

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 221

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT; AMEND-
2 ING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 6,
3 IDAHO CODE, TO PROVIDE A TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO DE-
4 FINE TERMS, TO REQUIRE A CLAIMANT TO MAKE CERTAIN DISCLOSURES, TO AL-
5 LOW A DEFENDANT TO FILE A CERTAIN MOTION REGARDING ADDITIONAL OR ALTER-
6 NATIVE TRUSTS, TO PROVIDE FOR CERTAIN REQUIREMENTS REGARDING DISCOVERY
7 AND USE OF MATERIALS, TO PROVIDE FOR A RECORD THAT IDENTIFIES ASBESTOS
8 TRUST CLAIMS, TO PROVIDE SANCTIONS FOR FAILURE TO PROVIDE CERTAIN IN-
9 FORMATION, TO PROVIDE CERTAIN PRESUMPTIONS, TO PROVIDE SEVERABILITY,
10 AND TO PROVIDE APPLICABILITY.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 31, Title 6, Idaho Code, and to read as follows:

16 CHAPTER 31

17 ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT

18 6-3101. TITLE. This chapter shall be known and may be cited as the "As-
19 bestos Bankruptcy Trust Claims Transparency Act."

20 6-3102. LEGISLATIVE FINDINGS. The legislature hereby finds that:

21 (1) Asbestos is a mineral that was widely used before the 1980s for in-
22 sulation, fireproofing and other purposes; and

23 (2) Millions of American workers and others were exposed to asbestos,
24 especially during and after World War II and before the promulgation of reg-
25 ulations by the occupational safety and health administration in the early
26 1970s; and

27 (3) Long-term exposure to asbestos has been associated with various
28 types of cancer, including mesothelioma and lung cancer, as well as nonma-
29 lignant conditions such as asbestosis and diffuse pleural thickening; and

30 (4) Although the use of asbestos has dramatically declined since the
31 1970s and workplace exposures have been regulated since 1971 by the occupa-
32 tional safety and health administration, past exposures will continue to re-
33 sult in significant claims of death and disability as a result of the expo-
34 sure; and the United States supreme court in *Amchem Products, Inc. v. Wind-*
35 *sor*, 521 U.S. 591, 598 (1997), described the asbestos litigation as a "cri-
36 sis"; and

37 (5) Approximately one hundred (100) employers have declared bankruptcy
38 at least partially due to asbestos-related liability; and

39 (6) These bankruptcies have resulted in a search for more solvent com-
40 panies, resulting in over ten thousand (10,000) companies being named as as-

1 bestos defendants, including many small and medium-sized companies, in in-
2 dustries that cover eighty-five percent (85%) of the United States economy;
3 and

4 (7) Scores of trusts have been established in asbestos-related bank-
5 ruptcy proceedings to form a multibillion dollar asbestos bankruptcy trust
6 compensation system outside of the tort system, and new asbestos trusts con-
7 tinue to be formed; and

8 (8) Asbestos claimants often seek compensation from solvent defendants
9 in civil actions and from trusts or claims facilities formed in asbestos-re-
10 lated bankruptcy proceedings; and

11 (9) There is limited coordination and transparency between these two
12 (2) paths to recovery, which has resulted in the suppression of evidence
13 in asbestos actions and potential fraud, as found in *In re Garlock Sealing*
14 *Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014); and

15 (10) Justice is promoted by transparency with respect to asbestos bank-
16 ruptcy trust claims in civil asbestos actions; and

17 (11) With this act, it is the intent of the Idaho legislature to provide
18 transparency with respect to asbestos bankruptcy trust claims in civil as-
19 bestos actions and to reduce the opportunity for fraud or suppression of evi-
20 dence in asbestos actions; and

21 (12) Asbestos actions and asbestos trust proceedings, and the interplay
22 between them, present unique circumstances for which there is presently a
23 void in Idaho law, including the Idaho rules of evidence and the Idaho rules
24 of civil procedure. That void is addressed by modifying the common law as set
25 forth in this chapter.

26 6-3103. DEFINITIONS. As used in this chapter:

27 (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite as-
28 bestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite,
29 asbestiform richterite, asbestiform amphibole minerals and any of these
30 minerals that have been chemically treated or altered, including all min-
31 erals defined as asbestos in 29 CFR 1910, at the time the asbestos action is
32 filed.

