos trust identified in the defendant's 151
motion for an order to stay the proceedings brought under division 152
(A) of this section, the court shall stay the proceedings until 153
the claimant files the asbestos trust claims with or submits them 154
to the asbestos trusts identified in the defendant's motion for an 155
order to stay the proceedings and has otherwise met the 156
obligations set forth in this section and section 2307.952 of the 157
Revised Code. 158

Sec. 2307.954. (A) A noncancer asbestos trust claim and a 159
cancer asbestos trust claim are based on distinct injuries caused 160
by a person's exposure to asbestos. A noncancer asbestos trust 161
claim that is subject to disclosure under section 2307.952 or 162
2307.953 of the Revised Code or is identified in this section 163
means the noncancer asbestos claim that is the subject of the 164
asbestos tort action in which the defendant seeks discovery 165
pursuant to sections 2307.951 to 2307.954 of the Revised Code. If 166
a claimant previously filed a noncancer asbestos trust claim with, 167
or submitted a noncancer asbestos trust claim to, an asbestos 168
trust and subsequently filed an asbestos tort action based on a 169
cancer asbestos claim, a cancer asbestos trust claim that is 170
subject to disclosure under section 2307.952 or 2307.953 of the 171
Revised Code or is identified in this section means both the 172
earlier filed noncancer asbestos trust claim and the cancer 173

asbestos claim that is the subject of the subsequent asbestos tort 174
action. 175

(B) Asbestos trust claims and the information that is the 176
subject of disclosure under section 2307.952 or 2307.953 of the 177
Revised Code are presumed to be authentic, relevant to, and 178
discoverable in an asbestos tort action. Notwithstanding any 179
agreement or confidentiality provision, trust claims material are 180
presumed to not be privileged. The parties in the asbestos tort 181
action may introduce at trial any trust claims material to prove 182
alternative causation for the exposed person's claimed injury, 183
death, or loss to person, to prove a basis to allocate 184
responsibility for the claimant's claimed injury, death, or loss 185
to person, and to prove issues relevant to an adjudication of the 186
asbestos claim, unless the exclusion of the trust claims material 187
is otherwise required by the rules of evidence. An asbestos trust 188
claim rejected by an asbestos trust may be excluded as evidence if 189
the exclusion is required by the rules of evidence. 190

(C) In addition to the disclosure requirements set forth in 191
sections 2307.952 and 2307.953 of the Revised Code, the parties to 192
the asbestos tort action may seek additional disclosure and 193
discovery of information relevant to the action by any mechanism 194
provided by any applicable section of the Revised Code, the Rules 195
of Civil Procedure, any local rule, or any case management order. 196
In addition to the disclosure described in this division, any 197
defendant in the asbestos tort action also may seek discovery of 198
the claimant's asbestos trust claims directly from the asbestos 199
trusts involved. 200

(D) In an asbestos tort action, upon the filing by a 201
defendant or judgment debtor of an appropriate motion seeking 202
sanctions or other relief, the court may impose any sanction 203
provided by a law of this state, including, but not limited to, 204
vacating a judgment rendered in an asbestos tort action for a 205

claimant's failure to comply with the disclosure requirements of 206
this section and sections 2307.952 and 2307.953 of the Revised 207
Code. 208

(E)(1) If subsequent to obtaining a judgment in an asbestos 209
tort action in this state a claimant files any additional asbestos 210
trust claim with, or submits any additional asbestos trust claim 211
to, an asbestos trust that was in existence at the time the 212
claimant obtained that judgment, the trial court, upon the filing 213
by a defendant or judgment debtor of an appropriate motion seeking 214
sanctions or other relief, has jurisdiction to reopen its judgment 215
in the asbestos tort action and do either of the following: 216

(a) Adjust the judgment by the amount of any subsequent 217
asbestos trust payments obtained by the claimant; 218

(b) Order any other relief to the parties that the court 219
considers just and proper. 220

(2) As used in division (E) of this section, "asbestos trust" 221
means and encompasses all trust entities, claims agents, or claims 222
processing facilities that are created pursuant to the 223
jurisdiction of a United States bankruptcy court and section 224
524(g) of Chapter 11 of the United States Bankruptcy Code, 11 225
U.S.C. 524(g), or other applicable provision of law and that are 226
formed for the purpose of compensating claimants asserting 227
eligible asbestos claims. 228

Section 2. Sections 2307.951 to 2307.954 of the Revised Code, 229
as enacted by this act, apply to asbestos tort actions filed on or 230
after the effective date of this act and to pending asbestos tort 231
actions in which trial has not commenced as of the effective date 232
of this act. 233

