



## **H.B. 292**

125th General Assembly  
(As Introduced)

**Rep. Oelslager**

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### **BILL SUMMARY**

- Provides the medical criteria required for an asbestos claim based on a nonmalignant condition, lung cancer, or cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach.
- Requires in a civil action in which an asbestos claim is alleged the filing with the complaint or other initial pleading of a written report and supporting test results constituting prima-facie evidence of an exposed person's physical impairment that meets the minimum requirements for the particular claim.
- Provides that the period of limitation for an asbestos-related claim based on a nonmalignant condition does not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, a physical impairment due to a nonmalignant condition.
- Limits the successor asbestos-related liabilities of certain domestic corporations.
- Provides that the assets of a successor are exempt from restraint, attachment, or execution on any judgment related to any claim for successor asbestos-related liabilities under certain specified circumstances.
- Provides that the bill's limitations on successor asbestos-related liabilities apply to all asbestos claims and all litigation involving asbestos claims, including claims and litigation pending on the bill's effective date, and that those limitations do not apply to workers' compensation benefits, claims against a successor that do not constitute claims for a successor asbestos-related liability, an insurance corporation, or any obligation

arising under the "National Labor Relations Act" or under any collective bargaining agreement.

- Provides the General Assembly's findings of fact and intent.
- Specifically requests the Supreme Court to adopt certain rules related to asbestos claims.

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## CONTENT AND OPERATION

### *Asbestos litigation--minimum requirements*

#### *Medical criteria for a claim based on a nonmalignant condition*

Under the bill, physical impairment<sup>1</sup> of the exposed person,<sup>2</sup> to which the person's exposure to asbestos<sup>3</sup> is a substantial contributing factor,<sup>4</sup> must be an

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<sup>1</sup> "Physical impairment" means a nonmalignant condition that meets the minimum requirements of R.C. 2307.92(B), lung cancer that meets the minimum requirements of R.C. 2307.92(C), or cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach that meets the minimum requirements of R.C. 2307.92(D) (R.C. 2307.91(U)).

essential element of an asbestos claim.<sup>5</sup> A person is prohibited from bringing or maintaining a civil action<sup>6</sup> alleging an asbestos claim based on a *nonmalignant condition* (a condition that is caused or may be caused by asbestos other than a diagnosed cancer (R.C. 2307.91(R)) in the absence of a prima-facie showing that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. (R.C. 2307.92(A) and (B).)

That prima-facie showing must include all of the following minimum requirements (R.C. 2307.92(B)):

(1) Evidence verifying that a qualified physician<sup>7</sup> has taken a detailed occupational and exposure history of the exposed person from the exposed person

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<sup>2</sup> *"Exposed person" means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim (R.C. 2307.91(K)).*

<sup>3</sup> *"Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered (R.C. 2307.91(B)).*

<sup>4</sup> *"Substantial contributing factor" means that exposure to asbestos is the predominate cause of the physical impairment alleged in the asbestos claim, the exposure to asbestos took place on a regular basis over an extended period of time and in close proximity to the exposed person, and a qualified physician has determined with a reasonable degree of medical certainty that the physical impairment of the exposed person would not have occurred but for the asbestos exposures (R.C. 2307.91(BB)).*

<sup>5</sup> *"Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief, arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos. (R.C. 2307.91(C).)*

<sup>6</sup> *"Civil action" means all suits or claims of a civil nature in state or federal court, whether cognizable as cases at law or in equity or admiralty. The term "civil action" does not include an action relating to any workers' compensation law (R.C. Chapters 4121., 4123., 4127., and 4131.). (R.C. 2307.91(J) and (DD).)*

<sup>7</sup> *"Qualified physician" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the medical criteria requirements described above and is a board-certified internist, pulmonary specialist, oncologist, or pathologist, is actually treating or*

or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the asbestos claim for a nonmalignant condition, including all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including, but not limited to, asbestos fibers or other disease causing dusts, that can cause pulmonary impairment and, if that type of exposure is involved, the nature, duration, and level of the exposure.

