

FIRST REGULAR SESSION

SENATE BILL NO. 200

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR EIGEL.

0928S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapters 292 and 537, RSMo, by adding thereto seven new sections relating to asbestos.

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

Section A. Chapters 292 and 537, RSMo, are amended by
2 adding thereto seven new sections, to be known as sections
3 292.700, 537.880, 537.882, 537.884, 537.886, 537.888, and
4 537.890, to read as follows:

292.700. 1. Beginning August 28, 2023, no person or
2 entity may manufacture, process, sell, or distribute
3 asbestos.

2. The provisions of this section shall not apply to:

5 (1) End-use of asbestos which has been installed in a
6 building or other structure before the effective date of
7 this section;

8 (2) Distribution of asbestos solely for the purpose of
9 disposal in compliance with applicable federal, state, and
10 local requirements; or

11 (3) Asbestos that meets the following:

12 (a) The manufacture, processing, selling, or
13 distribution in commerce of asbestos by the person which is
14 necessary to protect law enforcement interests or the
15 security interests of the state or any political subdivision
16 of the state or of the United States; or

17 (b) No feasible alternative to the manufacture,
18 processing, or distribution in commerce of asbestos exists
19 for the intended use.

537.880. 1. The provisions of sections 537.880 to
2 537.890 shall apply to asbestos actions filed on or after
3 the effective date of such sections and to pending asbestos
4 actions in which trial has not commenced as of such date.

2. As used in sections 537.880 to 537.890, the
6 following words and terms mean, unless the context clearly
7 requires otherwise:

8 (1) "Asbestos action", any claim for damages or other
9 relief presented in a civil action arising out of, based on,
10 or related to the health effects of exposure to asbestos and
11 any derivative claim made by or on behalf of a person
12 exposed to asbestos or a representative, spouse, parent,
13 child, or other relative of that person, but does not
14 include a claim for compensatory benefits pursuant to
15 workers' compensation law or for veterans' benefits;

16 (2) "Asbestos trust", a government-approved or court-
17 approved trust, qualified settlement fund, compensation
18 fund, or claims facility created as a result of an
19 administrative or legal action, a court-approved bankruptcy,
20 or created under 11 U.S.C. Section 524(g) or 11 U.S.C.
21 Section 1121(a) or other applicable provision of law, that
22 is intended to provide compensation to claimants arising out
23 of, based on, or related to the health effects of exposure
24 to asbestos;

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

28 (4) "Claimant", any person bringing an asbestos action
29 or asserting an asbestos trust claim, including a personal

30 representative if the asbestos action or asbestos trust
31 claim is brought by an estate, or a conservator or next
32 friend if the asbestos action or asbestos trust claim is
33 brought on behalf of a minor or legally incapacitated
34 individual. "Claimant" includes a claimant, counter-
35 claimant, cross-claimant, or third-party claimant;

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

39 (6) "Trust claim materials", a final executed proof of
40 claim and all documents and information, including copies of
41 electronic data and emails, submitted to or received from an
42 asbestos trust by the claimant, including claim forms and
43 supplementary materials, proofs of claim, affidavits,
44 depositions and trial testimony of the claimant and others
45 knowledgeable about the claimant's exposure history, work
46 history, exposure allegations, medical and health records,
47 all documents that reflect the status of a claim against an
48 asbestos trust, and if the asbestos trust claim has settled,
49 all documents relating to the settlement of the asbestos
50 trust claim;

51 (7) "Trust governance document", all documents that
52 relate to eligibility and payment levels, including claims
53 payment matrices, trust distribution procedures, or plans
54 for reorganization for an asbestos trust;

55 (8) "Veterans' benefits", a program for benefits in
56 connection with military service administered by the
57 Veterans' Administration under 38 U.S.C. Title 38;

58 (9) "Workers' compensation", a program administered by
59 the United States or a state to provide benefits, funded by
60 a responsible employer or its insurance carrier, for
61 occupational diseases or injuries or for disability or death

62 caused by occupational diseases or injuries. "Workers'
63 compensation" includes the Longshore and Harbor Workers'
64 Compensation Act, 33 U.S.C. Section 901, et seq., and
65 Federal Employees' Compensation Act, 5 U.S.C. Chapter 81.
66 "Workers' compensation" does not include the Federal
67 Employers' Liability Act of April 22, 1908, 45 U.S.C.
68 Section 51, et seq..

