

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1645

99TH GENERAL ASSEMBLY

5474H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to actions for damages due to exposure to asbestos.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto six new sections, to be known as sections 537.880, 537.882, 537.884, 537.886, 537.888, and 537.890, to read as follows:

537.880. 1. The provisions of sections 537.880 to 537.890 shall apply to asbestos actions filed on or after the effective date of such sections and to pending asbestos actions in which trial has not commenced as of such date.

2. As used in sections 537.880 to 537.890, the following words and terms shall have the meanings indicated, unless the context clearly requires otherwise:

(1) “Asbestos action”, any claim for damages or other relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos and any derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person;

(2) “Asbestos trust”, 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 created under 11 U.S.C. Section 524(g) or 11 U.S.C. Section 1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (3) "Asbestos trust claim", any claim for compensation by an exposed person or the
17 exposed person's representative against any asbestos trust;

18 (4) "Claimant", any person bringing an asbestos action or asserting an asbestos
19 trust claim, including a personal representative if the asbestos action or asbestos trust
20 claim is brought by an estate, or a conservator or next friend if the asbestos action or
21 asbestos trust claim is brought on behalf of a minor or legally incapacitated individual.
22 "Claimant" includes a claimant, counter-claimant, cross-claimant, or third-party claimant;

23 (5) "Exposed person", any person whose exposure to asbestos or to
24 asbestos-containing products is the basis for an asbestos claim;

25 (6) "Trust claim materials", all documents and information relevant or related to
26 a pending or potential asbestos trust claim including, but not limited to, claim forms,
27 proofs of claim, all materials submitted by a claimant in order to have the claim evaluated
28 by the asbestos trust, including copies of electronic data and emails. "Trust claim
29 materials" include claim forms and supplementary materials, proofs of claim, affidavits,
30 depositions and trial testimony of the claimant and others knowledgeable about the
31 claimant's exposure history, work history, exposure allegations, and medical and health
32 records relating to the claimant's claim including, but not limited to, x-rays, test results,
33 diagnostic reports, CT reports, cytology reports, and all other medical reports and
34 pathology results;

35 (7) "Trust governance document", all documents that relate to eligibility and
36 payment levels, including claims payment matrices, trust distribution procedures, or plans
37 for reorganization for an asbestos trust.

537.882. 1. Within thirty days after an asbestos action is filed or within thirty days
2 of the effective date of this section for asbestos actions that are pending on that effective
3 date, the claimant shall:

4 (1) Provide the court and parties with a sworn statement signed by the claimant
5 and claimant's counsel, under penalties of perjury, indicating that an investigation of all
6 asbestos trust claims has been conducted and that all asbestos trust claims that can be
7 made by the claimant or any person on the claimant's behalf have been completed and
8 filed. A deferral or placeholder claim that is missing necessary documentation for the trust
9 to review and pay the claim does not meet the requirements of this section. The sworn
10 statement shall indicate whether there has been a request to delay, suspend, withdraw, or
11 otherwise alter the standing of any asbestos trust claim and provide the status and
12 disposition of each asbestos trust claim;

13 (2) Provide all parties with all trust claim materials, including trust claim materials
14 that relate to conditions other than those that are the basis for the asbestos action and

15 including all trust claim materials from all law firms connected to the claimant in relation
16 to exposure to asbestos, including anyone at a law firm involved in the asbestos action, any
17 referring law firm, and any other firm that has filed an asbestos trust claim for the
18 claimant or on the claimant's behalf. Documents should be accompanied by a custodial
19 affidavit from the asbestos trust certifying that the trust claim materials submitted to the
20 defendants are true and complete; and

21 (3) Produce all available trust claims filed by any individual other than the
22 claimant if the claimant's asbestos trust claim is based on exposure to asbestos through that
23 other individual.

24 2. The claimant shall have a continuing duty, until final resolution of the asbestos
25 action, to supplement the statement and materials provided under subsection 1 of this
26 section. The claimant shall supplement and amend the information and materials provided
27 under subsection 1 of this section within thirty days after the claimant files an additional
28 asbestos trust claim, supplements an existing asbestos trust claim, or receives additional
29 trust claim materials related to any asbestos trust claim made against an asbestos trust.

30 3. A court may impose sanctions for failure by a claimant or claimant's counsel to
31 comply with this section, including dismissal of the asbestos action with prejudice for
32 willful failure to comply with the requirements of sections 537.880 to 537.890.

33 4. The submission of the sworn statement under subsection 1 of this section shall
34 be in addition to any disclosure requirements otherwise imposed by law, rules of civil
35 procedure, court order or ruling, applicable agreement or stipulation, local rule, or case
36 management order. Nothing in this section shall prevent a court of competent jurisdiction
37 from requiring any disclosures in addition to the disclosures required under this section.

