

1-1 By: Miller of Comal, et al. H.B. No. 1492  
1-2 (Senate Sponsor - Schwertner)  
1-3 (In the Senate - Received from the House May 12, 2015;  
1-4 May 12, 2015, read first time and referred to Committee on State  
1-5 Affairs; May 19, 2015, reported favorably by the following vote:  
1-6 Yeas 9, Nays 0; May 19, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Ellis	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Fraser	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 A BILL TO BE ENTITLED  
1-19 AN ACT

1-20 relating to consideration of asbestos or silica trust claims in  
1-21 certain actions asserting asbestos- or silica-related injuries.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Chapter 90, Civil Practice and Remedies Code, is  
1-24 amended by designating Sections 90.001 through 90.012 as Subchapter  
1-25 A and adding a subchapter heading to read as follows:

1-26 SUBCHAPTER A. GENERAL PROVISIONS

1-27 SECTION 2. Section 90.010(d-1), Civil Practice and Remedies  
1-28 Code, is amended to read as follows:

1-29 (d-1) Beginning on September 1, 2014, the MDL pretrial court  
1-30 shall dismiss each action for an asbestos-related injury or a  
1-31 silica-related injury that was pending on August 31, 2005, unless a  
1-32 report was served on or after September 1, 2013, that complies with  
1-33 Section 90.003, Section 90.004, or Subsection (f). The MDL  
1-34 pretrial court shall provide for the dismissal of such actions in a  
1-35 case management order entered for that purpose. All ~~such~~ actions  
1-36 for a silica-related injury shall be dismissed on or before August  
1-37 31, 2015. All actions for an asbestos-related injury shall be  
1-38 dismissed on or before December 31, 2015.

1-39 SECTION 3. Chapter 90, Civil Practice and Remedies Code, is  
1-40 amended by adding Subchapter B to read as follows:

1-41 SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

1-42 Sec. 90.051. DEFINITIONS. In this subchapter:

1-43 (1) "Asbestos or silica trust" means a claims  
1-44 facility, a claims agent, a qualified settlement fund, or any other  
1-45 entity that:

1-46 (A) is created under 11 U.S.C. Section 524(g) or  
1-47 another applicable law for the benefit of creditors of a bankrupt  
1-48 person;

1-49 (B) is formed for the purpose of compensating  
1-50 claimants for asbestos- or silica-related injuries; and

1-51 (C) is in existence on the date trial in an action  
1-52 asserting an asbestos- or silica-related injury is set to commence.

1-53 (2) "Trust claim" means any filing with or claim  
1-54 against an asbestos or silica trust seeking recovery of  
1-55 compensation or damages for or arising from the asbestos- or  
1-56 silica-related injury of an exposed person.

1-57 (3) "Trust claim material" means documentation filed  
1-58 as part of or in connection with a trust claim, including:

1-59 (A) documentation that a claimant submits or  
1-60 provides to an asbestos or silica trust for the purpose of  
1-61 demonstrating asbestos or silica exposure, the existence of an

2-1 asbestos- or silica-related injury, or the validity of a trust  
 2-2 claim; and

2-3 (B) claim forms and other materials that an  
 2-4 asbestos or silica trust requires a claimant to submit.

2-5 Sec. 90.052. REQUIREMENT TO MAKE TRUST CLAIMS. (a) Except  
 2-6 as provided by Subsection (d), a claimant who has filed an action to  
 2-7 recover damages for or arising from an asbestos- or silica-related  
 2-8 injury shall make a trust claim against each asbestos or silica  
 2-9 trust the claimant believes may owe compensation or damages to the  
 2-10 claimant for the injury that is the basis of the claimant's action.

2-11 (b) A claimant must make each trust claim required under  
 2-12 this section not later than:

2-13 (1) the 150th day before the date trial in the action  
 2-14 is set to commence; or

2-15 (2) a date provided by court order if trial is set to  
 2-16 commence on or before January 31, 2016.

2-17 (c) A claimant may file a motion seeking relief from the  
 2-18 obligation to make a trust claim otherwise required by this section  
 2-19 if the claimant believes that the fees and expenses, including  
 2-20 attorney's fees, for filing the trust claim exceed the claimant's  
 2-21 reasonably anticipated recovery from the trust.

