

BILL ANALYSIS

Senate Research Center
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S.B. 491
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Persons suffering from asbestos-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 protection. These companies have created trusts that compensate claimants, through an administrative process, for injuries from asbestos-related diseases. 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 in asbestos litigation 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.

S.B. 491 would promote similar transparency in Texas by requiring a claimant asserting an asbestos-related injury to serve on each defendant documentation relating to each trust claim made by or on behalf of the exposed person. A defendant would be able to file a motion to stay the proceedings if the defendant presents a list of asbestos trusts, not disclosed by the claimant, against which the defendant in good faith believes the claimant may make a successful trust claim. If the court agrees, the court would grant a stay until the claimant makes the trust claim and serves documentation relating to that claim. Perhaps most importantly, S.B. 491 would allow a court to modify a judgment, up to one year after the judgment is signed, by the amount of a subsequent payment from an asbestos trust to the claimant based on documentation that was not provided to the defendant or a trust claim made after the judgment that existed at the time of the judgment, thereby ensuring that a claimant is not allowed to "double-dip."

In summation, S.B. 491 would bring greater transparency to asbestos litigation in Texas and help ensure damages are fairly divided among all wrongdoers. This legislation would also protect solvent businesses against double-dipping and ensure resources, including trust fund balances, are available for future victims of asbestos-related injuries.

As proposed, S.B. 491 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, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. 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. NOTICE OF TRUST CLAIMS. (a) Requires a claimant asserting 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 include a sworn statement by the claimant that identifies each 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.

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

(c) Requires the claimant to 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, 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.

(d) Provides that 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) Requires a claimant to 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. 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.

(b) Requires that the notice required by Subsection (a) 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. 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.

Sec. 90.055. FAILURE TO PROVIDE NOTICE. (a) Authorizes an MDL (multidistrict litigation) pretrial court 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) 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, including vacating the judgment and ordering a new trial, 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.

Sec. 90.056. MOTION TO STAY. (a) Authorizes a defendant to file a motion to stay the proceedings under Section 90.058 not later than the 45th day before the date originally set for trial. Requires that the motion 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).

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

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

(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:

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

(B) 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 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 if the claimant files a response making a request under Subsection (a)(2)(B). Requires the claimant 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 if the court determines that the claimant's fees and expenses exceed the reasonably anticipated recovery.

Sec. 90.058. STAY OF PROCEEDINGS. (a) Requires the court to grant a motion under Section 90.056 if the court determines there is a good faith basis to make a trust claim 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 90.052(a).

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

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

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

Sec. 90.059. 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.

(c) Authorizes a party to use the trust claim material to prove:

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

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

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

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

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

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

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

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

(b) Requires a defendant or judgment debtor to file a motion under this section in a reasonable time after the claimant receives a payment from a related asbestos or silica trust, but not later than the first anniversary of the date the judgment is signed.

(c) Authorizes the trial court to modify a judgment, a manner consistent with this section on or before the 30th day after the date the motion is filed, if a motion under this section is filed after the period that the trial court may otherwise modify a judgment.

(d) Prohibits the supreme court from amending or adopting rules in conflict with this section. notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code.

SECTION 3. 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 4. Effective date: September 1, 2015.