

SECOND REGULAR SESSION

HOUSE BILL NO. 2438

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

6214H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto five new sections relating to actions for damages related 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 five new sections, to be known as sections 537.880, 537.882, 537.884, 537.886, and 537.888, to read as follows:

537.880. 1. The provisions of sections 537.880 to 537.888 shall apply to asbestos tort actions filed on or after August 28, 2016, and to pending asbestos tort actions in which trial has not commenced as of such date.

2. As used in sections 537.880 to 537.888, the following words and terms shall have the meanings indicated, unless the context clearly requires otherwise:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;

(2) "Asbestos claim", any claim for damages, loss, indemnification, contribution, restitution, or other relief, including punitive damages, that is related to bodily injury or another harm including loss of consortium, society, or companionship; loss of support; personal injury or death; mental or emotional injury; risk or fear of disease or other injury; or costs of medical monitoring or surveillance and that is allegedly caused by or related to the claimant's exposure to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's

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.

18 exposure to asbestos. "Asbestos claim" does not include a claim for compensatory benefits
19 pursuant to workers' compensation or veterans benefits;

20 (3) "Asbestos tort action", a civil action for damages for injury, death, or loss to
21 person based on an asbestos claim. "Asbestos tort action" shall include a products liability
22 claim that is subject to sections 537.760 to 537.765. "Asbestos tort action" shall not include
23 a civil action for damages for a breach of contract or another agreement between persons;

24 (4) "Asbestos trust", encompasses all trust entities, claims agents, or claims
25 processing facilities that are created pursuant to the jurisdiction of a United States
26 bankruptcy court and Section 524(g) of Chapter 11 of the United States Bankruptcy Code,
27 11 U.S.C. Section 524(g), or other applicable provision of law, that are formed for the
28 purpose of compensating claimants asserting eligible asbestos claims and that are in
29 existence on the date initially set for trial in the asbestos tort action;

30 (5) "Asbestos trust claim", any claim for compensation by an exposed person or the
31 exposed person's representative against any asbestos trust;

32 (6) "Cancer", a malignant condition;

33 (7) "Claimant", any person asserting an asbestos claim or asbestos trust claim.
34 "Claimant" includes a plaintiff, counter-claimant, cross-claimant, or third-party plaintiff;

35 (8) "Exposed person", any person whose exposure to asbestos or to
36 asbestos-containing products is the basis for an asbestos claim;

37 (9) "Noncancer", a nonmalignant condition;

38 (10) "Proof of claim", any form of documentation that a potential claimant against
39 an asbestos trust submits or provides to the asbestos trust that attests to or asserts the
40 existence of any liquidated or unliquidated asbestos claim that the claimant may have
41 against the asbestos trust or its predecessors under any theory of law;

42 (11) "Trust claims materials", all documents and information relevant or related
43 to a pending or potential asbestos trust claim including, but not limited to, claim forms,
44 proofs of claim, and informational materials required by an asbestos trust to be submitted
45 by a claimant in order to have the claim evaluated by the asbestos trust and relied upon
46 by the asbestos trust in making its compensation determination. "Trust claims materials"
47 include claims forms and supplementary materials, proofs of claim, affidavits, depositions
48 and trial testimony, work history, and medical and health records;

49 (12) "Trust governance document", any document that determines eligibility and
50 payment levels including claims payment matrices, trust distribution procedures, or plans
51 for reorganization for an asbestos trust.

537.882. 1. Within thirty days after filing the complaint or other initial pleading
2 in an asbestos tort action that is not otherwise barred or deferred under applicable law or

3 within thirty days of the effective date of this section with respect to asbestos tort actions
4 that are pending on that effective date, a claimant shall provide to all of the parties in the
5 action a sworn statement by the claimant, under penalty of perjury, identifying each
6 asbestos trust claim he or she has filed or reasonably anticipates filing against an asbestos
7 trust and all trust claims materials pertaining to each identified asbestos trust claim. The
8 sworn statement for each asbestos trust claim shall include the name, address, and contact
9 information for the asbestos trust, the amount claimed by the claimant, the date that the
10 claimant filed the asbestos trust claim, the disposition of the asbestos trust claim, and an
11 indication of whether there has been a request to defer, delay, suspend, or toll the asbestos
12 trust claim against the asbestos trust.

13 2. The submission of the sworn statement under subsection 1 of this section shall
14 be in addition to any disclosure requirements otherwise imposed by law, civil rule, court
15 order or ruling, applicable agreement or stipulation, local rule, or case management order.