(2) Evidence verifying that a qualified physician has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a qualified physician, based on a medical examination and pulmonary function testing of the exposed person, that the exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA Guides to the Evaluation of Permanent Impairment<sup>8</sup> and has asbestosis<sup>9</sup> or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening and that the asbestosis or diffuse pleural thickening, rather than solely chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has either a forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal or a chest x-ray

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*has treated the exposed person and has or had a doctor-patient relationship with the person, spends no more than 10% of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential civil actions, and whose medical group, professional corporation, clinic, or other affiliated group earns not more than 20% of their revenues from providing those services, is currently licensed to practice and actively practices in the state where the plaintiff's civil action was filed, and receives or received payment for the treatment of the exposed person from that person's HMO or other medical provider. (R.C. 2307.91(W).)*

*"Board-certified internist" means a medical doctor who is currently certified by the American Board of Internal Medicine (R.C. 2307.91(E)).*

<sup>8</sup> *"AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition 2000) as may be modified by the American Medical Association (R.C. 2307.91(A)).*

<sup>9</sup> *"Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers (R.C. 2307.91(D)).*

showing small, irregular opacities (s, t) graded by a certified B-reader at least 2/1 on the ILO scale.<sup>10</sup>

**Medical criteria for a claim based upon lung cancer**

A person is prohibited from bringing or maintaining a civil action alleging an asbestos claim based upon *lung cancer*<sup>11</sup> in the absence of a prima-facie showing of all of the following minimum requirements (R.C. 2307.92(C)):

(1) A diagnosis by a board-certified pathologist,<sup>12</sup> board-certified pulmonary specialist,<sup>13</sup> or board-certified oncologist<sup>14</sup> that the exposed person has primary lung cancer and that exposure to asbestos is a substantial contributing factor to that cancer;

(2) Evidence that is sufficient to demonstrate that at least ten years have elapsed between the date of the exposed person's first exposure to asbestos and the date of diagnosis of the exposed person's primary lung cancer;

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<sup>10</sup> "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA Guides to the Evaluation of Permanent Impairment (R.C. 2307.91(V)).

"FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests. "FVC" means forced vital capacity that is maximal volume of air expired with maximum effort from a position of full inspiration. "Spirometry" means the measurement of volume of air inhaled or exhaled by the lung. "ILO scale" means the system for the classification of chest x-rays set forth in the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses (1980) as amended. "Certified B-reader" means an individual qualified as a "final" or "B-reader" as defined in 42 C.F.R. § 37.51(b), as amended. (R.C. 2307.91(I), (M), (N), (O), and (AA).)

<sup>11</sup> "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs, but that term does not include an asbestos claim based upon mesothelioma (R.C. 2307.91(P)).

<sup>12</sup> "Board-certified pathologist" means a medical doctor who is currently certified by the American Board of Pathology (R.C. 2307.91(G)).

<sup>13</sup> "Board-certified pulmonary specialist" means a medical doctor who is currently certified by the American Board of Internal Medicine in the subspecialty of pulmonary medicine (R.C. 2307.91(H)).

<sup>14</sup> "Board-certified oncologist" means a medical doctor who is currently certified by the American Board of Internal Medicine in the subspecialty of medical oncology (R.C. 2307.91(F)).

(3) Either of the following:

(a) In the case of an exposed person who is a nonsmoker,<sup>15</sup> either of the following requirements:

(i) Radiological or pathological evidence of asbestosis<sup>16</sup> or radiological evidence of diffuse pleural thickening;<sup>17</sup>

(ii) Evidence of the exposed person's occupational exposure to asbestos for any of the applicable minimum exposure periods in the occupations specified in R.C. 2307.92(D)(3)(b)(i), (ii), and (iii) (see (3)(b) under **Medical criteria for a claim based upon cancer of the colon, etc.**," below).

(b) In the case of an exposed person who is a smoker,<sup>18</sup> both of the requirements specified in (3)(a)(i) and (ii) above.

**Medical criteria for a claim based upon cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach**

A person is prohibited from bringing or maintaining a civil action alleging an asbestos claim based upon *cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach*, in the absence of a prima-facie showing of all of the following minimum requirements (R.C. 2307.92(D)):

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<sup>15</sup> "Nonsmoker" means the exposed person has not smoked cigarettes or used any other tobacco products within the last 15 years (R.C. 2307.91(S)).

<sup>16</sup> "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis (R.C. 2307.91(T)).

"Radiological evidence of asbestosis" means a chest x-ray showing small, irregular opacities (s, t) graded by a certified Breader as at least 1/1 on the ILO scale (R.C. 2307.91(X)).

