

HOUSE BILL No. 2457

AN ACT enacting the asbestos trust claims transparency act; providing for disclosures regarding asbestos trust claims in civil asbestos actions.

Be it enacted by the Legislature of the State of Kansas:

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

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

(a) “Asbestos” has the same meaning as defined in K.S.A. 2017 Supp. 60-4901, and amendments thereto.

(b) “Asbestos claim” has the same meaning as defined in K.S.A. 2017 Supp. 60-4901, and amendments thereto.

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

(d) “Plaintiff” means the person bringing the asbestos claim, including a personal representative if the asbestos claim is brought by an estate, or a conservator or next friend if the asbestos claim is brought on behalf of a minor or legally incapacitated individual, and any person who is representing the plaintiff or has a fiduciary duty to the plaintiff for the action, including the plaintiff’s representatives, agents, counsel and assigns.

(e) “Trust claim materials” means all documents and information filed or submitted by or on behalf of the plaintiff as part of or related to a claim against an asbestos trust, including a final executed proof of claim, claim forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents demonstrating asbestos exposure or the health effects of exposure to asbestos or the validity of a trust claim or other materials that an asbestos trust requires in order to support the trust claim, documents reflecting the status of a claim against an asbestos trust, and, if the trust claim has settled, all documents relating to the settlement of the asbestos trust claim.

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

Sec. 3. (a) No later than 30 days prior to the date the court establishes for the completion of all fact discovery, the plaintiff, and any person who is representing the plaintiff or has a fiduciary duty to the plaintiff with respect to the asbestos claim, shall do all of the following:

(1) Conduct an investigation and file all asbestos trust claims that can be made by the plaintiff;

(2) provide the court and parties with a sworn statement signed by the plaintiff and the plaintiff’s counsel in the asbestos claim, under penalty of perjury, indicating that an investigation of asbestos trust claims has been conducted by the plaintiff and any person who is representing the plaintiff or has a fiduciary duty to the plaintiff with respect to the asbestos claim, and further indicating that all asbestos trust claims that can be made by the plaintiff or on the plaintiff’s behalf have been completed and filed. A deferral or placeholder claim that has missing documentation for the asbestos trust to review and pay the claim does not meet the requirements of this section. The sworn statement must indicate whether there has been a request to delay, suspend, withdraw or otherwise alter the standing of an asbestos trust claim and provide the status and disposition of each asbestos trust claim, including the amount of any trust claim payment made or to be made to the plaintiff;

(3) provide all parties with all trust claim materials, including trust claim materials that relate to conditions other than those that are the basis for the asbestos claim and all trust claim materials from all law firms connected to the plaintiff in relation to exposure to asbestos, including anyone at a law firm or any fiduciaries involved in the asbestos claim, any referring law firm, and any other firm or fiduciary that has filed an asbestos trust claim for the plaintiff or on the plaintiff’s behalf. Documents shall be accompanied by a custodial affidavit from the asbestos trust certifying that the trust claim materials submitted to the defendants are true and complete; and

(4) if the plaintiff's asbestos trust claim is based on exposure to asbestos through another individual, the plaintiff shall produce all trust claim materials submitted by or on behalf of the other individual to any asbestos trust if the plaintiff is in possession, control or custody of those trust claim materials, or if the plaintiff, plaintiff's counsel or any of the plaintiff's fiduciaries are legally entitled to obtain those trust claim materials.

(b) The plaintiff has a continuing duty to supplement the information and materials required under subsection (a), and the supplementation shall be made within 30 days after the plaintiff or a person on the plaintiff's behalf supplements an existing asbestos trust claim, receives additional information or materials related to an asbestos trust claim, or files an additional asbestos trust claim. The requirements of this section are in addition to any notice or materials to be served or produced as part of discovery and under any other law, rule, order or applicable agreement.

Sec. 4. (a) A defendant may file a motion no later than the date the court establishes for the completion of all fact discovery identifying the asbestos trust claims the defendant believes the plaintiff can file and include information supporting the asbestos trust claims.

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

- (1) File the asbestos trust claims;
- (2) file a written response with the court stating why there is insufficient evidence for the plaintiff to file the asbestos trust claims; or
- (3) file a written response with the court requesting a determination that the cost to file the asbestos trust claims exceeds the plaintiff's reasonably anticipated recovery.

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

(2) If the court determines that the cost of submitting an asbestos trust claim exceeds the plaintiff's reasonably anticipated recovery, the plaintiff shall file with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage or other connection to asbestos covered by that asbestos trust within 30 days of the court's determination.

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

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

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

(b) A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than one year after the judgment in the asbestos claim was entered.

Sec. 7. This act shall apply to all asbestos claims filed on or after July 1, 2018.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.