2-22 (d) If a claimant files a motion under Subsection (c), the  
 2-23 court shall determine whether the claimant's fees and expenses,  
 2-24 including attorney's fees, for making the trust claim exceed the  
 2-25 claimant's reasonably anticipated recovery from the trust. If the  
 2-26 court determines that the claimant's fees and expenses exceed the  
 2-27 claimant's reasonably anticipated recovery, the claimant is not  
 2-28 required to make the trust claim but shall provide the court with a  
 2-29 verified statement of the exposed person's exposure history to  
 2-30 asbestos or silica that is covered by the trust.

2-31 Sec. 90.053. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST  
 2-32 CLAIM MATERIAL. (a) A claimant in an action to recover damages for  
 2-33 or arising from an asbestos- or silica-related injury shall serve  
 2-34 on each party notice of, and trust claim material relating to, each  
 2-35 trust claim made by or on behalf of the exposed person. The notice  
 2-36 must:

2-37 (1) identify each trust claim made by or on behalf of  
 2-38 the exposed person;

2-39 (2) state the amount of any trust claim payment made to  
 2-40 compensate for the exposed person's injury; and

2-41 (3) state the date each trust claim was made and  
 2-42 whether a request for individual or enhanced review or for a  
 2-43 deferral, delay, suspension, or tolling of the claim has been  
 2-44 submitted to the trust.

2-45 (b) The claimant shall serve the notice and trust claim  
 2-46 materials required by Subsection (a) not later than:

2-47 (1) the 120th day before the date trial in the action  
 2-48 is set to commence; or

2-49 (2) a date provided by court order if the court entered  
 2-50 an order under Section 90.052(b).

2-51 (c) The notice and trust claim materials required to be  
 2-52 served under Subsection (a) are in addition to any notice or  
 2-53 materials required to be served or produced under other law, rule,  
 2-54 order, or applicable agreement.

2-55 (d) If a claimant makes a trust claim after the date  
 2-56 provided by Section 90.052(b) but before the date that trial in the  
 2-57 action commences, the claimant shall serve the notice of, and trust  
 2-58 claim material relating to, the trust claim as required by  
 2-59 Subsection (a) reasonably promptly after making the trust claim,  
 2-60 but not later than the earlier of:

2-61 (1) the date that trial commences; or

2-62 (2) the 15th day after the date the additional trust  
 2-63 claim is made.

2-64 (e) If a claimant discovers that the notice or trust claim  
 2-65 materials provided by the claimant under this section were  
 2-66 incomplete or incorrect at the time the notice or trust claim  
 2-67 materials were served or that the notice or trust claim materials as  
 2-68 served are no longer complete and correct, the claimant shall  
 2-69 supplement the notice and the production of trust claim materials.

3-1 The claimant shall serve the supplemental notice or trust claim  
3-2 materials reasonably promptly after the claimant discovers the  
3-3 necessity for the supplementation, but not later than the 15th day  
3-4 after the date the claimant discovers the necessity for the  
3-5 supplementation.

3-6 (f) A claimant shall serve notice of, and trust claim  
3-7 material relating to, a trust claim regardless of whether the claim  
3-8 is for an injury resulting in cancer or an injury not resulting in  
3-9 cancer.

3-10 Sec. 90.054. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE  
3-11 AND TRUST CLAIM MATERIAL. (a) An MDL pretrial court may not remand  
3-12 an action to a trial court and a trial court may not commence trial  
3-13 in the action unless the claimant has:

3-14 (1) made each trust claim as required by this  
3-15 subchapter; and

3-16 (2) served the notice of, and trust claim material  
3-17 relating to, those trust claims in accordance with Section 90.053.

3-18 (b) If a claimant received compensation from an asbestos or  
3-19 silica trust for an injury that also gave rise to a judgment against  
3-20 a defendant for the same injury and the claimant failed to serve the  
3-21 relevant notice and trust claim material as required by Section  
3-22 90.053, the trial court, on a defendant's or judgment debtor's  
3-23 motion and after reasonable notice to the parties, may impose an  
3-24 appropriate sanction, including setting aside the judgment and  
3-25 ordering a new trial.

