

## Senate Substitute for HOUSE BILL No. 2053

By Committee on Judiciary

3-23

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1 AN ACT enacting the asbestos bankruptcy trust claims transparency act;  
2 providing for disclosures regarding asbestos bankruptcy trust claims in  
3 civil asbestos actions.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through 7, and amendments thereto, may be  
7 cited as the asbestos bankruptcy trust claims transparency act.

8 Sec. 2. The following definitions apply to this act:

9 (a) "Asbestos" means chrysotile, amosite, crocidolite, tremolite  
10 asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite,  
11 asbestiform richterite, asbestiform amphibole minerals, and any of these  
12 minerals that have been chemically treated or altered, including all  
13 minerals defined as asbestos in 29 C.F.R. § 1910 at the time the asbestos  
14 action is filed.

15 (b) "Asbestos action" means a claim for damages or other civil or  
16 equitable relief presented in a civil action arising out of, based on, or  
17 related to the health effects of exposure to asbestos, including loss of  
18 consortium, wrongful death, mental or emotional injury, risk or fear of  
19 disease or other injury, costs of medical monitoring or surveillance, and  
20 any other derivative claim made by or on behalf of a person exposed to  
21 asbestos or a representative, spouse, parent, child or other relative of that  
22 person.

23 (c) "Asbestos trust" means a government-approved or court-approved  
24 trust, qualified settlement fund, compensation fund or claims facility  
25 created as a result of an administrative or legal action, a court-approved  
26 bankruptcy, or pursuant to 11 U.S.C. § 524(g) or 11 U.S.C. § 1121(a) or  
27 other applicable provision of law, that is intended to provide compensation  
28 to claimants arising out of, based on, or related to the health effects of  
29 exposure to asbestos.

30 (d) "Plaintiff" means the person bringing the asbestos action,  
31 including a personal representative if the asbestos action is brought by an  
32 estate, or a conservator or next friend if the asbestos action is brought on  
33 behalf of a minor or legally incapacitated individual.

34 (e) "Trust claims materials" means a final executed proof of claim  
35 and all other documents and information related to a claim against an  
36 asbestos trust, including claims forms and supplementary materials,

1 affidavits, depositions and trial testimony, work history, and medical and  
2 health records, documents reflecting the status of a claim against an  
3 asbestos trust, and if the trust claim has settled, all documents relating to  
4 the settlement of the trust claim.

5 (f) "Trust governance documents" means all documents that relate to  
6 eligibility and payment levels, including claims payment matrices, trust  
7 distribution procedures, or plans for reorganization, for an asbestos trust.

8 Sec. 3. (a) Within 30 days after an asbestos action is filed, or within  
9 30 days after the effective date of this act, whichever is later, the plaintiff  
10 shall do all of the following:

11 (1) Provide the court and parties with a sworn statement signed by the  
12 plaintiff and plaintiff's counsel, under penalties of perjury, indicating that  
13 an investigation of all asbestos trust claims has been conducted and that all  
14 asbestos trust claims that can be made by the plaintiff or any person on the  
15 plaintiff's behalf have been filed. The sworn statement must indicate  
16 whether there has been a request to defer, delay, suspend or toll any  
17 asbestos trust claim, and provide the disposition of each asbestos trust  
18 claim.

19 (2) Provide all parties with all trust claims materials, including trust  
20 claims materials that relate to conditions other than those that are the basis  
21 for the asbestos action and including all trust claims materials from all law  
22 firms connected to the plaintiff in relation to exposure to asbestos,  
23 including anyone at a law firm involved in the asbestos action, any  
24 referring law firm, and any other firm that has filed an asbestos trust claim  
25 for the plaintiff or on the plaintiff's behalf.

26 (3) If the plaintiff's asbestos trust claim is based on exposure to  
27 asbestos through another individual, the plaintiff shall produce all trust  
28 claims materials submitted by the other individual to any asbestos trusts if  
29 the materials are available to the plaintiff or the plaintiff's counsel.

30 (b) The plaintiff shall supplement the information and materials  
31 required under subsection (a) within 30 days after the plaintiff or a person  
32 on the plaintiff's behalf supplements an existing asbestos trust claim,  
33 receives additional information or materials related to an asbestos trust  
34 claim, or files an additional asbestos trust claim.

35 (c) The court may dismiss the asbestos action if the plaintiff fails to  
36 comply with this section.

