

## **BILL ANALYSIS**

C.S.H.B. 1492  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has become evident to certain observers that claimants across the country, including in Texas, have deferred making claims to the existing asbestos and silica trusts until their underlying lawsuit is resolved. Such observers suggest at least two concerns that claimants in Texas might have for pursuing this strategy. C.S.H.B. 1492 seeks to address these concerns.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1492 amends the Civil Practice and Remedies Code to require a claimant asserting an asbestos-related 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. The bill requires the notice to include a statement by the claimant that identifies each pending trust claim and states the date the claim was made and whether a request for a deferral, delay, suspension, or tolling of the claim has been submitted. The bill requires the notice to include a sworn statement by the claimant's attorney, made under the penalty of perjury, that the notice is complete and based on the attorney's good-faith investigation of all potential trust claims for the claimant.

C.S.H.B. 1492 requires the claimant, in an action pending on September 1, 2015, in which discovery was commenced before that date, to serve the required notice and trust claim material not later than October 1, 2015. The bill requires the claimant, in an action filed on or after September 1, 2015, or an action pending on September 1, 2015, in which discovery was not commenced before that date, to serve the required notice and trust claim material not later than the 120th day before the date the action is originally set for trial. The bill specifies that the required notice and disclosures are in addition to any notice or disclosure required by other law, rule, order, or applicable agreement.

C.S.H.B. 1492 requires a claimant to serve additional notice of and trust claim material relating to a trust claim made after the claimant serves the notice and trust claim material. The bill requires the claimant to serve the additional notice and trust claim material on all parties not later than the 30th day after the date the additional trust claim is made and requires the additional notice to include a statement by the claimant providing information on the additional trust claims and a sworn statement by the claimant's attorney. The bill requires a 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.

C.S.H.B. 1492 requires an MDL pretrial court to decline to remand an action to a trial court if the claimant fails to provide notice and trust claim material in accordance with the bill's provisions. The bill authorizes the trial court, on a defendant's or judgment debtor's motion and after reasonable notice to the parties, to impose an appropriate sanction if a claimant received compensation from an asbestos or silica trust for an injury that also gave rise to a judgment against a defendant and the claimant failed to provide notice of and trust claim material relating to the relevant trust claim in accordance with the bill's provisions.

C.S.H.B. 1492 authorizes a defendant to file a motion to stay the proceedings, sets out the requirements and procedures relating to the motion, and sets out additional requirements and procedures relating to a claimant's response to the motion. The bill requires the court to grant a motion to stay the proceedings if the court determines there is a good faith basis to make a trust claim identified by the motion. The bill requires the stay to continue until the claimant provides proof that the claimant has made the claim and served the prescribed notice of and trust claim material relating to the claim. The bill prohibits the court from staying the proceedings if, with respect to each trust claim identified in the motion, the claimant provides the proof that the claimant has made a trust claim identified in the defendant's motion and served the prescribed notice of and trust claim material relating to the claim or the court makes a determination that the claimant's fees and expenses exceed the reasonably anticipated recovery.

C.S.H.B. 1492 establishes that the trust claim material is presumed to be authentic, relevant, and discoverable in an action to which the bill's provisions apply. The bill establishes that, notwithstanding an agreement, including a confidentiality agreement, trust claim material is presumed to not be privileged. The bill authorizes a party to use the trust claim material to prove an alternate source for the cause of the exposed person's injury, death, or loss; a basis to allocate responsibility for the exposed person's injury, death, or loss; or any other issue relevant to adjudication of a claim asserted in the action.

C.S.H.B. 1492 authorizes a trial court, on a defendant's or judgment debtor's motion and after reasonable notice to the parties, to modify the judgment by the amount of a subsequent payment by an asbestos or silica trust to the claimant based on a trust claim relating to which notice and trust claim material was not provided to the defendant or judgment debtor in accordance with the bill's provisions regarding notice of trust claims or a trust claim made after the judgment to an asbestos or silica trust that existed at the time of the judgment. The bill also authorizes the trial court, as an alternative, to order other relief that the court considers just and proper in connection with the payment. The bill requires a defendant or judgment debtor to file the applicable motion in a reasonable time after the claimant receives a payment from a related asbestos or silica trust, but not later than the third anniversary of the date the judgment is signed. The bill authorizes the trial court to modify the judgment in such a manner on or before the 30th day after the date the motion is filed. The bill prohibits the Texas Supreme Court from amending or adopting rules in conflict with the bill's provisions relating to the modification of a judgment based on a subsequent trust claim.

