

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 2437

(SENATE AUTHORS: JOHNSON)

DATE
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OFFICIAL STATUS
Introduction and first reading
Referred to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to civil actions; providing for disclosure of asbestos trust claims; proposing
1.3 coding for new law in Minnesota Statutes, chapter 604.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[604.025] ASBESTOS TRUST CLAIMS TRANSPARENCY ACT.**

1.6 Subdivision 1. Definitions. (a) For the purposes of this section, the terms in this
1.7 subdivision have the meanings given them.

1.8 (b) "Asbestos action" means a claim for damages or other relief asserted in a civil action
1.9 arising out of, based on, or related to the health effects of exposure to asbestos. Asbestos
1.10 action includes any claim by any trustee or other representative on behalf of a person claiming
1.11 health effects arising out of, based on, or related to exposure to asbestos.

1.12 (c) "Asbestos claimant" means a person asserting an asbestos action or asbestos trust
1.13 claim. Asbestos claimant includes a plaintiff, counterclaimant, cross-claimant, or third-party
1.14 plaintiff.

1.15 (d) "Asbestos trust" means a government-approved or court-approved trust, qualified
1.16 settlement fund, compensation fund or claims facility created as a result of an administrative
1.17 or legal action, a court-approved bankruptcy, or pursuant to United States Code, title 11,
1.18 section 524(g) or 1121(a), or other applicable provision of law, that is intended to compensate
1.19 claimants arising out of, based on, or related to the health effects of asbestos exposure.

1.20 (e) "Asbestos trust claim" means any claim for compensation by a person against any
1.21 asbestos trust.

2.1 (f) "Plaintiff" means a person asserting an asbestos action, including (1) a trustee
2.2 appointed pursuant to section 573.02, subdivision 3; (2) a personal representative if the
2.3 action is brought through or on behalf of an estate; or (3) a parent, guardian, conservator,
2.4 or next friend if the asbestos action is brought through or on behalf of a minor or legally
2.5 incapacitated individual.

2.6 (g) "Trust claim materials" means a final executed proof of claim and all other documents
2.7 and information submitted to or received from an asbestos trust, including (1) claim forms
2.8 and supplementary materials; (2) affidavits, depositions, and trial testimony of the asbestos
2.9 claimant and others knowledgeable about the asbestos claimant's exposure history; (3) work
2.10 history; (4) exposure allegations; (5) medical and health records; (6) all documents that
2.11 reflect the status of an asbestos trust claim; and (7) if the asbestos trust claim has been
2.12 resolved, all documents relating to the resolution of the asbestos trust claim.

2.13 (h) "Trust governance documents" means all documents that relate to eligibility and
2.14 payment levels, including claims payment matrices, trust distribution procedures, or plans
2.15 to reorganize an asbestos trust.

2.16 Subd. 2. **Required disclosures by plaintiff.** (a) Within 60 days of the commencement
2.17 of an asbestos action, the plaintiff must:

2.18 (1) file or otherwise submit all asbestos trust claims that can be made by or on behalf
2.19 of the asbestos claimant;

2.20 (2) serve on all parties a sworn statement signed by the plaintiff, under penalty of perjury,
2.21 stating that a good faith investigation of all asbestos trust claims that can be made by or on
2.22 behalf of the asbestos claimant has been conducted and that all asbestos trust claims that
2.23 can be made by or on behalf of the asbestos claimant have been filed with or otherwise
2.24 submitted to the appropriate asbestos trusts. The sworn statement must state whether there
2.25 has been a request to defer, delay, suspend, or toll any asbestos trust claim, and state the
2.26 disposition of each asbestos trust claim if there has been a disposition of any such asbestos
2.27 trust claim. A deferral or placeholder claim that is missing documentation for the asbestos
2.28 trust to pay the claim does not meet the requirements of this section; and

2.29 (3) serve on all parties all trust claim materials filed or submitted by or on behalf of the
2.30 asbestos claimant. Disclosure of all trust claim materials served under this clause must be
2.31 accompanied by a notarized affidavit or declaration under penalty of perjury that certifies
2.32 the trust claim materials are true and complete.

2.33 (b) A plaintiff has a continuing duty to supplement disclosures required under paragraph
2.34 (a) within 30 days after:

- 3.1 (1) an asbestos trust claim is supplemented;
3.2 (2) additional information or materials related to an asbestos trust claim is received; or
3.3 (3) files or otherwise submits any additional asbestos trust claims.

3.4 **Subd. 3. Identification of additional or alternative asbestos trusts by defendant.** (a)
3.5 Not less than 60 days before trial, if a defendant believes the plaintiff has not filed all
3.6 asbestos trust claims as required by subdivision 2, the defendant may move the court for an
3.7 order to require the plaintiff to file additional asbestos trust claims. The motion must identify
3.8 the additional asbestos trust claims the defendant believes the plaintiff is eligible to file.

3.9 (b) If the court determines there is a sufficient basis for the plaintiff to file one or more
3.10 asbestos trust claims identified by a defendant, the court must stay the asbestos action until
3.11 the plaintiff files the identified asbestos trust claim and makes the disclosures required under
3.12 subdivision 2. The asbestos action must not proceed to trial until at least 60 days after the
3.13 plaintiff complies with this section.

3.14 **Subd. 4. Discovery; use of materials.** (a) Trust claim materials and trust governance
3.15 documents are admissible evidence in an asbestos action and are presumed relevant and
3.16 authentic. A claim of privilege does not apply to trust claim materials or trust governance
3.17 documents.

3.18 (b) A defendant in an asbestos action may seek discovery from an asbestos trust. The
3.19 plaintiff is prohibited from claiming privilege or confidentiality to bar discovery and must
3.20 authorize the release of trust claim materials or provide permission required by an asbestos
3.21 trust to release information and materials sought by a defendant.

3.22 (c) Trust claim materials may be used to prove, without limitation, an alternative source
3.23 for the cause of the asbestos claimant's alleged harm and may serve as a basis to allocate
3.24 fault and apportion damages under chapter 604 for the asbestos claimant's alleged harm.

3.25 **Subd. 5. Setoff** (a) In an asbestos action where damages are awarded and an amount
3.26 determined to be uncollectible from an entity that an asbestos trust was established for is
3.27 reallocated pursuant to section 604.02, subdivision 2, the amount reallocated to a defendant
3.28 must be reduced by an amount equaling:

3.29 (1) the percentage of the amount initially reallocated to the defendant compared to the
3.30 total amount initially reallocated to all defendants, multiplied by

3.31 (2) the amount the plaintiff has received from the asbestos trust for the entity whose
3.32 amount is determined to be uncollectible or, for trust claims not yet paid as of the reallocation

4.1 date, the amount the plaintiff receives from the asbestos trust as specified in the asbestos
4.2 trust's trust governance documents.

4.3 (b) In an asbestos action where damages are awarded and an amount determined to be
4.4 uncollectible from an entity that an asbestos trust was established for is reallocated under
4.5 section 604.02, subdivision 3, the amount reallocated to a defendant in the product's chain
4.6 of manufacture or distribution must be reduced by an amount equaling:

4.7 (1) the percentage of the amount initially reallocated to the defendant as compared to
4.8 the total amount initially reallocated to all defendants in the product's chain of manufacture
4.9 or distribution, multiplied by

4.10 (2) the amount the plaintiff has received from the asbestos trust for the entity whose
4.11 amount is determined to be uncollectible or, for trust claims not yet paid as of the reallocation
4.12 date, the amount the plaintiff receives from the asbestos trust as specified in the trust
4.13 governance documents.