

## **BILL ANALYSIS**

Senate Research Center

H.B. 1492  
By: Miller, Doug et al. (Schwertner)  
State Affairs  
5/13/2015  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Persons suffering from asbestos- and silica-related diseases have access to compensation through both asbestos trusts and the court system. Due to the costs of asbestos litigation, many asbestos product manufacturers have filed for bankruptcy. These companies have created trusts that compensate claimants, through an administrative process, for injuries. In addition to trust claims, claimants may also pursue lawsuits against solvent businesses. Because money is paid out of asbestos trusts independent of any past, pending, or future litigation, the current compensation system is subject to manipulation.

Proceedings in a United States Bankruptcy Court have revealed that, in many instances, plaintiff attorneys have deliberately misled defendants about claimants' exposure history. In re Garlock Sealing Technologies LLC (Bankr. W.D.N.C. 2014). These attorneys routinely deny that their clients were exposed to other sources of asbestos. After recovery is obtained against solvent defendants, plaintiff attorneys have then pursued claims against asbestos trusts for compensation, citing exposure that was withheld during litigation. In Garlock, the Court found, out of a sample of 15 settled cases, exposure evidence was withheld in all 15 cases. Plaintiffs in these cases disclosed an average of two exposures to bankrupt companies' products. Yet, after litigating, these same plaintiffs made claims against an average of 19 asbestos trusts. Garlock at 31. The Court rightly concluded that this "significant" withholding of exposure evidence ultimately inflated the recovery against the defendant. Id. at 37.

In response to similar schemes, Ohio, Wisconsin, and Oklahoma have passed legislation that requires claimants to file trust claims before going to trial, thus giving defendants an accurate picture of claimants' exposure histories.

H.B. 1492 promotes similar transparency in Texas by requiring a claimant who has filed an action for an asbestos- or silica-related injury to make a trust claim against each trust the claimant believes may owe damages for the injury. The bill also requires the claimant to serve on each defendant trust claim material relating to each trust claim made by or on behalf of the exposed person. A multi-district litigation (MDL) pretrial court would be prohibited from remanding an action to a trial court unless the claimant has: (1) made each required trust claim; and (2) served the trust claim material relating to those claims.

H.B. 1492 also allows a defendant to file a motion to stay the proceedings by presenting a list of asbestos or silica trusts not disclosed by the claimant against which the defendant in good faith believes the claimant may make a successful trust claim. The court is required to grant the motion to stay if the court determines the claimant is likely to receive compensation from a trust identified by the motion. The stay continues until the claimant provides proof that the claimant has made the claim and served trust claim material relating to the claim.

In summation, H.B. 1492 seeks to bring greater transparency to asbestos and silica litigation in Texas and help ensure that damages are fairly divided among all wrongdoers. This legislation also seeks to protect solvent businesses against double-dipping and to ensure that resources, including trust fund balances, are available for future victims of asbestos-related injuries.

H.B. 1492 amends current law relating to consideration of asbestos or silica trust claims in certain actions asserting asbestos- or silica-related injuries.

## **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

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

### **SUBCHAPTER A. GENERAL PROVISIONS**

SECTION 2. Amends Section 90.010(d-1), Civil Practice and Remedies Code, as follows:

(d-1) Requires that all actions for a silica-related injury be dismissed on or before August 31, 2015. Requires that all actions for an asbestos-related injury be dismissed on or before December 31, 2015. Makes a nonsubstantive change.

SECTION 3. Amends Chapter 90, Civil Practice and Remedies Code, by adding Subchapter B, as follows:

### **SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS**

Sec. 90.051. DEFINITIONS. Defines "asbestos or silica trust," "trust claim," and "trust claim material."

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

(b) Requires a claimant to make each trust claim required under this section not later than:

- (1) the 150th day before the date trial in the action is set to commence; or
- (2) a date provided by court order if trial is set to commence on or before January 31, 2016.

(c) Authorizes a claimant to file to a motion seeking relief from the obligation to make a trust claim otherwise required by this section if the claimant believes that the fees and expenses, including attorney's fees, for filing the trust claim exceed the claimant's reasonably anticipated recovery from the trust.