3-26 (c) This section may not be construed to require payment of  
3-27 a trust claim by an asbestos or silica trust before the MDL pretrial  
3-28 court remands the action for trial or before a judgment is rendered  
3-29 in the action.

3-30 Sec. 90.055. MOTION TO STAY. (a) A defendant may file a  
3-31 motion requesting a stay of the proceedings under Section 90.057 on  
3-32 or before the later of:

3-33 (1) the 60th day before the date trial in the action is  
3-34 set to commence;

3-35 (2) the 15th day after the date the defendant first  
3-36 obtains asbestos- or silica-exposure information that could  
3-37 support an additional asbestos or silica trust claim by the  
3-38 claimant; or

3-39 (3) a date provided by court order if the court entered  
3-40 an order under Section 90.052(b).

3-41 (b) The motion described by Subsection (a) must include:

3-42 (1) a list of asbestos or silica trusts not disclosed  
3-43 by the claimant against which the defendant in good faith believes  
3-44 the claimant may make a successful trust claim; and

3-45 (2) information supporting the additional trust claim  
3-46 described by Subdivision (1), including information that may be  
3-47 used to meet the trust claim requirements of an asbestos or silica  
3-48 trust described by Subdivision (1).

3-49 Sec. 90.056. RESPONSE TO MOTION TO STAY. (a) Not later  
3-50 than the 14th day after the date the defendant files a motion to  
3-51 stay under Section 90.055 or the date provided by court order under  
3-52 Section 90.052(b), the claimant may file a response:

3-53 (1) stating and providing proof that the claimant has  
3-54 made a trust claim identified in the defendant's motion and served  
3-55 the notice of, and trust claim material relating to, the claim as  
3-56 prescribed by Section 90.053; or

3-57 (2) requesting a determination by the court that the  
3-58 fees and expenses, including attorney's fees, for filing a trust  
3-59 claim identified in the motion exceed the claimant's reasonably  
3-60 anticipated recovery from the trust.

3-61 (b) If the claimant files a response making a request under  
3-62 Subsection (a)(2), the court shall determine whether the claimant's  
3-63 fees and expenses, including attorney's fees, for making the  
3-64 relevant trust claim exceed the claimant's reasonably anticipated  
3-65 recovery from the trust. If the court determines that the  
3-66 claimant's fees and expenses exceed the claimant's reasonably  
3-67 anticipated recovery, the claimant is not required to make the  
3-68 trust claim but shall provide the court with a verified statement of  
3-69 the exposed person's exposure history to asbestos or silica that is

4-1 covered by the trust.

4-2 Sec. 90.057. STAY OF PROCEEDINGS. (a) The court shall grant  
4-3 a motion to stay under Section 90.055 if the court determines the  
4-4 motion was timely filed and the claimant is likely to receive  
4-5 compensation from a trust identified by the motion. The stay shall  
4-6 continue until the claimant provides proof that the claimant has  
4-7 made the claim and served notice of, and trust claim material  
4-8 relating to, the claim as prescribed by Section 90.053.

4-9 (b) The court may not stay the proceedings if, with respect  
4-10 to each trust claim identified in the motion:

4-11 (1) the court determines that the claimant has  
4-12 satisfied the requirements of Section 90.053(a); or

4-13 (2) the court makes a determination described by  
4-14 Section 90.052(d) or 90.056(b).

4-15 Sec. 90.058. EVIDENCE OF TRUST CLAIMS. (a) Trust claim  
4-16 material is presumed to be authentic, relevant, and discoverable in  
4-17 an action to which this subchapter applies.

4-18 (b) Notwithstanding an agreement, including a  
4-19 confidentiality agreement, trust claim material is presumed to not  
4-20 be privileged in an action to which this subchapter applies.

4-21 (c) This section may not be construed to affect the  
4-22 application of Section 33.003 to an action governed by this  
4-23 chapter.

4-24 SECTION 4. Subchapter B, Chapter 90, Civil Practice and  
4-25 Remedies Code, as added by this Act, applies to an action:

4-26 (1) commenced on or after the effective date of this  
4-27 Act; or

4-28 (2) pending on the effective date of this Act.

4-29 SECTION 5. This Act takes effect September 1, 2015.

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