<sup>17</sup> "Radiological evidence of diffuse pleural thickening" means a chest x-ray showing bilateral pleural thickening graded by a certified Breader as at least B2 on the ILO scale and blunting of at least one costophrenic angle (R.C. 2307.91(Y)).

<sup>18</sup> "Smoker" means a person who has smoked cigarettes or other tobacco products within the last 15 years (R.C. 2307.91(Z)).

(1) A diagnosis by a board-certified pathologist, board-certified pulmonary specialist, or board-certified oncologist, whichever is appropriate for the type of cancer claimed, that the exposed person has primary cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach and that exposure to asbestos was a substantial contributing factor to that particular cancer;

(2) Evidence that is sufficient to demonstrate that at least ten years have elapsed between the date of the exposed person's first exposure to asbestos and the date of diagnosis of the exposed person's particular cancer;

(3) Either of the following requirements:

(a) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening;

(b) Evidence of the exposed person's occupational exposure to asbestos for any of the following applicable minimum exposure periods in the specified occupations:

(i) Five exposure years<sup>19</sup> for insulators, shipyard workers, workers in manufacturing plants handling raw asbestos, boilermakers, shipfitters, steamfitters, or other trades performing similar functions;

(ii) Ten exposure years for utility and power house workers, secondary manufacturing workers, or other trades performing similar functions;

(iii) Fifteen exposure years for general construction, maintenance workers, chemical and refinery workers, marine engine room personnel and other personnel on vessels, stationary engineers and firefighters, railroad engine repair workers, or other trades performing similar functions.

No prima-facie showing is required in a civil action alleging an asbestos claim based upon mesothelioma<sup>20</sup> (R.C. 2307.92(E)).

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<sup>19</sup> "Exposure years" means that each single year of exposure prior to 1972 will be counted as one year, each single year of exposure from 1972 through 1979 will be counted as one-half year, and exposure after 1979 will not be counted, except that each year from 1972 forward for which the plaintiff can establish exposure exceeding the OSHA limit for eight-hour time-weighted average airborne concentration for a substantial portion of the year will count as one year. (R.C. 2307.91(L).)

<sup>20</sup> "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using standardized and accepted criteria of microscopic morphology and appropriate staining techniques (R.C. 2307.91(Q)).

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, must comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA Guides to the Evaluation of Permanent Impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretative standards set forth in the official statement of the American Thoracic Society entitled "Lung Function Testing: Selection of Reference Values and Interpretative Strategies" as published in American Review of Respiratory Disease, 1991:144:1202-1218. (R.C. 2307.92(F).)

All of the following apply to the presentation of prima-facie evidence that meets the requirements described above in **"Medical criteria for a claim based upon a nonmalignant condition," "Medical criteria for a claim based upon lung cancer,"** and **"Medical criteria for a claim based upon cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach"** (R.C. 2307.72(G)):

- (1) It does not result in any presumption at trial that the exposed person has a physical impairment that is caused by an asbestos-related condition.
- (2) It is not conclusive as to the liability of any defendant in the case.
- (3) It is not admissible at trial.

#### **Asbestos litigation--required filings**

The plaintiff in any civil action who alleges an asbestos claim must file together with the complaint or other initial pleading a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements described above in **"Medical criteria for a claim based upon a nonmalignant condition," "Medical criteria for a claim based upon lung cancer,"** and **"Medical criteria for a claim based upon cancer of the colon, rectum, larynx, pharynx, esophagus, or stomach,"** whichever is applicable. With respect to any asbestos claim that is pending on the effective date of this provision, the plaintiff must file the written report and supporting test results 60 days following the effective date of this provision or 30 days prior to trial, whichever is earlier. The defendant in the case must be afforded a reasonable opportunity to challenge the adequacy of the proffered prima-facie evidence of the physical impairment. The court is required to dismiss the plaintiff's claim without prejudice upon a finding of failure to make the required prima-facie showing. (R.C. 2307.93.)

### **Asbestos litigation--statute of repose**

Notwithstanding any other provision of the Revised Code, with respect to any asbestos claim based upon a nonmalignant condition that is not barred as of the effective date of this provision, the period of limitations does not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that the person has a physical impairment due to a nonmalignant condition. An asbestos claim that arises out of a nonmalignant condition is a distinct cause of action from an asbestos claim relating to the same exposed person that arises out of asbestos-related cancer. The court is prohibited from awarding damages for fear or risk of cancer in any civil action asserting only an asbestos claim for a nonmalignant condition. No settlement of an asbestos claim for a nonmalignant condition that is concluded after the effective date of this provision may require, as a condition of settlement, the release of any future claim for asbestos-related cancer. (R.C. 2307.94.)

