

By: Miller of Comal, Keffer, Phillips,  
Clardy, Sheets, et al.

H.B. No. 1492

Substitute the following for H.B. No. 1492:

By: Schofield

C.S.H.B. No. 1492

A BILL TO BE ENTITLED

AN ACT

relating to consideration of asbestos or silica trust claims in  
certain actions asserting asbestos- or silica-related injuries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 90, Civil Practice and Remedies Code, is  
amended 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. Chapter 90, Civil Practice and Remedies Code, is  
amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

Sec. 90.051. DEFINITIONS. In this subchapter:

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

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

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

(C) is in existence on the date originally set  
for trial in an action asserting an asbestos- or silica-related  
injury.

(2) "Trust claim" means a filing with or claim against

1 an asbestos or silica trust seeking recovery of damages for or  
2 arising from the asbestos- or silica-related injury of an exposed  
3 person.

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

6 (A) documentation that a claimant submits or  
7 provides to an asbestos or silica trust that seeks compensation for  
8 or demonstrates the existence of an asbestos- or silica-related  
9 injury or a trust claim that the claimant may have against the  
10 asbestos or silica trust; and

11 (B) claim forms and other materials that an  
12 asbestos or silica trust requires a claimant to submit in order to  
13 receive compensation.

14 Sec. 90.052. NOTICE OF TRUST CLAIMS. (a) A claimant  
15 asserting an asbestos- or silica-related injury shall serve on each  
16 party notice of and trust claim material relating to each trust  
17 claim made by or on behalf of the exposed person. The notice must  
18 include a statement by the claimant that identifies each pending  
19 trust claim and states the date the claim was made and whether a  
20 request for a deferral, delay, suspension, or tolling of the claim  
21 has been submitted. The notice must include a sworn statement by  
22 the claimant's attorney, made under the penalty of perjury, that  
23 the notice is complete and based on the attorney's good-faith  
24 investigation of all potential trust claims for the claimant.

25 (b) In an action pending on September 1, 2015, in which  
26 discovery was commenced before that date, the claimant shall serve  
27 the notice and trust claim material required by Subsection (a) not

1 later than October 1, 2015.

2 (c) In an action filed on or after September 1, 2015, or an  
3 action pending on September 1, 2015, in which discovery was not  
4 commenced before that date, the claimant shall serve the notice and  
5 trust claim material required by Subsection (a) not later than the  
6 120th day before the date the action is originally set for trial.

7 (d) The notice and disclosures required by this section are  
8 in addition to any notice or disclosure required by other law, rule,  
9 order, or applicable agreement.

10 Sec. 90.053. ADDITIONAL TRUST CLAIMS NOTICE. (a) A  
11 claimant shall serve notice of and trust claim material relating to  
12 a trust claim made after the claimant serves notice and trust claim  
13 material under Section 90.052. The claimant shall serve the  
14 additional notice and trust claim material on all parties not later  
15 than the 30th day after the date the additional trust claim is made.

16 (b) The notice required by Subsection (a) must include a  
17 statement by the claimant providing information on the additional  
18 trust claims and a sworn statement by the claimant's attorney, as  
19 prescribed by Section 90.052.

20 Sec. 90.054. NOTICE OF CANCER- AND NON-CANCER-RELATED TRUST  
21 CLAIMS REQUIRED. A claimant shall serve notice of and trust claim  
22 material relating to a trust claim regardless of whether the claim  
23 is for an injury resulting in cancer or an injury not resulting in  
24 cancer.

25 Sec. 90.055. FAILURE TO PROVIDE NOTICE. (a) An MDL  
26 pretrial court must decline to remand an action to a trial court if  
27 the claimant fails to provide notice and trust claim material in

1 accordance with this subchapter.

2 (b) If a claimant received compensation from an asbestos or  
3 silica trust for an injury that also gave rise to a judgment against  
4 a defendant and the claimant failed to provide notice of and trust  
5 claim material relating to the relevant trust claim in accordance  
6 with this subchapter, the trial court, on a defendant's or judgment  
7 debtor's motion and after reasonable notice to the parties, may  
8 impose an appropriate sanction, including vacating the judgment and  
9 ordering a new trial.

