

House Bill 639

By: Representatives Scoggins of the 14th, Kelley of the 16th, and Gambill of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 provide transparency with respect to asbestos trust claims and claims made in civil asbestos
3 actions; to provide for legislative findings; to provide for definitions; to revise information
4 required for the sworn information form; to provide for requirements; to provide for
5 penalties; to provide for applicability; to provide for an effective date; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising
10 paragraphs (7) through (9) of Code Section 51-14-7, relating to sworn information form
11 providing required information, failure to state a claim, and class actions barred, as follows:

12 "(7) The specific condition related to asbestos or silica claimed to exist; and
13 (8) Any supporting documentation of the condition claimed to exist; ~~and~~
14 ~~(9) The identity of any bankruptcy trust to which a claim has been submitted concerning~~
15 ~~any asbestos or silica injury of the exposed person, attaching any claim form or other~~
16 ~~information submitted to such trust or trusts with respect to the exposed person. Plaintiff~~

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17 ~~must also identify any bankruptcy trust that the plaintiff believes is or may be liable for~~
18 ~~all or part of the injury at issue, even if a claim has not been submitted to that trust at the~~
19 ~~time the complaint is filed."~~

20 **SECTION 2.**

21 Said title is further amended by adding a new chapter to read as follows:

22 "CHAPTER 17.

23 51-17-1.

24 (a) The General Assembly finds that:

25 (1) More than 120 employers have declared bankruptcy, at least partially due to
26 asbestos-related liability;

27 (2) Scores of trusts have been established in bankruptcy proceedings to form a
28 multi-billion dollar compensation system for asbestos claimants outside of the civil
29 courts, and new asbestos trusts continue to be formed;

30 (3) Asbestos claimants typically seek compensation from solvent defendants in civil
31 actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;

32 (4) There is limited transparency between these two paths to recovery;

33 (5) An absence of transparency with respect to asbestos bankruptcy trust claims has
34 resulted in the suppression of evidence in asbestos actions;

35 (6) A federal bankruptcy court found that trust claim filings are being manipulated and
36 information withheld in order to inflate recoveries in asbestos actions;

37 (7) The lack of transparency regarding trust claims information harms Georgia
38 employers, their employees, shareholders, and the communities in which they operate.
39 Companies that pay inflated settlements and awards in asbestos cases have fewer
40 resources to pay future claimants and to invest in the state's economy; and

41 (8) Transparency with respect to asbestos trust claims and claims made in civil asbestos
42 actions promotes the integrity of asbestos actions and extends recovery time to help
43 future plaintiffs.

44 (b) It is the purpose of this chapter to:

45 (1) Provide transparency with respect to asbestos trust claims and claims made in civil
46 asbestos actions; and

47 (2) Reduce the opportunity for withholding or suppression of trust-related exposure
48 evidence in asbestos actions.

49 51-17-2.

50 As used in this chapter, the term:

51 (1) 'Asbestos action' means any claim for damages or other civil or equitable relief
52 presented in a civil action arising out of, based on, or in any way related to the health
53 effects of exposure to asbestos and any other derivative claim made by or on behalf of a
54 person exposed to asbestos or a representative, spouse, parent, child, or other relative of
55 that person.

56 (2) 'Asbestos trust' means a government-approved or court-approved trust, qualified
57 settlement fund, compensation fund or claims facility that is created as a result of an
58 administrative or legal action, a court-approved bankruptcy, or under 11 U.S.C. 524(g),
59 11 U.S.C. 1121(a), or other applicable provision of law and is intended to provide
60 compensation to claimants arising out of, based on, or related to the health effects of
61 exposure to asbestos.

62 (3) 'Trust claims materials' means any final executed proof of claim and any other
63 document or information submitted to or received from an asbestos trust, including a
64 claim form or supplementary material, affidavit, deposition or trial testimony, work
65 history, exposure allegation, medical or health record, document reflecting the status of

66 a claim against an asbestos trust and, if the trust claim has settled, any document relating
67 to the settlement of the trust claim.

68 (4) 'Trust governance documents' means any document that relates to eligibility and
69 payment levels, including a claims payment matrix, trust distribution procedure or plan
70 for reorganization for an asbestos trust.

71 51-17-3

72 (a) In addition to the requirements set forth in Chapter 14 of this title, a plaintiff shall do
73 all of the following within 30 days of filing an asbestos action:

74 (1) Provide all parties with a sworn statement, indicating that an investigation of all
75 asbestos trust claims has been conducted and that all asbestos trust claims that can be
76 made by the plaintiff have been filed; and

77 (2) Provide all parties with all trust claims materials from all law firms connected to the
78 plaintiff in relation to exposure to asbestos.

79 (b) A plaintiff shall supplement the information and materials required under
80 subsection (a) of this Code section within 30 days after the plaintiff files an additional
81 asbestos trust claim, supplements an existing asbestos trust claim, or receives additional
82 information or materials related to an asbestos trust claim.

83 51-17-4.

84 (a) Not less than 60 days before trial of an asbestos action, if a defendant believes the
85 plaintiff has not filed all asbestos trust claims as required by Code Section 51-17-3, the
86 defendant may move the court for an order to require the plaintiff to file additional asbestos
87 trust claims that the defendant believes the plaintiff is eligible to file.

88 (b) If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust
89 claim identified by the defendant, the court shall stay the asbestos action until the plaintiff

90 files the trust claim and produces all related trust claims materials. An asbestos action may
91 not proceed to trial until at least 60 days after the plaintiff complies with the court's order.

92 51-17-5.

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

97 (b) Asbestos trust claims materials and trust governance documents are presumed to be
98 relevant and authentic and are admissible in evidence. No claim of privilege shall apply
99 to asbestos trust claims materials or trust governance documents.

100 (c) Trust claim materials that are sufficient to entitle a claim to consideration for payment
101 under the applicable trust governance documents may be sufficient to support a jury finding
102 that the claimant was exposed to products for which the trust was established to provide
103 compensation and that such exposure was a substantial contributing factor in causing the
104 claimant's injury that is at issue in the asbestos action.

105 51-17-6.

106 If a plaintiff files an asbestos trust claim after the plaintiff obtains a judgment in an
107 asbestos action and the asbestos trust was in existence at the time of the judgment, the trial
108 court upon motion by a defendant shall adjust the judgment by the amount of any
109 subsequent asbestos trust payments obtained by the plaintiff."

110 **SECTION 3.**

111 This Act shall become effective upon its approval by the Governor or upon its becoming law
112 without such approval and shall apply to asbestos claims that accrue on or after such date.

113

SECTION 4.

114 All laws and parts of laws in conflict with this Act are repealed.