16 3. The claimant shall supplement and amend the information and materials he or
17 she provided under subsection 1 of this section within thirty days after the claimant files
18 an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives
19 additional trust claims materials related to any asbestos trust claim he or she makes against
20 an asbestos trust.

21 4. With respect to any asbestos trust claim that a claimant discloses under
22 subsection 3 of this section in an amendment to the sworn statement, the claimant shall
23 provide to all of the parties in the asbestos tort action all trust claims materials pertaining
24 to each additional asbestos trust claim identified in that amendment. The claimant shall
25 provide the trust claims materials under this subsection within thirty days of filing or
26 submitting each additional asbestos trust claim.

27 5. Failure to provide to all of the parties in the asbestos tort action all trust claims
28 materials as required by this section in a timely manner shall constitute grounds for the
29 court to decline to assign an initial trial date or to extend the date set for trial in the action.

30 6. Nothing in this section shall prevent a court of competent jurisdiction from
31 requiring any disclosures in addition to the disclosures required under this section.

537.884. 1. Any defendant in an asbestos tort action may file a motion with the
2 court, with notice to the claimant and to all of the parties in the action, for an order to stay
3 the proceedings. A defendant's motion to stay the proceedings shall set forth credible
4 evidence that demonstrates all of the following:

5 (1) The identities of all asbestos trusts not previously disclosed by the claimant
6 under section 537.882 against which the claimant has not made any asbestos trust claims

7 but against which the defendant in good faith believes the claimant may make a successful
8 asbestos trust claim;

9 (2) The information that the defendant believes supports the additional asbestos
10 trust claims described under subdivision (1) of this subsection; and

11 (3) A description of the information sufficient to meet the asbestos trust claim
12 requirements of the asbestos trusts described under subdivision (1) of this subsection.

13 2. Within fourteen days after the filing of the defendant's motion for an order to
14 stay the proceedings under subsection 1 of this section, the claimant may do either of the
15 following:

16 (1) File the asbestos trust claims with or submit them to the asbestos trusts
17 identified in the defendant's motion for an order to stay the proceedings. The submission
18 to the court and to all of the parties in the asbestos tort action of proof demonstrating that
19 the asbestos trust claims identified in the defendant's motion to stay the proceedings have
20 been filed with or submitted to the appropriate asbestos trusts is dispositive of the
21 defendant's motion for an order to stay the proceedings. Alternatively, the defendant may
22 withdraw the motion brought under subsection 1 of this section; or

23 (2) File with the court a response to the defendant's motion for an order to stay the
24 proceedings requesting a determination by the court that the information supporting the
25 asbestos trust claims against the asbestos trusts identified in the defendant's motion for an
26 order to stay the proceedings should be modified prior to the filing of an asbestos trust
27 claim with, or the submission of an asbestos trust claim to, an asbestos trust or that there
28 is insufficient information to file or submit the asbestos trust claim identified in the
29 defendant's motion for an order to stay the proceedings.

30 3. If the defendant has met its burden under subsection 1 of this section and if the
31 claimant files a response under subdivision (2) of subsection 2 of this section, the court
32 shall determine if a successful asbestos trust claim could be submitted in good faith to each
33 asbestos trust identified in the defendant's motion for an order to stay the proceedings
34 brought under subsection 1 of this section. The claimant has the burden of proof, by a
35 preponderance of the evidence, to demonstrate that the information set forth by the
36 defendant under subdivisions (2) and (3) of subsection 1 of this section should be modified
37 prior to the filing of an asbestos trust claim with, or the submission of an asbestos trust
38 claim to, each asbestos trust identified in the defendant's motion or that the asbestos trust
39 claim should not be filed with or submitted to the asbestos trust because a successful
40 asbestos trust claim cannot be made in good faith.

41 4. If the court determines that there is a good-faith basis for filing an asbestos trust
42 claim with, or submitting an asbestos trust claim to, an asbestos trust identified in the

43 defendant's motion for an order to stay the proceedings brought under subsection 1 of this
44 section, the court shall stay the immediate proceedings until the claimant files the asbestos
45 trust claims with or submits them to the asbestos trusts identified in the defendant's motion
46 for an order to stay the proceedings and has otherwise met the obligations set forth in this
47 section and section 537.882.