### **Asbestos litigation--scope or operation**

The bill provides that the above-described provisions regarding asbestos litigation do not affect the scope or operation of any workers' compensation law or veterans' benefit program or the exclusive remedy of subrogation under the provisions of that law or program and may not authorize any lawsuit that is barred by any provision of any workers' compensation law. "Veterans' benefit program" means any program for benefits in connection with military service administered by the Veterans' Administration under title 38 of the United States Code. "Workers' compensation law" means R.C. Chapters 4121., 4123., 4127., and 4131. (R.C. 2307.95 and 2307.91(CC) and (DD).)

### **Successor asbestos-related liabilities**

#### **Definitions**

The bill provides the following definitions for the purposes of the successor asbestos-related liabilities provisions (R.C. 2307.96(A)):

(1) "Asbestos" has the same meaning as in the above-described asbestos provisions.

(2) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes any of the following:

(a) A claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person,

risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos;

(b) A claim for damage or loss to property that is caused by the installation, presence, or removal of asbestos.

(3) "Successor" means a domestic corporation or a subsidiary of a domestic corporation that acquired any assets of or the stock of a foreign business corporation, if the transaction occurred on or before July 29, 1977; the purchasing domestic corporation paid less than \$5 million for the acquisition; and the principal place of business of the foreign corporation was located outside the state of Ohio.

(4)(a) "Successor asbestos-related liabilities," in relation to an asset purchase or a stock purchase by a successor means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, if the liabilities are related in any way to asbestos claims and are assumed or incurred by a successor as a result of or in connection with the asset purchase or stock purchase, merger, or consolidation, or the agreement of the asset purchase or stock purchase.

(b) "Successor asbestos-related liabilities" includes any liabilities described in the prior paragraph that, after the effective date of the asset purchase or stock purchase, are paid, otherwise discharged, committed to be paid, or committed to be otherwise discharged by or on behalf of the successor, or by or on behalf of a transferor, in connection with any judgment, settlement, or other discharge of those liabilities in this state or another jurisdiction.

(5) "Transferor" means a foreign corporation or its shareholders from which successor asbestos-related liabilities are assumed or incurred by the successor.

### **Limitation on liability**

The bill provides that generally the cumulative successor asbestos-related liabilities of a successor are limited to the fair market value of the acquired assets or stock as determined on the effective date of the asset purchase or stock purchase, merger, or consolidation. If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior asset purchase, stock purchase, merger, or consolidation involving a prior transferor, the successor asbestos-related liabilities of the successor must be limited to the fair market value of the previously acquired assets or stock as determined on the effective date of the prior asset purchase, stock purchase, merger, or consolidation. The successor

has no responsibility for any successor asbestos-related liabilities in excess of the limitation of those liabilities described above. (R.C. 2307.96(B).)

**Exemption from restraint, attachment, or execution**

The bill provides that generally the assets of a successor are exempt from restraint, attachment, or execution on any judgment entered in this state or another jurisdiction related to any claim for successor asbestos-related liabilities if the cumulative amounts of those liabilities that, after the effective date of the asset purchase or stock purchase that is covered under "**Limitation on liability**," above, are paid or committed to be paid by or on behalf of the successor, or by or on behalf of the transferor, in connection with any judgment, settlement, or other discharge of claims of asbestos-related liabilities exceed the fair market value of the assets or stock as determined on the effective date of the asset purchase or stock purchase, merger, or consolidation. If a transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior asset purchase, stock purchase, merger, or consolidation involving a prior transferor, the assets of the successor are exempt from restraint, attachment, or execution on any judgment entered in this state or another jurisdiction related to any claim for successor asbestos-related liabilities if the cumulative amounts of those liabilities that, after the effective date of the prior asset purchase, stock purchase, merger, or consolidation, are paid or committed to be paid by or on behalf of the successor, or by or on behalf of the prior transferor, in connection with any judgment, settlement, or other discharge of claims of asbestos-related liabilities, exceed the fair market value of the previously acquired assets or stock as determined on the effective date of the prior asset purchase, stock purchase, merger, or consolidation. (R.C. 2307.96(C).)