37 (d) An asbestos action may not be set for trial until at least 180 days  
38 after the requirements of subsection (a) are met.

39 Sec. 4. (a) A defendant may file a motion requesting a stay of the  
40 proceedings on or before the later of the 60<sup>th</sup> day before the date trial in the  
41 action is set to commence or the 15<sup>th</sup> day after the defendant first obtains  
42 information that could support additional trust claims by the plaintiff. The  
43 motion shall identify the asbestos trust claims the defendant believes the

1 plaintiff can file and include information supporting the asbestos trust  
2 claims.

3 (b) Within 10 days of receiving the defendant's motion, the plaintiff  
4 shall:

5 (1) File the asbestos trust claims;

6 (2) file a written response with the court stating why there is  
7 insufficient evidence for the plaintiff to file the asbestos trust claims; or

8 (3) file a written response with the court requesting a determination  
9 that the cost to file the asbestos trust claims exceeds the plaintiff's  
10 reasonably anticipated recovery.

11 (c) (1) If the court determines that there is a sufficient basis for the  
12 plaintiff to file an asbestos trust claim identified in the motion to stay, the  
13 court shall stay the asbestos action until the plaintiff files the asbestos trust  
14 claim and produces all related trust claims materials.

15 (2) If the court determines that the cost of submitting an asbestos trust  
16 claim exceeds the plaintiff's reasonably anticipated recovery, the court  
17 shall stay the asbestos action until the plaintiff files with the court and  
18 provides all parties with a verified statement of the plaintiff's history of  
19 exposure, usage or other connection to asbestos covered by that asbestos  
20 trust.

21 (d) An asbestos action may not be set for trial until at least 60 days  
22 after the plaintiff provides the documentation required by this section.

23 (e) Not less than 30 days before trial in an asbestos action, the court  
24 shall enter into the record a document that identifies every asbestos trust  
25 claim made by the plaintiff or on the plaintiff's behalf.

26 Sec. 5. (a) Trust claims materials and trust governance documents are  
27 presumed to be relevant and authentic, and are admissible in evidence in  
28 an asbestos action. A claim of privilege does not apply to any trust claims  
29 materials or trust governance documents.

30 (b) A defendant in an asbestos action may seek discovery from an  
31 asbestos trust. The plaintiff may not claim privilege or confidentiality to  
32 bar discovery and shall provide consent or other expression of permission  
33 that may be required by the asbestos trust to release information and  
34 materials sought by a defendant.

35 (c) Trust claim materials that are sufficient to entitle a claim to  
36 consideration for payment under the applicable trust governance  
37 documents may be sufficient to support a jury finding that the plaintiff  
38 may have been exposed to products for which the trust was established to  
39 provide compensation and that, under applicable law, such exposure may  
40 be a substantial contributing factor in causing the plaintiff's injury that is at  
41 issue in the asbestos action.

42 Sec. 6. (a) On the motion of a defendant or judgment debtor seeking  
43 sanctions or other relief in an asbestos action, the court may impose any

1 sanction provided by court rule or a law of this state, including, but not  
2 limited to, vacating a judgment rendered in the action, for a plaintiff's  
3 failure to comply with the disclosure requirements of this act.

4 (b) If the plaintiff or a person on the plaintiff's behalf files an asbestos  
5 trust claim after the plaintiff obtains a judgment in an asbestos action, and  
6 that asbestos trust was in existence at the time the plaintiff obtained the  
7 judgment, the trial court, on motion by a defendant or judgment debtor  
8 seeking sanctions or other relief, has jurisdiction to reopen the judgment in  
9 the asbestos action and adjust the judgment by the amount of any  
10 subsequent asbestos trust payments obtained by the plaintiff and order any  
11 other relief to the parties that the court considers just and proper.

12 (c) A defendant or judgment debtor shall file any motion under this  
13 section within a reasonable time and not more than one year after the  
14 judgment was entered.

15 Sec. 7. (a) This act shall apply to all asbestos actions filed on or after  
16 July 1, 2017. The act shall also apply to any pending asbestos actions in  
17 which trial has not commenced as of July 1, 2017.

18 (b) This act may only be applied prospectively if the application of a  
19 provision in this act would unconstitutionally affect a vested right.

20 Sec. 8. This act shall take effect and be in force from and after its  
21 publication in the statute book.