33 (2) "Asbestos action" means a claim for damages or other civil or equi-
34 table relief presented in a civil action arising out of, based on or related
35 to the health effects of exposure to asbestos, including loss of consortium,
36 wrongful death, mental or emotional injury, risk or fear of disease or other
37 injury, costs of medical monitoring or surveillance and any other derivative
38 claim made by or on behalf of a person exposed to asbestos or a representa-
39 tive, spouse, parent, child or other relative of that person.

40 (3) "Asbestos trust" means a government-approved or court-approved
41 trust, qualified settlement fund, compensation fund or claims facility
42 created as a result of an administrative or legal action, a court-approved
43 bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other
44 applicable provision of law, that is intended to provide compensation to
45 claimants arising out of, based on or related to the health effects of expo-
46 sure to asbestos.

47 (4) "Claimant" means any person, living or deceased, bringing an as-
48 bestos action or asserting an asbestos trust claim, including a personal
49 representative if the asbestos action or asbestos trust claim is brought by

1 an estate, or a conservator or next friend if the asbestos action or asbestos
2 trust claim is brought on behalf of a minor or legally incapacitated individ-
3 ual. "Claimant" includes a claimant, counter-claimant, cross-claimant or
4 third-party claimant.

5 (5) "Trust claims materials" means a final executed proof of claim and
6 all other documents and information submitted to an asbestos trust, includ-
7 ing claims forms and supplementary materials, affidavits, depositions and
8 trial testimony, work history, and medical and health records, documents re-
9 flecting the status of a claim against an asbestos trust, and if the trust
10 claim has settled, all documents received from an asbestos trust or sent to
11 an asbestos trust relating to the settlement of the trust claim.

12 (6) "Trust governance documents" means all documents that relate to el-
13 igibility and payment levels, including claims payment matrices, trust dis-
14 tribution procedures, or plans for reorganization, for an asbestos trust.

15 6-3104. REQUIRED DISCLOSURES BY CLAIMANT. (1) Forty-five (45) days
16 after an asbestos action is filed the claimant shall do the following:

17 (a) Provide the court and parties who have received service of the
18 summons and complaint with a sworn statement signed by claimant and
19 claimant's counsel, under penalties of perjury, indicating that an in-
20 vestigation of all asbestos trust claims has been conducted and that all
21 asbestos trust claims that can be made by the claimant or any person on
22 the claimant's behalf have been filed. The sworn statement must indi-
23 cate whether there has been a request to defer, delay, suspend or toll
24 any asbestos trust claim, and provide the disposition of each asbestos
25 trust claim;

26 (b) Provide all parties with all trust claims materials, including
27 trust claims materials that relate to conditions other than those that
28 are the basis for the asbestos action and including all trust claims ma-
29 terials from all law firms connected to claimant in relation to exposure
30 to asbestos, including anyone at a law firm involved in the asbestos
31 action, any referring law firm, and any other firm that has filed an
32 asbestos trust claim for the claimant or on the claimant's behalf;

33 (c) If the claimant's asbestos trust claim is based on exposure to as-
34 bestos through another individual, the claimant shall produce all trust
35 claims materials submitted by the other individual to any asbestos
36 trusts if the materials are available to claimant or claimant's coun-
37 sel; and

38 (d) If a party has not been served with the summons and complaint, the
39 plaintiff shall have the same amount of time as prescribed in this sub-
40 section after date of service of the summons and complaint to comply
41 with the provisions of this subsection.

42 (2) The claimant shall supplement the information and materials re-
43 quired under subsection (1) of this section within thirty (30) days after
44 the claimant or a person on the claimant's behalf supplements an existing
45 asbestos trust claim, receives additional information or materials related
46 to an asbestos trust claim, or files an additional asbestos trust claim.

47 (3) The court may dismiss the asbestos action if the claimant fails to
48 comply with the provisions of this section.

1 (4) An asbestos action may not be set for trial until at least one hun-
2 dred eighty (180) days after the requirements of subsection (1) of this sec-
3 tion are met.

4 6-3105. IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS
5 BY DEFENDANT. (1) A defendant may file a motion to stay the proceedings of
6 the asbestos action on or before the sixtieth day before the trial date or
7 the fifteenth day after the defendant first obtains information that reason-
8 ably could support additional trust claims by the claimant, whichever date
9 is later. The motion shall identify the asbestos trust claims the defendant
10 believes the claimant can file and include information supporting those as-
11 bestos trust claims.

12 (2) Within fourteen (14) days after receiving the defendant's motion to
13 stay proceedings, the claimant shall:

14 (a) File the asbestos trust claims;

15 (b) File a written response with the court stating why there is insuffi-
16 cient evidence for the claimant to file the asbestos trust claims; or

17 (c) File a written response with the court requesting a determination
18 that the cost to file the asbestos trust claims exceeds the claimant's
19 reasonably anticipated recovery.