48 **5. The court may allow additional time for discovery or may stay the proceedings**
49 **for other good cause shown.**

537.886. 1. Trust claims materials and trust governance documents shall be
2 **admissible in evidence. No claims of privilege apply to trust claims materials or trust**
3 **governance documents.**

4 **2. A defendant in an asbestos tort action may seek discovery against an asbestos**
5 **trust identified under sections 537.880 to 537.888. The claimant shall not claim privilege**
6 **or confidentiality to bar discovery, and the claimant shall provide consent or other**
7 **expression of permission that may be required by the asbestos trust to release information**
8 **and materials sought by the defendant.**

537.888. 1. A noncancer asbestos trust claim and a cancer asbestos trust claim are
2 **based on distinct injuries caused by a person's exposure to asbestos. A noncancer asbestos**
3 **trust claim that is subject to disclosure under section 537.882 or 537.884 or is identified in**
4 **this section means the noncancer asbestos claim that is the subject of the asbestos tort**
5 **action in which the defendant seeks discovery under sections 537.880 to 537.888. If a**
6 **claimant previously filed a noncancer asbestos trust claim with, or submitted a noncancer**
7 **asbestos trust claim to, an asbestos trust and subsequently filed an asbestos tort action**
8 **based on a cancer asbestos claim, a cancer asbestos trust claim that is subject to disclosure**
9 **under section 537.882 or 537.884 or is identified in this section means both the earlier filed**
10 **noncancer asbestos trust claim and the cancer asbestos claim that is the subject of the**
11 **subsequent asbestos tort action.**

12 **2. Asbestos trust claims and the information that is the subject of disclosure under**
13 **section 537.882 or 537.884 are presumed to be authentic, relevant to, and discoverable in**
14 **an asbestos tort action. Notwithstanding any agreement or confidentiality provision, trust**
15 **claims materials are presumed to not be privileged. The parties in the asbestos tort action**
16 **may introduce at trial any trust claims material to prove alternative causation for the**
17 **exposed person's claimed injury, death, or loss to person; to prove a basis to allocate**
18 **responsibility for the claimant's claimed injury, death, or loss to person; or to prove issues**
19 **relevant to an adjudication of the asbestos claim, unless the exclusion of the trust claims**
20 **material is otherwise required by the rules of evidence. An asbestos trust claim rejected**

21 by an asbestos trust may be excluded as evidence if the exclusion is required by the rules
22 of evidence.

23 **3. In addition to the disclosure requirements set forth in sections 537.882 and**
24 **537.884, the parties to the asbestos tort action may seek additional disclosure and discovery**
25 **of information relevant to the action by any mechanism provided by any applicable section**
26 **of the state statute, the rules of civil procedure, any local rule, or any case management**
27 **order. In addition to the disclosure described in this subsection, any defendant in the**
28 **asbestos tort action also may seek discovery of the claimant's asbestos trust claims directly**
29 **from the asbestos trusts involved.**

30 **4. In an asbestos tort action, upon the filing by a defendant or judgment debtor of**
31 **an appropriate motion seeking sanctions or other relief, the court may impose any sanction**
32 **provided by a law of this state including, but not limited to, vacating a judgment rendered**
33 **in an asbestos tort action for a claimant's failure to comply with the disclosure**
34 **requirements of sections 537.880 to 537.888.**

35 **5. If, subsequent to obtaining a judgment in an asbestos tort action in this state, a**
36 **claimant files any additional asbestos trust claim with, or submits any additional asbestos**
37 **trust claim to, an asbestos trust that was in existence at the time the claimant obtained that**
38 **judgment, the trial court, upon the filing by a defendant or judgment debtor of an**
39 **appropriate motion seeking sanctions or other relief, has jurisdiction to reopen its**
40 **judgment in the asbestos tort action and do either of the following:**

41 **(1) Adjust the judgment by the amount of any subsequent asbestos trust payments**
42 **obtained by the claimant; or**

43 **(2) Order any other relief to the parties that the court considers just and proper.**

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45 **For purposes of this subsection, the term "asbestos trust" encompasses all trust entities,**
46 **claims agents, or claims processing facilities that are created pursuant to the jurisdiction**
47 **of a United States bankruptcy court and Section 524(g) of Chapter 11 of the United States**
48 **Bankruptcy Code, 11 U.S.C. Section 524(g), or other applicable provision of law, that are**
49 **formed for the purpose of compensating claimants asserting eligible asbestos claims.**

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

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