

Regular Session, 2012

HOUSE BILL NO. 477

BY REPRESENTATIVE ABRAMSON

CIVIL/PROCEDURE: Provides disclosure procedures for asbestos and silica claims

1 AN ACT

2 To enact Code of Civil Procedure Article 1476, relative to discovery in civil proceedings;  
3 to provide for claims involving asbestos or silica; to require the disclosure of certain  
4 information; to require certification; to provide for supplemental information; to  
5 provide for sanctions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 1476 is hereby enacted to read as follows:

8 Art. 1476. Required disclosures; asbestos and silica

9 A. Within thirty days of commencing an action involving a claim for injury,  
10 disease, or death related to asbestos or silica, and for cases currently pending, no less  
11 than ninety days prior to trial, a plaintiff shall provide to all parties:

12 (1) A statement of all existing or potential claims against any trust created  
13 pursuant to Title 11 of the United States Code; or

14 (2) A statement that no claims will be filed by that plaintiff or person whose  
15 exposure is alleged to be the cause of the claim, against any trust created pursuant  
16 to Title 11 of the United States Code, for the purpose of processing, liquidating,  
17 paying, or satisfying asbestos or silica claims.

18 B. A statement made pursuant to Paragraph A of this Article shall be a sworn  
19 statement, under oath, by a plaintiff attesting that the plaintiff and counsel have  
20 conducted a good faith investigation of all existing or potential trust claims. A

1 statement made pursuant to Subparagraph (A)(1) shall also disclose when the claim  
2 was or will be made and whether there has been any request for deferral, delay,  
3 suspension, or tolling of the trust claims process or proceeding against a trust. The  
4 plaintiff shall have a continuing duty to supplement a sworn statement made pursuant  
5 to Paragraph A within thirty days of receipt of additional information which supports  
6 the filing of additional trust claims. A statement made pursuant to Subparagraph  
7 (A)(2) may be withdrawn prior to trial if a statement made pursuant to Subparagraph  
8 (A)(1) is filed as a substitute for the statement made pursuant to Subparagraph  
9 (A)(2). In the event a statement is filed as a substitute within ninety days of a trial  
10 date set in a matter, the trial shall be continued no less than ninety days from the date  
11 the substitute statement is filed or the documents set forth in Paragraph B are  
12 produced, whichever is later.

13 C. As to any claim identified in Paragraph A of this Article, the plaintiff  
14 shall produce final, executed proof of any claim and all supporting materials and all  
15 documents submitted to a trust or fund, including work histories, affidavits,  
16 depositions, trial testimony, and medical documentation, including X-rays, test  
17 results, reports and records of all doctors, and pathology results.

18 D. Failure to comply with the disclosure requirements in this Article may  
19 serve as the basis for sanctions against the plaintiff including, at the discretion of the  
20 court, dismissal upon a finding that the plaintiff willfully failed to comply.

21 E. Except as provided in Code of Evidence Articles 408 and 413, the  
22 disclosures required by this Article shall be admissible in actions involving asbestos  
23 and silica claims. The provisions of this Article shall not change the application of  
24 the laws relative to the allocation of fault.

25 F. The provisions of Paragraph A of this Article shall not be interpreted to  
26 require a plaintiff or other person to file a claim against any trust.

27 Section 2. The provisions of this Act shall apply to all asbestos and silica claims  
28 filed on or after the effective date of this Act and to any pending asbestos or silica claims in  
29 which no trial date has been set as of the effective date of this Act.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abramson

HB No. 477

**Abstract:** Provides disclosure procedures for asbestos and silica claims.

Proposed law requires the plaintiff or person whose exposure is alleged to be the cause of the claim to provide to all parties a statement of any existing or potential claims or a statement that no claim will be filed involving asbestos or silica against any trust created in accordance with Title 11 of the U.S. Code within 30 days of commencing an action or at least 90 days prior to trial.

Proposed law requires the plaintiff to attest that the plaintiff and his counsel have conducted a good faith investigation of all potential claims.

Proposed law requires the statement to include information regarding when all claims were or may be filed and whether any deferrals, delays, suspensions, or tollings of the claims process have been requested.

Proposed law requires the plaintiff to supplement the statement within 30 days of obtaining additional information supporting the filing of additional claims.

Proposed law provides that a statement that no claims will be filed may be withdrawn prior to trial if substituted with a statement of all existing or potential claims prior to trial. Further provides that if the substitute is filed within 90 days of trial, the trial shall be continued no less than 90 days from the filing of the substitute or the completion of discovery, whichever is later.

Proposed law requires, as to any claim, the final, executed proof of the claim and all supporting materials and all documents submitted to a trust or fund, including work histories, depositions, and all medical documentation.

Proposed law provides that failure to comply with the disclosure requirements may serve as the basis for sanctions, including dismissal.

Proposed law provides that the disclosures made in accordance with proposed law shall be admissible, except as provided in C.E. Arts. 408 and 413, and shall not change the application of the laws relative to the allocation of fault.

Provides that proposed law shall not be interpreted to require a plaintiff or other person to file a claim against any trust.

Proposed law applies to all asbestos and silica claims filed on or after the effective date of proposed law and to all pending claims in which no trial date has been set as of the effective date of proposed law.

(Adds C.C.P. Art. 1476)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provision for the filing of a statement that no claim will be filed.
2. Deleted reference to claims filed against any fund established for the benefit of claimants.
3. Added provision addressing the applicability of the laws on allocation of fault.
4. Added provision specifying that proposed law does not require the filing of a claim against any trust.
5. Provided that proposed law shall apply to cases in which a trial date has not been set.

House Floor Amendments to the engrossed bill.

1. Changed time period from 180 days to 90 days prior to trial within which a statement of existing or potential claims, or a statement that no claims will be filed, shall be provided to all parties.
2. Added provision allowing the withdrawal of a statement that no claims will be filed prior to trial if substituted with a statement of all existing or potential claims. Further added that if the substitute is filed within 90 days of trial, the trial shall be continued no less than 90 days from the filing of the substitute or the completion of discovery, whichever is later.