10 Sec. 90.056. MOTION TO STAY. (a) A defendant may file a  
11 motion to stay the proceedings under Section 90.058 not later than  
12 the 45th day before the date originally set for trial. The motion  
13 must include:

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

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

21 (b) Notwithstanding any other provision of this subchapter,  
22 a defendant may file a motion to stay the proceedings as described  
23 by this section not later than the seventh day after the date the  
24 defendant receives notice of asbestos or silica exposure  
25 information that may support an additional asbestos or silica trust  
26 claim.

27 Sec. 90.057. RESPONSE TO MOTION TO STAY. (a) Not later

1 than the 14th day after the date the defendant files a motion under  
2 Section 90.056, the claimant may file a response:

3 (1) stating and providing proof that the claimant has  
4 made a trust claim identified in the defendant's motion and served  
5 notice of and trust material relating to the claim as prescribed by  
6 Section 90.052(a); or

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

11 (b) If the claimant files a response making a request under  
12 Subsection (a)(2), the court shall determine whether the claimant's  
13 fees and expenses, including attorney's fees, for making the  
14 relevant trust claim exceed the claimant's reasonably anticipated  
15 recovery from the trust. If the court determines that the  
16 claimant's fees and expenses exceed the reasonably anticipated  
17 recovery, the claimant shall provide the court with a verified  
18 statement of the exposed person's exposure history to asbestos or  
19 silica that is covered by the trust.

20 Sec. 90.058. STAY OF PROCEEDINGS. (a) The court shall grant  
21 a motion under Section 90.056 if the court determines there is a  
22 good faith basis to make a trust claim identified by the motion.  
23 The stay shall continue until the claimant provides proof that the  
24 claimant has made the claim and served notice of and trust claim  
25 material relating to the claim as prescribed by Section 90.052(a).

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

1           (1) the claimant provides the proof described by  
2 Section 90.057(a)(1); or

3           (2) the court makes a determination described by  
4 Section 90.057(b).

5           Sec. 90.059. EVIDENCE OF TRUST CLAIMS. (a) Trust claim  
6 material is presumed to be authentic, relevant, and discoverable in  
7 an action to which this subchapter applies.

8           (b) Notwithstanding an agreement, including a  
9 confidentiality agreement, trust claim material is presumed to not  
10 be privileged.

11           (c) A party may use the trust claim material to prove:

12           (1) an alternate source for the cause of the exposed  
13 person's injury, death, or loss;

14           (2) a basis to allocate responsibility for the exposed  
15 person's injury, death, or loss; or

16           (3) any other issue relevant to adjudication of a  
17 claim asserted in the action.

18           Sec. 90.060. MODIFICATION OF JUDGMENT BASED ON SUBSEQUENT  
19 TRUST CLAIM. (a) Subject to Subsection (c), a trial court, on a  
20 defendant's or judgment debtor's motion and after reasonable notice  
21 to the parties, may:

22           (1) modify the judgment by the amount of a subsequent  
23 payment by an asbestos or silica trust to the claimant based on:

24           (A) a trust claim relating to which notice and  
25 trust claim material was not provided to the defendant or judgment  
26 debtor in accordance with Section 90.052; or

27           (B) a trust claim made after the judgment to an

1 asbestos or silica trust that existed at the time of the judgment;  
2 or  
3 (2) order other relief that the court considers just  
4 and proper in connection with the payment.

5 (b) A defendant or judgment debtor must file a motion under  
6 this section in a reasonable time after the claimant receives a  
7 payment from a related asbestos or silica trust, but not later than  
8 the third anniversary of the date the judgment is signed.

9 (c) If a motion under this section is filed after the period  
10 that the trial court may otherwise modify a judgment, the trial  
11 court may modify the judgment in a manner consistent with this  
12 section on or before the 30th day after the date the motion is  
13 filed.

14 (d) Notwithstanding Section 22.004, Government Code, the  
15 supreme court may not amend or adopt rules in conflict with this  
16 section.

17 SECTION 3. Subchapter B, Chapter 90, Civil Practice and  
18 Remedies Code, as added by this Act, applies to an action:

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

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

22 SECTION 4. This Act takes effect September 1, 2015.