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FLOOR AMENDMENT NO. _____

BY: Doug Miller

1 Amend C.S.H.B. No. 1492 (house committee printing) by
2 striking all below the enacting clause and substituting the
3 following:

4 SECTION 1. Chapter 90, Civil Practice and Remedies Code, is
5 amended by designating Sections 90.001 through 90.012 as Subchapter
6 A and adding a subchapter heading to read as follows:

7 SUBCHAPTER A. GENERAL PROVISIONS

8 SECTION 2. Section 90.010(d-1), Civil Practice and Remedies
9 Code, is amended to read as follows:

10 (d-1) Beginning on September 1, 2014, the MDL pretrial court
11 shall dismiss each action for an asbestos-related injury or a
12 silica-related injury that was pending on August 31, 2005, unless a
13 report was served on or after September 1, 2013, that complies with
14 Section 90.003, Section 90.004, or Subsection (f). The MDL pretrial
15 court shall provide for the dismissal of such actions in a case
16 management order entered for that purpose. All such actions shall
17 be dismissed on or before January [~~August~~] 31, 2016 [~~2015~~].

18 SECTION 3. Chapter 90, Civil Practice and Remedies Code, is
19 amended by adding Subchapter B to read as follows:

20 SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

21 Sec. 90.051. DEFINITIONS. In this subchapter:

22 (1) "Asbestos or silica trust" means a claims
23 facility, a claims agent, a qualified settlement fund, or any other
24 entity that:

25 (A) is created under 11 U.S.C. Section 524(g) or
26 another applicable law for the benefit of creditors of a bankrupt
27 person;

28 (B) is formed for the purpose of compensating
29 claimants for asbestos- or silica-related injuries; and

1 (C) is in existence on the date trial in an action
2 asserting an asbestos- or silica-related injury is set to commence.

3 (2) "Trust claim" means any filing with or claim
4 against an asbestos or silica trust seeking recovery of
5 compensation or damages for or arising from the asbestos- or
6 silica-related injury of an exposed person.

7 (3) "Trust claim material" means documentation filed
8 as part of or in connection with a trust claim, including:

9 (A) documentation that a claimant submits or
10 provides to an asbestos or silica trust for the purpose of
11 demonstrating asbestos or silica exposure, the existence of an
12 asbestos- or silica-related injury, or the validity of a trust
13 claim; and

14 (B) claim forms and other materials that an
15 asbestos or silica trust requires a claimant to submit.

16 Sec. 90.052. REQUIREMENT TO MAKE TRUST CLAIMS. (a) Except
17 as provided by Subsection (d), a claimant who has filed an action to
18 recover damages for or arising from an asbestos- or silica-related
19 injury shall make a trust claim against each asbestos or silica
20 trust the claimant believes may owe compensation or damages to the
21 claimant for the injury that is the basis of the claimant's action.

22 (b) A claimant must make each trust claim required under
23 this section not later than:

24 (1) the 150th day before the date trial in the action
25 is set to commence; or

26 (2) a date provided by court order if trial is set to
27 commence on or before January 31, 2016.

28 (c) A claimant may file a motion seeking relief from the
29 obligation to make a trust claim otherwise required by this section
30 if the claimant believes that the fees and expenses, including
31 attorney's fees, for filing the trust claim exceed the claimant's

1 reasonably anticipated recovery from the trust.

2 (d) If a claimant files a motion under Subsection (c), the
3 court shall determine whether the claimant's fees and expenses,
4 including attorney's fees, for making the trust claim exceed the
5 claimant's reasonably anticipated recovery from the trust. If the
6 court determines that the claimant's fees and expenses exceed the
7 claimant's reasonably anticipated recovery, the claimant is not
8 required to make the trust claim but shall provide the court with a
9 verified statement of the exposed person's exposure history to
10 asbestos or silica that is covered by the trust.

11 Sec. 90.053. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST
12 CLAIM MATERIAL. (a) A claimant in an action to recover damages for
13 or arising from an asbestos- or silica-related injury shall serve
14 on each party notice of, and trust claim material relating to, each
15 trust claim made by or on behalf of the exposed person. The notice
16 must:

17 (1) identify each trust claim made by or on behalf of
18 the exposed person;

19 (2) state the amount of any trust claim payment made to
20 compensate for the exposed person's injury; and

21 (3) state the date each trust claim was made and
22 whether a request for individual or enhanced review or for a
23 deferral, delay, suspension, or tolling of the claim has been
24 submitted to the trust.