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

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

17 (2) Provide all parties with all trust claim
18 materials, including trust claim materials that relate to
19 conditions other than those that are the basis for the
20 asbestos action and including all trust claim materials from
21 all law firms connected to the claimant in relation to
22 exposure to asbestos. Documents provided under this
23 subdivision shall be accompanied by an affidavit certifying
24 that the trust claim materials are true and complete; and

25 (3) Produce all available asbestos trust claims filed
26 by any individual other than the claimant if the claimant's
27 asbestos trust claim is based on exposure to asbestos
28 through that other individual and the materials are
29 available to the claimant or claimant's counsel.

30 2. The claimant shall have a continuing duty to
31 supplement the statement and materials provided under
32 subsection 1 of this section within thirty days after the
33 claimant files an additional asbestos trust claim,
34 supplements an existing asbestos trust claim, or receives
35 additional trust claim materials related to any asbestos
36 trust claim made against an asbestos trust.

37 3. A court may impose sanctions for failure by a
38 claimant or a claimant's counsel to comply with the
39 requirements of sections 537.880 to 537.890, including
40 dismissal of the asbestos action with prejudice for willful
41 failure to comply with the requirements of sections 537.880
42 to 537.890.

 537.884. 1. Not less than sixty days before the date
2 the trial in an asbestos action is set to commence, if the
3 defendant believes the claimant has not filed all asbestos
4 trust claims as required by section 537.882 the defendant
5 may move the court for an order to require the claimant to
6 file additional asbestos trust claims. The motion shall
7 identify the asbestos trust claims the defendant believes
8 the claimant is eligible to file and include information
9 supporting those asbestos trust claims.

10 2. If a defendant has previously filed a motion under
11 subsection 1 of this section, the court shall not grant a
12 subsequent motion if the defendant knew that the claimant
13 met the criteria for payment for the additional asbestos

14 trust claim identified in the subsequent motion at the time
15 the earlier motion was filed.

16 3. Within ten days after the filing of the defendant's
17 motion, the claimant shall:

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

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

23 4. Within ten days of the claimant filing a written
24 response to the defendant's motion, the court shall
25 determine if there is a sufficient basis for the claimant to
26 file the asbestos trust claim identified in the defendant's
27 motion.

28 5. If the court determines that there is a sufficient
29 basis for the claimant to file an asbestos trust claim
30 identified in the defendant's motion, the court shall order
31 the claimant to file the asbestos trust claim and produce
32 all related trust claim materials within ten days. If the
33 claimant does not comply with the court's order, the
34 asbestos action shall not proceed to trial until at least
35 thirty days after the claimant complies with the court's
36 order.

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

6 2. A defendant in an asbestos action may seek
7 discovery against an asbestos trust identified in sections
8 537.880 to 537.890. The claimant shall not claim privilege
9 or confidentiality to bar discovery. The claimant shall

10 provide consent or any other expression of permission that
11 may be required by the asbestos trust to release information
12 and materials sought by the defendant.

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

21 4. The parties in the asbestos action may introduce at
22 trial any trust claim materials or trust governance
23 documents to prove, without limitation, alternative
24 causation for the exposed person's claimed injury, death, or
25 loss to person; to prove that the bankrupt entity is a joint
26 tort-feasor, liable for the same injury or wrongful death
27 for the purposes of section 537.060; or to prove issues
28 relevant to an adjudication of the asbestos claim, unless
29 the exclusion of the trust claim material is otherwise
30 required by the rules of evidence. The jury shall not be
31 informed of the specific amount of consideration paid by a
32 trust to a claimant in settlement of a claim.

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

9 establish an attributed value to the claimant's asbestos
10 trust claims.

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

20 3. In an asbestos action in which damages are awarded
21 and a setoff is applied under applicable law, the setoff or
22 credit for an asbestos trust claim that has been resolved
23 shall be the amount of the actual payment received by the
24 claimant from the asbestos trust after application of any
25 applicable payment percentages.

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

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

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