

By: Schwertner

S.B. No. 491

A BILL TO BE ENTITLED

1 AN ACT
2 relating to consideration of asbestos or silica trust claims in
3 certain actions asserting asbestos- or silica-related injuries.

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

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

8 SUBCHAPTER A. GENERAL PROVISIONS

9 SECTION 2. Chapter 90, Civil Practice and Remedies Code, is
10 amended by adding Subchapter B to read as follows:

11 SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

12 Sec. 90.051. DEFINITIONS. In this subchapter:

13 (1) "Asbestos or silica trust" means an entity that:

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

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

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

22 (2) "Trust claim" means a filing with or claim against
23 an asbestos or silica trust seeking recovery of damages for or
24 arising from the asbestos- or silica-related injury of an exposed

1 person.

2 (3) "Trust claim material" means documentation
3 supporting a trust claim, including:

4 (A) documentation that a claimant submits or
5 provides to an asbestos or silica trust that demonstrates the
6 existence of an asbestos- or silica-related injury or a trust claim
7 that the claimant may have against the asbestos or silica trust; and

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

11 Sec. 90.052. NOTICE OF TRUST CLAIMS. (a) A claimant
12 asserting an asbestos- or silica-related injury shall serve on each
13 party notice of and trust claim material relating to each trust
14 claim made by or on behalf of the exposed person. The notice must
15 include a sworn statement by the claimant that identifies each
16 trust claim and states the date the claim was made and whether a
17 request for a deferral, delay, suspension, or tolling of the claim
18 has been submitted.

19 (b) In an action pending on September 1, 2015, in which
20 discovery was commenced before that date, the claimant shall serve
21 the notice and trust claim material required by Subsection (a) not
22 later than October 1, 2015.

23 (c) In an action filed on or after September 1, 2015, or an
24 action pending on September 1, 2015, in which discovery was not
25 commenced before that date, the claimant shall serve the notice and
26 trust claim material required by Subsection (a) not later than the
27 120th day before the date the action is originally set for trial.

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

4 Sec. 90.053. ADDITIONAL TRUST CLAIMS NOTICE. (a) A
5 claimant shall serve notice of and trust claim material relating to
6 a trust claim made after the claimant serves notice of and trust
7 claim material under Section 90.052. The claimant shall serve the
8 additional notice and trust claim material on all parties not later
9 than the 30th day after the date the additional trust claim is made.

10 (b) The notice required by Subsection (a) must include a
11 sworn statement providing information on the additional trust
12 claims as prescribed by Section 90.052.

13 Sec. 90.054. NOTICE OF CANCER- AND NON-CANCER-RELATED TRUST
14 CLAIMS REQUIRED. A claimant shall serve notice of and trust claim
15 material relating to a trust claim regardless of whether the claim
16 is for an injury resulting in cancer or an injury not resulting in
17 cancer.

18 Sec. 90.055. FAILURE TO PROVIDE NOTICE. (a) An MDL
19 pretrial court may decline to remand an action to a trial court if
20 the claimant fails to provide notice and trust claim material in
21 accordance with this subchapter.

22 (b) If a claimant received compensation from an asbestos or
23 silica trust for an injury that also gave rise to a judgment against
24 a defendant and the claimant failed to provide notice of and trust
25 claim material relating to the relevant trust claim in accordance
26 with this subchapter, the trial court, on a defendant's or judgment
27 debtor's motion and after reasonable notice to the parties, may

1 impose an appropriate sanction, including vacating the judgment and
2 ordering a new trial.

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

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

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

14 (b) Notwithstanding any other provision of this subchapter,
15 a defendant may file a motion to stay the proceedings as described
16 by this section not later than the seventh day after the date the
17 defendant receives notice of asbestos or silica exposure
18 information that may support an additional asbestos or silica trust
19 claim.

20 Sec. 90.057. RESPONSE TO MOTION TO STAY. (a) Not later
21 than the 14th day after the date the defendant files a motion under
22 Section 90.056, the claimant may file a response:

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

27 (2) requesting a determination by the court that:

1 (A) the information provided in the motion is
2 insufficient to support a trust claim identified in the motion; or

3 (B) the fees and expenses, including attorney's
4 fees, for filing a trust claim identified in the motion exceed the
5 claimant's reasonably anticipated recovery from the trust.

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

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

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

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

25 (2) the court makes a determination described by
26 Section 90.057(b).

27 Sec. 90.059. EVIDENCE OF TRUST CLAIMS. (a) Trust claim

1 material is presumed to be authentic, relevant, and discoverable in
2 an action to which this subchapter applies.

3 (b) Notwithstanding an agreement, including a
4 confidentiality agreement, trust claim material is presumed to not
5 be privileged.

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

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

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

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

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

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

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

22 (B) a trust claim made after the judgment to an
23 asbestos or silica trust that existed at the time of the judgment;
24 or

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

27 (b) A defendant or judgment debtor must file a motion under

1 this section in a reasonable time after the claimant receives a
2 payment from a related asbestos or silica trust, but not later than
3 the first anniversary of the date the judgment is signed.

4 (c) If a motion under this section is filed after the period
5 that the trial court may otherwise modify a judgment, the trial
6 court may modify the judgment in a manner consistent with this
7 section on or before the 30th day after the date the motion is
8 filed.

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

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

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

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

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