

SECOND REGULAR SESSION

HOUSE BILL NO. 1717

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RILEY.

3732H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto seven 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 seven new sections, to be known as sections 537.880, 537.882, 537.884, 537.886, 537.888, 537.890, and 537.892, to read as follows:

537.880. 1. The provisions of sections 537.880 to 537.892 shall apply to asbestos actions filed on or after August 28, 2022, and to asbestos actions filed before August 28, 2022, unless the trial date in the asbestos action was set before January 1, 2022, and the trial will begin on or before December 1, 2022.

2. The provisions of sections 537.880 to 537.890 shall not apply to asbestos actions filed by or on behalf of any paid, volunteer, or retired firefighter, paramedic, or emergency medical technician.

3. As used in sections 537.880 to 537.892, the following terms shall mean, 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 or a court-approved bankruptcy or created under 11

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.

17 U.S.C. Section 524(g), or 11 U.S.C. Section 1121(a), or other applicable provision of law
18 that is intended to provide compensation to claimants arising out of, based on, or related
19 to the health effects of exposure to asbestos;

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

22 (4) "Claimant", any person bringing an asbestos action or asserting an asbestos
23 trust claim, including a personal representative if the asbestos action or asbestos trust
24 claim is brought by an estate, or a conservator or next friend if the asbestos action or
25 asbestos trust claim is brought on behalf of a minor or disabled person, as the terms
26 "minor" and "disabled person" are defined in section 475.010;

27 (5) "Exposed person", any person whose exposure to asbestos or to asbestos-
28 containing products is the basis for an asbestos action or an asbestos trust claim;

29 (6) "Trust claim materials", a final executed proof of claim and all documents
30 and information, including copies of electronic data and emails, submitted to or received
31 from an asbestos trust by a claimant or a claimant's representative, including claim
32 forms and supplementary materials, proofs of claim, affidavits, depositions and trial
33 testimony of the claimant and others knowledgeable about the claimant's exposure
34 history, work history, exposure allegations, medical and health records, all documents
35 that reflect the status of a claim against an asbestos trust, and if the asbestos trust claim
36 has settled, all documents relating to the settlement of the asbestos trust claim;

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

537.882. 1. Within thirty days after an asbestos action is filed if the asbestos
2 action was filed on or after August 28, 2022, or within thirty days of August 28, 2022, for
3 an asbestos action that was filed before August 28, 2022, and is subject to the provisions
4 of sections 537.880 to 537.892, the claimant shall:

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

14 **(2) Provide all parties with all trust claim materials from all law firms connected**
15 **to the claimant in relation to exposure to asbestos, including trust claim materials that**
16 **relate to conditions other than those that are the basis for the asbestos action.**
17 **Documents provided pursuant to this subdivision shall include an affidavit from the**
18 **claimant certifying that the trust claim materials are true and complete; and**

19 **(3) Produce all available asbestos trust claims filed by any individual other than**
20 **the claimant if the claimant's asbestos trust claim is based on exposure to asbestos**
21 **through that other individual and the materials are available to the claimant or**
22 **claimant's counsel.**

23 **2. The claimant shall have a continuing duty to supplement the statement and**
24 **materials required to be provided pursuant to subsection 1 of this section within thirty**
25 **days after the claimant files an additional asbestos trust claim, supplements an existing**
26 **asbestos trust claim, or receives additional trust claim materials related to any asbestos**
27 **trust claim made against an asbestos trust.**

28 **3. The court shall dismiss the asbestos action without prejudice if the claimant**
29 **fails to comply with the requirements of sections 537.880 to 537.890.**

537.884. 1. Not less than sixty days before the date the trial in an asbestos action
2 **is set to commence, if the defendant believes the claimant has not filed all asbestos trust**
3 **claims as required by section 537.882, the defendant may move the court for an order to**
4 **require the claimant to file the additional asbestos trust claims the defendant believes**
5 **the claimant is eligible to file.**

6 **2. Within ten days after the filing of the defendant's motion, the claimant shall:**
7 **(1) File the asbestos trust claims and produce all related trust claim materials; or**
8 **(2) File a written response with the court stating why there is insufficient**
9 **evidence for the claimant to file the asbestos trust claims.**

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

13 **4. If the court determines that there is a sufficient basis for the claimant to file an**
14 **asbestos trust claim identified in the defendant's motion, the court shall order the**
15 **claimant to file the asbestos trust claim and produce all related trust claim materials**
16 **within ten days. An asbestos action shall not proceed to trial until at least ninety days**
17 **after the claimant complies with the court's order.**