25 (b) The claimant shall serve the notice and trust claim
26 materials required by Subsection (a) not later than:

27 (1) the 120th day before the date trial in the action
28 is set to commence; or

29 (2) a date provided by court order if the court entered
30 an order under Section 90.052(b).

31 (c) The notice and trust claim materials required to be

1 served under Subsection (a) are in addition to any notice or
2 materials required to be served or produced under other law, rule,
3 order, or applicable agreement.

4 (d) If a claimant makes a trust claim after the date
5 provided by Section 90.052(b) but before the date that trial in the
6 action commences, the claimant shall serve the notice of, and trust
7 claim material relating to, the trust claim as required by
8 Subsection (a) reasonably promptly after making the trust claim,
9 but not later than the earlier of:

10 (1) the date that trial commences; or

11 (2) the 15th day after the date the additional trust
12 claim is made.

13 (e) If a claimant discovers that the notice or trust claim
14 materials provided by the claimant under this section were
15 incomplete or incorrect at the time the notice or trust claim
16 materials were served or that the notice or trust claim materials as
17 served are no longer complete and correct, the claimant shall
18 supplement the notice and the production of trust claim materials.
19 The claimant shall serve the supplemental notice or trust claim
20 materials reasonably promptly after the claimant discovers the
21 necessity for the supplementation, but not later than the 15th day
22 after the date the claimant discovers the necessity for the
23 supplementation.

24 (f) A claimant shall serve notice of, and trust claim
25 material relating to, a trust claim regardless of whether the claim
26 is for an injury resulting in cancer or an injury not resulting in
27 cancer.

28 Sec. 90.054. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE
29 AND TRUST CLAIM MATERIAL. (a) An MDL pretrial court may not remand
30 an action to a trial court and a trial court may not commence trial
31 in the action unless the claimant has:

1 (1) made each trust claim as required by this
2 subchapter; and

3 (2) served the notice of, and trust claim material
4 relating to, those trust claims in accordance with Section 90.053.

5 (b) If a claimant received compensation from an asbestos or
6 silica trust for an injury that also gave rise to a judgment against
7 a defendant for the same injury and the claimant failed to serve the
8 relevant notice and trust claim material as required by Section
9 90.053, the trial court, on a defendant's or judgment debtor's
10 motion and after reasonable notice to the parties, may impose an
11 appropriate sanction, including setting aside the judgment and
12 ordering a new trial.

13 (c) This section may not be construed to require payment of
14 a trust claim by an asbestos or silica trust before the MDL pretrial
15 court remands the action for trial or before a judgment is rendered
16 in the action.

17 Sec. 90.055. MOTION TO STAY. (a) A defendant may file a
18 motion requesting a stay of the proceedings under Section 90.057 on
19 or before the later of:

20 (1) the 60th day before the date trial in the action is
21 set to commence;

22 (2) the 15th day after the date the defendant first
23 obtains asbestos- or silica-exposure information that could
24 support an additional asbestos or silica trust claim by the
25 claimant; or

26 (3) a date provided by court order if the court entered
27 an order under Section 90.052(b).

28 (b) The motion described by Subsection (a) must include:

29 (1) a list of asbestos or silica trusts not disclosed
30 by the claimant against which the defendant in good faith believes
31 the claimant may make a successful trust claim; and

1 (2) information supporting the additional trust claim
2 described by Subdivision (1), including information that may be
3 used to meet the trust claim requirements of an asbestos or silica
4 trust described by Subdivision (1).

5 Sec. 90.056. RESPONSE TO MOTION TO STAY. (a) Not later
6 than the 14th day after the date the defendant files a motion to
7 stay under Section 90.055 or the date provided by court order under
8 Section 90.052(b), the claimant may file a response:

9 (1) stating and providing proof that the claimant has
10 made a trust claim identified in the defendant's motion and served
11 the notice of, and trust claim material relating to, the claim as
12 prescribed by Section 90.053; or

13 (2) requesting a determination by the court that the
14 fees and expenses, including attorney's fees, for filing a trust
15 claim identified in the motion exceed the claimant's reasonably
16 anticipated recovery from the trust.