As used in this section, "asbestos tort action" has the same 234
meaning as in section 2307.951 of the Revised Code, as enacted by 235

this act. 236

Section 3. (A) If any provision that constitutes the whole or 237
part of a section of the Revised Code enacted by this act or if 238
any application of any provision that constitutes the whole or 239
part of a section of the Revised Code enacted by this act is held 240
invalid, the invalidity does not affect other provisions of the 241
section or applications of other provisions of the section that 242
can be given effect without the invalid provision or application. 243
To this end, the provisions that constitute the whole or part of 244
the sections of the Revised Code enacted by this act and their 245
applications are independent and severable. 246

(B) If any provision that constitutes the whole or part of a 247
section of the Revised Code enacted by this act or if any 248
application of any provision that constitutes the whole or part of 249
a section of the Revised Code enacted by this act is held to be 250
preempted by federal law, the preemption does not affect other 251
provisions of the section or applications of other provisions of 252
the section that can be given effect without the preempted 253
provision or application. To this end, the provisions that 254
constitute the whole or part of the sections of the Revised Code 255
enacted by this act and their applications are independent and 256
severable. 257

Section 4. The General Assembly makes the following 258
statements of findings and intent: 259

(A) The United States Supreme Court has described asbestos 260
litigation in this country as a crisis. 261

(B) Asbestos litigation has forced an estimated eighty-five 262
employers into bankruptcy. The rate of asbestos-driven 263
bankruptcies has accelerated in recent years. Between 2000 and 264
2007, there were more asbestos-related bankruptcy filings than in 265
either of the prior two decades. 266

(C) Personal injury lawyers have responded to these 267
bankruptcies by expanding their search for solvent defendants. The 268
number of asbestos defendants now includes over eight thousand 269
five hundred companies, including many small- and medium-sized 270
companies, in industries that cover eighty-five per cent of the 271
United States economy. 272

(D) Asbestos claimants often seek compensation for alleged 273
asbestos-related conditions from civil defendants that remain 274
solvent in civil court tort actions and from trusts or claims 275
facilities formed in asbestos bankruptcy proceedings. 276

(E) There is limited coordination and transparency between 277
these two paths to recovery. Ohio courts have already experienced 278
the problem of instances of claimants failing to provide 279
information and materials regarding asbestos trust claims that 280
they have commenced. This lack of transparency creates a strong 281
potential for abuse of the judicial process, as plaintiffs may 282
allege facts intended to maximize recoveries from trusts created 283
through the bankruptcy system while also alleging different or 284
conflicting facts to maximize recoveries from tort system 285
defendants. 286

(F) It is in the interest of justice that there be 287
transparency for claims made in the bankruptcy system and for 288
claims made in civil asbestos litigation. Transparency will 289
address the potential for abuse, fraud, and duplicate and 290
inconsistent payments. 291

(G) Presentation of abusive, fraudulent, or inconsistent 292
claims undermines the integrity of Ohio's judicial system. 293

(H) The current lack of transparency in the tort system may 294
result in businesses in this state being unfairly penalized and 295
deprived of their rights. 296

(I) New asbestos trusts are being formed and are anticipated 297

to be funded with approximately thirty billion dollars in assets. 298
As a consequence, it is critical to the interests of justice and 299
to the economy of the state of Ohio that the distribution of these 300
assets be made in a manner that incorporates full and consistent 301
disclosure when recovery is sought through an asbestos tort action 302
in Ohio against solvent companies or through a trust claim against 303
a bankrupt entity. All relevant asbestos exposure information 304
should be made available in a timely manner so that solvent 305
companies do not unnecessarily absorb the liabilities of bankrupt 306
trust entities that are not subject to tort actions. Transparency 307
will help ensure that all responsible parties are allocated an 308
equitable share of any liability and will encourage injured 309
persons to promptly seek an appropriate recovery from all 310
appropriate sources. 311

(J) The General Assembly has established apportionment of 312
liability as a public policy. Pursuant to Ohio apportionment of 313
liability law, bankrupt entities are currently assigned a 314
proportion of liability by the trier of fact. As a consequence, 315
this act furthers this existing public policy of the State of Ohio 316
by ensuring that asbestos tort actions are resolved on the basis 317
of all available evidence and on the full merits. With the advent 318
of an increasing number of significant asbestos trusts, it is 319
apparent that asbestos trusts and the claimants asserting claims 320
against them will be primary sources of information and evidence 321
that will ensure that Ohio's public policy of apportionment of 322
liability and of civil trials based upon all available evidence 323
will be protected and promoted. 324

(K) It is the intent of the General Assembly that this act 325
apply to claims made against any currently operating asbestos 326
trusts and to any asbestos trusts created on and after the 327
effective date of this act. 328