C.S.H.B. 1492 defines "asbestos or silica trust" to mean a claims facility, claims agent, qualified settlement fund, or any other entity that is created under federal law or another applicable law for the benefit of creditors of a bankrupt person, that is formed for the purpose of compensating claimants for asbestos-related or silica-related injuries, and that is in existence on the date originally set for trial in an action asserting an asbestos-related or silica-related injury. The bill defines "trust claim" to mean any filing with or claim against an asbestos or silica trust seeking recovery of damages for or arising from the asbestos-related or silica-related injury of an exposed person. The bill defines "trust claim material" to mean documentation filed as part of or in connection with a trust claim, including documentation that a claimant submits or provides to an asbestos or silica trust that seeks compensation or demonstrates the existence of an asbestos-related or silica-related injury or a trust claim that the claimant may have against the asbestos or

silica trust and claim forms and other materials that an asbestos or silica trust requires a claimant to submit in order to receive compensation.

**EFFECTIVE DATE**

September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1492 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

SECTION 1. Chapter 90, Civil Practice and Remedies Code, is amended.

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, claims agent, 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 any filing with or claim against an asbestos or silica trust seeking recovery of damages for or arising from the asbestos- or silica-related injury of an exposed person.

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

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

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

Sec. 90.052. NOTICE OF TRUST

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Same as introduced version.

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

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

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

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

Sec. 90.052. NOTICE OF TRUST

CLAIMS. (a) A claimant asserting an asbestos- or silica-related injury shall serve on each party notice of and trust claim material relating to each trust claim made by or on behalf of the exposed person. The notice must include a statement by the claimant that identifies each pending trust claim and states the date the claim was made and whether a request for a deferral, delay, suspension, or tolling of the claim has been submitted. The notice shall include an attestation by the claimant's attorney, made under the penalty of perjury, that the notice is complete and based on the attorney's good faith investigation of all potential trust claims.

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

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

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

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

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

Sec. 90.054. NOTICE OF CANCER- AND NON-CANCER-RELATED TRUST CLAIMS REQUIRED.

Sec. 90.055. FAILURE TO PROVIDE NOTICE. (a) An MDL pretrial court shall

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

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

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

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

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

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

Sec. 90.054. NOTICE OF CANCER- AND NON-CANCER-RELATED TRUST CLAIMS REQUIRED.

Sec. 90.055. FAILURE TO PROVIDE NOTICE. (a) An MDL pretrial court must

decline to remand an action to a trial court if the claimant fails to provide notice and trust claim material in accordance with this subchapter.

(b) If a claimant received compensation from an asbestos or silica trust for an injury that also gave rise to a judgment against a defendant and the claimant failed to provide notice of and trust claim material relating to the relevant trust claim in accordance with this subchapter, 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 vacating the judgment and ordering a new trial.

Sec. 90.056. MOTION TO STAY.

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

(1) stating and providing proof that the claimant has made a trust claim identified in the defendant's motion and served notice of and trust material relating to the claim as prescribed by Section 90.052(a); 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) If the claimant files a response making a request under Subsection (a)(2)(B), the court shall 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. If the court determines that the claimant's fees and expenses exceed the reasonably anticipated recovery, the claimant 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. 90.058. STAY OF PROCEEDINGS.

Sec. 90.059. EVIDENCE OF TRUST CLAIMS.

Sec. 90.060. MODIFICATION OF JUDGMENT BASED ON SUBSEQUENT TRUST CLAIM.

SECTION 3. Subchapter B, Chapter 90, Civil Practice and Remedies Code, as added

decline to remand an action to a trial court if the claimant fails to provide notice and trust claim material in accordance with this subchapter.

(b) If a claimant received compensation from an asbestos or silica trust for an injury that also gave rise to a judgment against a defendant and the claimant failed to provide notice of and trust claim material relating to the relevant trust claim in accordance with this subchapter, 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 vacating the judgment and ordering a new trial.

Sec. 90.056. MOTION TO STAY.

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

(1) stating and providing proof that the claimant has made a trust claim identified in the defendant's motion and served notice of and trust material relating to the claim as prescribed by Section 90.052(a); 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) If the claimant files a response making a request under Subsection (a)(2), the court shall 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. If the court determines that the claimant's fees and expenses exceed the reasonably anticipated recovery, the claimant 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. 90.058. STAY OF PROCEEDINGS.

Sec. 90.059. EVIDENCE OF TRUST CLAIMS.

Sec. 90.060. MODIFICATION OF JUDGMENT BASED ON SUBSEQUENT TRUST CLAIM.

SECTION 3. Same as introduced version.

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 4. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.