17 (b) If the claimant files a response making a request under
18 Subsection (a)(2), the court shall determine whether the claimant's
19 fees and expenses, including attorney's fees, for making the
20 relevant trust claim exceed the claimant's reasonably anticipated
21 recovery from the trust. If the court determines that the
22 claimant's fees and expenses exceed the claimant's reasonably
23 anticipated recovery, the claimant is not required to make the
24 trust claim but shall provide the court with a verified statement of
25 the exposed person's exposure history to asbestos or silica that is
26 covered by the trust.

27 Sec. 90.057. STAY OF PROCEEDINGS. (a) The court shall grant
28 a motion to stay under Section 90.055 if the court determines the
29 motion was timely filed and the claimant is likely to receive
30 compensation from a trust identified by the motion. The stay shall
31 continue until the claimant provides proof that the claimant has

1 made the claim and served notice of, and trust claim material
2 relating to, the claim as prescribed by Section 90.053.

3 (b) The court may not stay the proceedings if, with respect
4 to each trust claim identified in the motion:

5 (1) the court determines that the claimant has
6 satisfied the requirements of Section 90.053(a); or

7 (2) the court makes a determination described by
8 Section 90.052(d) or 90.056(b).

9 Sec. 90.058. EVIDENCE OF TRUST CLAIMS. (a) Trust claim
10 material is presumed to be authentic, relevant, and discoverable in
11 an action to which this subchapter applies.

12 (b) Notwithstanding an agreement, including a
13 confidentiality agreement, trust claim material is presumed to not
14 be privileged in an action to which this subchapter applies.

15 (c) Except as provided by Subsection (d), a party may use
16 the trust claim material as proof of:

17 (1) exposure to an asbestos or silica product;

18 (2) an alternate source for the cause of the exposed
19 person's injury, death, or loss;

20 (3) a basis to allocate responsibility for the exposed
21 person's injury, death, or loss; or

22 (4) any other issue relevant to adjudication of a
23 claim asserted in the action.

24 (d) This section may not be construed to affect the
25 application of Section 33.003 to an action governed by this
26 chapter.

27 Sec. 90.059. MODIFICATION OF JUDGMENT BASED ON SUBSEQUENT
28 TRUST CLAIM PAYMENT. (a) On a non-settling defendant's or judgment
29 debtor's motion and after reasonable notice to the parties, the
30 court that rendered the judgment has jurisdiction to and shall:

31 (1) modify the judgment to reduce the amount of

1 damages to be recovered by the claimant by the dollar amount of a
2 trust claim payment made to the claimant after judgment was
3 rendered if the claimant:

4 (A) made a trust claim and failed to serve notice
5 of, and trust claim material relating to, that trust claim in
6 accordance with Section 90.053; or

7 (B) made a trust claim after failing to disclose
8 in response to an inquiry made in the action that the exposed person
9 was exposed to the product or site for which the trust claim payment
10 was made; and

11 (2) order other relief that the court considers just
12 and proper in connection with the payment.

13 (b) If, before judgment is rendered, the claimant makes a
14 trust claim and serves the notice of, and trust claim material
15 relating to, the trust claim as required by Section 90.053(a), the
16 court may not modify a judgment under this section for that trust
17 claim, but the court may enter an appropriate order under
18 Subsection (a)(2).

19 (c) A defendant or judgment debtor must file a motion under
20 this section not later than the 30th day after the date the
21 defendant or judgment debtor discovers that the claimant received a
22 payment from an asbestos or silica trust described by Subsection
23 (a), but not later than the third anniversary of the date the
24 judgment is signed.

25 (d) If a judgment is required to be modified under this
26 section, the court shall modify the judgment in a manner consistent
27 with this section and make other orders the court considers just and
28 proper on or before the 30th day after the date the motion is filed.

29 (e) A court has jurisdiction and authority to enforce a
30 judgment modified under this section to the same extent that the
31 court has jurisdiction and authority to enforce other judgments.

1 SECTION 4. Subchapter B, Chapter 90, Civil Practice and
2 Remedies Code, as added by this Act, applies to an action:

3 (1) commenced on or after the effective date of this
4 Act; or

5 (2) pending on the effective date of this Act.

6 SECTION 5. This Act takes effect September 1, 2015.