537.884. 1. A defendant may file a motion requesting a stay of the asbestos action
2 on or before the later of the sixtieth day before the date the trial in the action is set to
3 commence or the fifteenth day after the defendant first obtains information that could
4 support additional trust claims by the claimant. The motion shall identify the asbestos
5 trust claims the defendant believes the claimant can file and include information
6 supporting those asbestos trust claims.

7 2. Within ten days after the filing of the defendant's motion, the claimant shall:

8 (1) File the asbestos trust claims and produce all related trust claim materials; or

9 (2) File a written response with the court stating why there is insufficient evidence
10 for the claimant to file the asbestos trust claims.

11 3. Within ten days of the claimant filing a written response to the defendant's
12 motion to stay, the court shall determine if there is a sufficient basis for the claimant to file
13 the asbestos trust claim identified in the motion to stay.

14 **4. If the court determines that there is a sufficient basis for the claimant to file an**
15 **asbestos trust claim identified in the motion to stay, the court shall stay the asbestos action**
16 **until the claimant files the asbestos trust claim and produces all related trust claim**
17 **materials.**

18 **5. An asbestos action shall not be set for trial until at least forty-five days after the**
19 **claimant produces the documentation required by this section.**

537.886. 1. Trust claim materials and trust governance documents are presumed
2 **to be relevant and authentic and are admissible in evidence in an asbestos action. No**
3 **claims of privilege apply to trust claim materials or trust governance documents.**

4 **2. A defendant in an asbestos action may seek discovery against an asbestos trust**
5 **identified under sections 537.880 to 537.890. The claimant shall not claim privilege or**
6 **confidentiality to bar discovery. The claimant shall provide consent or any other**
7 **expression of permission that may be required by the asbestos trust to release information**
8 **and materials sought by the defendant.**

9 **3. Trust claim materials that are sufficient to entitle a claim to consideration for**
10 **payment under the applicable trust governance documents may be sufficient to support a**
11 **jury finding that the claimant was exposed to products for which the trust was established**
12 **to provide compensation and that such exposure was a substantial contributing factor in**
13 **causing the claimant's injury that is at issue in the asbestos action.**

14 **4. The parties in the asbestos action may introduce at trial any trust claim materials**
15 **or trust governance documents to prove, without limitation, alternative causation for the**
16 **exposed person's claimed injury, death, or loss to person; to prove that the bankrupt entity**
17 **is a joint-tortfeasor, liable for the same injury or wrongful death for the purposes of section**
18 **537.060; or to prove issues relevant to an adjudication of the asbestos claim, unless the**
19 **exclusion of the trust claim material is otherwise required by the rules of evidence. The**
20 **jury shall not be informed of the specific amount of consideration paid by a trust to a**
21 **claimant in settlement of a claim.**

537.888. 1. Not less than thirty days before trial in an asbestos action, the court
2 **shall enter into the record a document that identifies every asbestos trust claim made by**
3 **the claimant or on the claimant's behalf.**

4 **2. If a claimant proceeds to trial in an asbestos action before an asbestos trust claim**
5 **is resolved, there is a rebuttable presumption that the claimant is entitled to, and will**
6 **receive, the compensation specified in the trust governance documents applicable to his or**
7 **her claim at the time of trial. The court shall take judicial notice that the trust governance**
8 **documents specify compensation amounts and payment percentages and shall establish an**
9 **attributed value to the claimant's asbestos trust claims.**

10 **3. In an asbestos action in which damages are awarded and setoffs are permitted**
11 **under applicable law, a defendant is entitled to a setoff or credit in the amount the**
12 **claimant has been awarded from an asbestos trust identified in subsection 1 of this section,**
13 **and the amount of the valuation established under subsection 2 of this section. If multiple**
14 **defendants are found liable for damages, the court shall distribute the amount of setoff or**
15 **credit proportionally between the defendants, according to the liability of each defendant.**

537.890. 1. In an asbestos action, upon the filing by a defendant or judgment
2 **debtor of an appropriate motion seeking sanctions or other relief, the court may impose**
3 **any sanction provided by court rule or law of this state including, but not limited to,**
4 **vacating a judgment rendered in an asbestos tort action for a claimant's failure to comply**
5 **with the disclosure requirements of sections 537.880 to 537.890.**

6 **2. If, subsequent to obtaining a judgment in an asbestos action, a claimant files any**
7 **additional asbestos trust claim with, or submits any additional asbestos trust claim to, an**
8 **asbestos trust that was in existence at the time the claimant obtained that judgment, the**
9 **trial court, upon the filing by a defendant or judgment debtor of an appropriate motion**
10 **seeking sanctions or other relief, has jurisdiction to reopen the judgment in the asbestos**
11 **action and adjust the judgment by the amount of any subsequent asbestos trust payments**
12 **obtained by the claimant and order any other relief that the court considers just and**
13 **proper.**

14 **3. A defendant or judgment debtor shall file any motion under this section within**
15 **a reasonable time and not more than one year after the judgment was entered or taken.**

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