**Establishment of fair market value of total assets**

Under the bill, a successor may establish the fair market value of the total assets by means of any method that is reasonable under the circumstances, including by reference to the going-concern value of those assets, to the purchase price attributable to or paid for the assets in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, to the value of those assets recorded on a balance sheet. Total assets include intangible assets. A showing by the successor of a reasonable determination of the fair market value of total assets is prima-facie evidence of the fair market value of those assets. After a successor has established a reasonable determination of the fair market value of the total assets, a claimant that disputes that determination has the burden of establishing a different fair market value of those assets. (R.C. 2307.96(D)(1) and (2).)

For the purpose of adjusting the limitations on liability discussed in "Limitations on liability" and "Exemption from restraint, attachment, or execution," above, to account for the passage of time, the fair market value of total assets on the effective date of the applicable asset purchase or stock purchase under the applicable provisions must be increased annually, at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the asset purchase or stock purchase plus 1%, not compounded, until the earlier of either of the following (R.C. 2307.96(D)(3)):

(1) The date of the judgment, settlement, or other discharge of claims of successor asbestos-related liabilities to which the limitations on liability are being applied;

(2) The date on which the adjusted fair market value of total assets is first exceeded by the cumulative amounts of successor asbestos-related liabilities that are paid or committed to be paid by or on behalf of the successor or by or on behalf of a transferor, after the effective date of the asset purchase or stock purchase in connection with any judgment, settlement, or other discharge of the successor asbestos-related liabilities.

#### Application of the limitations on liability

The bill provides that the above limitations on liability apply to the following (R.C. 2307.96(E)(1)):

(1) All asbestos claims, including asbestos claims that are pending on the effective date of this provision, and all litigation involving asbestos claims, including litigation that is pending on the effective date of this provision.

(2) Successors of a successor to which the bill's provisions apply.

The limitations on liability do not apply to any of the following (R.C. 2307.96(E)(2)):

(1) Workers' compensation benefits that are paid by or on behalf of an employer to an employee pursuant to any provision of the workers' compensation law (R.C. Chapter 4121., 4123., 4127., or 4131.) in Ohio or comparable workers' compensation law of another jurisdiction;

(2) Any claim against a successor that does not constitute a claim for a successor asbestos-related liability;

(3) An insurance corporation;

(4) Any obligation arising under the "National Labor Relations Act" or under any collective bargaining agreement.

Under the bill, a holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted, or any affiliate or holding company of that holder, owner, or subscriber or of the corporation, is under no obligation to, and has no liability to, the corporation or to any person with respect to any obligation or liability of the corporation relating in any way to asbestos claims on the basis that the holder, owner, subscriber, affiliate, or holding company controlled the corporation or is or was the alter ego of the corporation, or on the basis of actual fraud or constructive fraud, a sham to perpetrate a fraud, a fraudulent conveyance, piercing the corporate veil, or any other similar theory, unless the person demonstrates that the holder, owner, subscriber, affiliate, or holding company caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the person primarily for the direct pecuniary benefit of the holder, owner, subscriber, affiliate, or holding company, and then only to the extent of that direct pecuniary benefit. Any liability of the holder, owner, or subscriber of shares of a corporation described above or any affiliate or holding company of that holder, owner, or subscriber or of the corporation for an obligation or liability that is so limited is exclusive and preempts any other obligation or liability imposed upon a holder, owner, or subscriber of shares of that corporation or any affiliate or holding company of that holder, owner, or subscriber or of the corporation for that obligation or liability under common law or otherwise. (R.C. 2307.97.)

### **Disposition of assets**

The bill provides that the terms and conditions of the following transactions are subject to the limitations on liability discussed in "**Limitations on liability**" and "**Exemption from restraint, attachment, or execution**," above: a lease, sale, exchange, transfer, or other disposition of all, or substantially all, of the assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business that is authorized (1) by the directors, either before or after authorization by the shareholders or (2) at a meeting of the shareholders held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal, or, if the articles so provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of the voting power, and by the affirmative vote of the holders of shares of any particular class that is required by the articles (R.C. 1701.76(F)).

### **Merger or consolidation**

The bill provides that, with regards to when a merger or consolidation becomes effective, all obligations belonging to or due to each constituent entity, the liability of the surviving or new entity for all the obligations of each constituent entity, and all the rights of creditors of each constituent entity that are preserved unimpaired are subject to the above-discussed limitations under the successor asbestos-related liability provisions of the bill (R.C. 1701.82(A)(3), (4), and (5)).