20 (3) (a) If the court determines that there is a sufficient basis for the
21 claimant to file an asbestos trust claim identified in the motion to
22 stay, the court shall stay the asbestos action until the claimant files
23 the asbestos trust claim and produces all related trust claims materi-
24 als.

25 (b) If the court determines that the cost of submitting an asbestos
26 trust claim exceeds the claimant's reasonably anticipated recovery,
27 the court shall stay the asbestos action until the claimant files with
28 the court and provides all parties with a verified statement of the
29 claimant's history of exposure, usage or other connection to asbestos
30 covered by that asbestos trust.

31 (4) An asbestos action trial may not occur until at least sixty (60)
32 days have passed after the claimant provides the documentation required in
33 this section.

34 6-3106. DISCOVERY -- USE OF MATERIALS. (1) Asbestos trust claims and
35 the information that is the subject of disclosure under the provisions of
36 this chapter are presumed to be authentic, relevant to, and discoverable in
37 an asbestos tort action. Notwithstanding any agreement or confidentiality
38 provision, trust claims material are presumed to not be privileged. The par-
39 ties in the asbestos tort action may introduce at trial any trust claims ma-
40 terial to prove alternative causation for the exposed person's claimed in-
41 jury, death or loss to person, to prove a basis to allocate responsibility
42 for the claimant's claimed injury, death or loss to person, and to prove is-
43 sues relevant to an adjudication of the asbestos claim, unless the exclusion
44 of the trust claims material is otherwise required by the rules of evidence.
45 An asbestos trust claim rejected by an asbestos trust may be excluded as evi-
46 dence if the exclusion is required by the rules of evidence.

47 (2) A defendant in an asbestos action may seek discovery from an as-
48 bestos trust. The claimant may not claim privilege or confidentiality to bar

1 discovery and shall provide consent or other expression of permission that
2 may be required by the asbestos trust to release information and materials
3 sought by a defendant.

4 (3) Trust claims materials that are sufficient to entitle a claim to
5 consideration for payment under the applicable trust governance documents
6 may be sufficient to support a jury finding that the claimant was exposed
7 to products for which the trust was established to provide compensation and
8 that, under applicable law, such exposure may be a substantial contributing
9 factor in causing the claimant's injury that is at issue in the asbestos ac-
10 tion.

11 6-3107. TRUST RECORD. Thirty (30) days prior to trial in an asbestos
12 action, the court shall enter into the record a document that identifies ev-
13 ery asbestos trust claim made by the claimant or on the claimant's behalf.

14 6-3108. FAILURE TO PROVIDE INFORMATION -- SANCTIONS. (1) On the motion
15 of a defendant or judgment debtor seeking sanctions or other relief in an as-
16 bestos action, for a claimant's failure to comply with the disclosure re-
17 quirements of this chapter, the court may impose any sanction provided by
18 court rule or a law of this state including, but not limited to, vacating a
19 judgment rendered in the action.

20 (2) If the claimant or a person on the claimant's behalf files an as-
21 bestos trust claim after the claimant obtains a judgment in an asbestos ac-
22 tion and that asbestos trust was in existence at the time the claimant ob-
23 tained the judgment, the trial court, on motion by a defendant or judgment
24 debtor seeking sanctions or other relief, has jurisdiction, pursuant to rule
25 59 or rule 60 of the Idaho rules of civil procedure, to reopen the judgment in
26 the asbestos action and adjust the judgment by the amount of any subsequent
27 asbestos trust payments obtained by the claimant and order any other relief
28 to the parties that the court considers just and proper.

29 6-3109. PRESUMPTIONS. Whenever the provisions of this chapter pre-
30 scribe that an action is to be taken by, before or after a certain number of
31 days, numerically specified herein, the legislature intends that the stated
32 number of days constitutes a prima facie number presumed to be valid and con-
33 trolling, but which either party may seek to rebut, in the discretion of the
34 court.

35 6-3110. SEVERABILITY. The provisions of this chapter are declared to
36 be severable, and if any provision of this chapter or the application of that
37 provision to any person or circumstance is declared invalid for any reason,
38 that declaration shall not affect the validity of remaining portions of this
39 chapter.

40 6-3111. APPLICABILITY. This chapter shall apply to all asbestos ac-
41 tions filed on or after the effective date.