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
5 trust. The claimant shall not claim privilege or confidentiality to bar discovery. The
6 claimant shall provide consent or any other expression of permission that may be
7 required by the asbestos trust to release information and materials sought by the
8 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
11 a jury finding that the claimant was exposed to products for which the trust was
12 established to provide compensation and that such exposure was a substantial
13 contributing factor in 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
15 materials or trust governance documents to prove, without limitation, alternative
16 causation for the exposed person's claimed injury, death, or loss to person; to prove that
17 the bankrupt entity is a joint tort-feasor, liable for the same injury or wrongful death for
18 the purposes of section 537.060; or to prove issues relevant to an adjudication of the
19 asbestos action, unless the exclusion of the trust claim material is otherwise required by
20 the rules of evidence.

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

8 2. In an asbestos action in which damages are awarded and setoffs are
9 permitted, a defendant is entitled to a setoff or credit in the amount of the actual
10 payment received by the claimant from the asbestos trust and the amount of the
11 valuation established under subsection 1 of this section. If multiple defendants are
12 found liable for damages, the court shall distribute the amount of setoff or credit
13 proportionally between the defendants, according to the liability of each defendant.

537.890. 1. If, subsequent to obtaining a judgment in an asbestos action, a
2 claimant files an additional asbestos trust claim with, or submits an additional asbestos
3 trust claim to, an asbestos trust that was in existence at the time the claimant obtained
4 the judgment, the claimant shall provide notice within ten days of such filing or
5 submission to the defendant and the trial court from which the judgment was obtained.
6 The trial court, upon the filing of a motion by a defendant or judgment debtor, has
7 jurisdiction and shall reopen the judgment in the asbestos action and adjust the

8 judgment by the amount of any asbestos trust payments obtained by the claimant after
9 the initial judgment and order any other relief that the court considers just and proper.

10 2. A defendant or judgment debtor shall file any motion pursuant to this section
11 within three years after the judgment was entered or taken.

537.892. 1. Within thirty days after an asbestos action is filed if the asbestos
2 action was filed on or after August 28, 2022, or within thirty days of August 28, 2022, for
3 an asbestos action that was filed before August 28, 2022, and is subject to the provisions
4 of sections 537.880 to 537.892, the claimant shall file a sworn information form
5 specifying the evidence that provides the basis for each claim against each defendant.
6 The sworn information form shall include all of the following with specificity:

7 (1) The name, address, date of birth, marital status, occupation, smoking history,
8 current and past worksites, and current and past employers of the exposed person, and
9 any person through whom the exposed person was exposed to asbestos;

10 (2) Each person through whom the exposed person was exposed to asbestos and
11 the exposed person's relationship to each person;

12 (3) Each person who is knowledgeable about each exposure;

13 (4) The manufacturer or seller of each asbestos or asbestos-containing product
14 and the specific product involved in each exposure, including any person through whom
15 the exposed person was exposed to asbestos;

16 (5) The specific location and manner of each exposure, including any person
17 through whom the exposed person was exposed to asbestos;

18 (6) The beginning and ending dates of each exposure, the frequency and
19 duration of each exposure, and the proximity of the asbestos-containing product or its
20 use to the exposed person and any person through whom the exposed person was
21 exposed to asbestos;

22 (7) The specific asbestos-related disease that is alleged;

23 (8) A certification that no prior asbestos actions have been made on the
24 claimant's behalf or, if the claimant has filed prior asbestos actions, information as to
25 the case name, case number, and court; and

26 (9) Any supporting documentation relating to the information required in this
27 subsection.

28 2. A claimant's obligation to provide sworn information pursuant to subsection 1
29 of this section is in addition to any court ordered disclosures. Claimants have a
30 continuing duty to supplement the information that is required to be disclosed in
31 subsection 1 of this section within ten days after the claimant receives additional
32 information that is required to be disclosed.

33 **3. The court, on motion by a defendant, shall dismiss the asbestos action without**
34 **prejudice as to any defendant whose product or premises is not identified in the**
35 **required disclosures set forth in subsection 1 of this section.**

36 **4. The court, on motion by a defendant, shall dismiss the asbestos action without**
37 **prejudice if the claimant fails to comply with the requirements of this section.**

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