### **Statement of findings and intent and other uncodified provisions**

The General Assembly makes the following statement of findings and intent in the bill (Section 3(A)):

(1) Asbestos claims have created an increased amount of litigation in state and federal courts that the United States Supreme Court has characterized as "an elephant mass" of cases that "defies customary judicial administration and calls for national legislation." *Ortiz v. Fibreboard Corporation* (1999), 119 S.Ct. 2295, 2303.

(2) The current asbestos personal injury litigation system is unfair and inefficient, imposing a severe burden on litigants and taxpayers alike.

(3) The extraordinary volume of nonmalignant asbestos cases continue to strain federal and state courts, with over 200,000 cases pending and over 50,000 new cases filed each year.

(4) Asbestos personal injury litigation has already contributed to the bankruptcy of more than 60 companies, including nearly all manufacturers of asbestos textile and insulation products, and the ratio of asbestos-driven bankruptcies is accelerating.

(5) The General Assembly recognizes that the vast majority of asbestos claims are filed by individuals who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but who do not suffer from an asbestos-related impairment.

(6) The cost of compensating exposed individuals who are not ill jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future; threatens savings, retirement benefits, and jobs of the state's current and retired employees; adversely affects the communities in which these defendants operate; and impairs Ohio's economy.

(7) As stated in testimony by Robert Bunda, a trial lawyer who has been involved with the defense of asbestos claims on behalf of Owens-Illinois, Inc. for 24 years, there is something terribly wrong with the current civil justice system, evidenced by the fact that Owens-Illinois has been sued over 300,000 times for its brief involvement in manufacturing asbestos. According to Mr. Bunda, at least five Ohio-based companies have gone bankrupt because of the cost of paying people who are not sick. These bankruptcies have imperiled the availability of even modest compensation for the most seriously injured asbestos workers. They have also imperiled jobs, the health benefits, and the retirement funds of tens of thousands of blue-collar workers. New jobs are not being created in Ohio, and existing Ohio jobs are being destroyed.

(8) According to a study conducted by NERA Economic Consulting, in 2000, Owens-Corning laid off 275 employees from its Granville, Ohio plant. The ripple effect of those job losses predicts total employment in the county of almost 500 jobs and a \$15 million to \$20 million annual reduction in regional income.

(9) The public interest requires the deferring of claims of exposed individuals who are not ill in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state's employees and the well being of the Ohio economy.

The bill provides that in enacting sections 2307.91 to 2307.97 of the Revised Code, it is the intent of the General Assembly to: (1) give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos; (2) fully preserve the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become impaired in the future as a result of such exposure; (3) enhance the ability of the state's judicial systems and federal judicial systems to supervise and control litigation and asbestos-related bankruptcy proceedings; and (4) conserve the scarce resources of the defendants to allow compensation of cancer victims and others who are physically impaired by exposure to asbestos while securing the right to similar compensation for those who may suffer physical impairment in the future (Section 3(B)).

The bill also provides the following in uncodified law (Section 4):

(1) The General Assembly acknowledges the Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

(2) The General Assembly requests the Supreme Court to adopt rules to specify procedures for venue and consolidation of asbestos claims brought

pursuant to R.C. 2307.91 to 2307.95. With respect to procedures for venue in regard to asbestos claims, the General Assembly requests the Supreme Court to adopt a rule that requires that an asbestos claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in Ohio or that Ohio is the state in which the plaintiff's exposure to asbestos is a substantial contributing factor. With respect to procedures for consolidation of asbestos claims, the General Assembly requests the Supreme Court to adopt a rule that permits consolidation of asbestos claims only with the consent of all parties and, in the absence of that consent, permits a court to consolidate for trial only those asbestos claims that relate to the same exposed person and members of the exposed person's household.

As used in the above uncodified provisions, "asbestos," "asbestos claim," "exposed person," and "substantial contributing factor" have the same meanings as in R.C. 2307.91 of the bill.

**Severability**

The bill includes the following severability clauses (Sections 5 and 6).

If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the sections contained in this act are composed, and their applications, are independent and severable.

If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law contained in this act, is held to be preempted by federal law, the preemption of the item of law or its application does not affect other items of law or applications that can be given affect. The items of law of which the sections of this act are composed, and their applications, are independent and severable.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-03	p. 1091

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