(d) Requires the court, if a claimant files a motion under Subsection (c), to determine whether the claimant's fees and expenses, including attorney's fees, for making the trust claim exceed the claimant's reasonably anticipated recovery from the trust. Provides that, if the court determines that the claimant's fees and expenses exceed the claimant's reasonably anticipated recovery, the claimant is not required to make the trust claim but is required to provide the court with a verified statement of the exposed person's exposure history to asbestos or silica that is covered by the trust.

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

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

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

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

(b) Requires the claimant to serve the notice and trust claim materials required by Subsection (a) not later than:

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

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

(c) Provides that the notice and trust claim materials required to be served under Subsection (a) are in addition to any notice or materials required to be served or produced under other law, rule, order, or applicable agreement.

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

(1) the date that trial commences; or

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

(e) Requires the claimant, if a claimant discovers that the notice or trust claim materials provided by the claimant under this section were incomplete or incorrect at the time the notice or trust claim materials were served or that the notice or trust claim materials as served are no longer complete and correct, to supplement the notice and the production of trust claim materials. Requires the claimant to serve the supplemental notice or trust claim materials reasonably promptly after the claimant discovers the necessity for the supplementation, but not later than the 15th day after the date the claimant discovers the necessity for the supplementation.

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

Sec. 90.054. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE AND TRUST CLAIM MATERIAL. (a) Prohibits an MDL pretrial court (relating to the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under certain rules) from remanding an action to a trial court and prohibits a trial court from commencing trial in the action unless the claimant has:

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

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

(b) Provides that if a claimant received compensation from an asbestos or silica trust for an injury that also gave rise to a judgment against a defendant for the same injury and the claimant failed to serve the relevant notice and trust claim material as required by Section 90.053, the trial court, on a defendant's or

judgment debtor's motion and after reasonable notice to the parties, may impose an appropriate sanction, including setting aside the judgment and ordering a new trial.

(c) Prohibits this section from being construed to require payment of a trust claim by an asbestos or silica trust before the MDL pretrial court remands the action for trial or before a judgment is rendered in the action.

Sec. 90.055. MOTION TO STAY. (a) Authorizes a defendant to file a motion requesting a stay of the proceedings under Section 90.057 on or before the later of:

- (1) the 60th day before the date trial in the action is set to commence;
- (2) the 15th day after the date the defendant first obtains asbestos- or silica-exposure information that could support an additional asbestos or silica trust claim by the claimant; or
- (3) a date provided by court order if the court entered an order under Section 90.052(b).

(b) Requires that the motion described by Subsection (a) include:

- (1) a list of asbestos or silica trusts not disclosed by the claimant against which the defendant in good faith believes the claimant may make a successful trust claim; and
- (2) information supporting the additional trust claim described by Subdivision (1), including information that may be used to meet the trust claim requirements of an asbestos or silica trust described by Subdivision (1).

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

- (1) stating and providing proof that the claimant has made a trust claim identified in the defendant's motion and served the notice of, and trust claim material relating to, the claim as prescribed by Section 90.053; or
- (2) requesting a determination by the court that the fees and expenses, including attorney's fees, for filing a trust claim identified in the motion exceed the claimant's reasonably anticipated recovery from the trust.

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

Sec. 90.057. STAY OF PROCEEDINGS. (a) Requires the court to grant a motion to stay under Section 90.055 if the court determines the motion was timely filed and the claimant is likely to receive compensation from a trust identified by the motion. Requires that the stay continue until the claimant provides proof that the claimant has made the claim and served notice of, and trust claim material relating to, the claim as prescribed by Section 90.053.

(b) Prohibits the court from staying the proceedings if, with respect to each trust claim identified in the motion:

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

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

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

(b) Provides that, notwithstanding an agreement, including a confidentiality agreement, trust claim material is presumed to not be privileged in an action to which this subchapter applies.

(c) Prohibits this section from being construed to affect the application of Section 33.003 (Determination of Percentage of Responsibility) to an action governed by this chapter.

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

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

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

SECTION 5. Effective date: September 1, 2015.