

FIRST REGULAR SESSION

SENATE BILL NO. 347

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time January 25, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1260S.02I

AN ACT

To amend chapter 537, RSMo, by adding thereto five 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 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 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 537.888, the following words and terms shall have the meanings indicated, unless the context clearly requires otherwise:

(1) "Asbestos", chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, any of these minerals that have been chemically treated or altered, and all minerals defined as asbestos in 29 CFR 1910;

(2) "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, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance. "Asbestos action" includes any other 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. "Asbestos action" does not include a

21 claim for compensatory benefits pursuant to workers' compensation or
22 veterans benefits;

23 (3) "Asbestos trust", a government approved or court approved
24 trust, qualified settlement fund, compensation fund or claims facility
25 created as a result of an administrative or legal action, a court-
26 approved bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C.
27 1121(a) or other applicable provision of law, that is intended to provide
28 compensation to claimants arising out of, based on, or related to the
29 health effects of exposure to asbestos;

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

33 (5) "Claimant", any person bringing an asbestos action or
34 asserting an asbestos trust claim, including a personal representative
35 if the asbestos action or asbestos trust claim is brought by an estate, or
36 a conservator or next friend if the asbestos action or asbestos trust
37 claim is brought on behalf of a minor or legally incapacitated
38 individual. "Claimant" includes a claimant, counter-claimant,
39 cross-claimant, or third-party claimant;

40 (6) "Exposed person", any person whose exposure to asbestos or
41 to asbestos-containing products is the basis for an asbestos claim;

42 (7) "Trust claim materials", all documents and information
43 relevant or related to a pending or potential asbestos trust claim
44 including, but not limited to, claim forms, proofs of claim, all materials
45 submitted by a claimant in order to have the claim evaluated by the
46 asbestos trust, including copies of electronic data and emails. "Trust
47 claim materials" include claim forms and supplementary materials,
48 proofs of claim, affidavits, depositions and trial testimony of the
49 claimant and others knowledgeable about the claimant's exposure
50 history, work history, exposure allegations, and medical and health
51 records relating to claimant's claim, including but not limited to x-rays,
52 test results, diagnostic reports, CT reports, cytology reports, and all
53 other medical reports and pathology results;

54 (8) "Trust governance document", all documents that relate to
55 eligibility and payment levels, including claims payment matrices, trust
56 distribution procedures, or plans for reorganization, for an asbestos
57 trust.

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

4 (1) Provide the court and parties with a sworn statement signed
5 by the claimant and claimant's counsel, under penalty of perjury,
6 indicating that an investigation has been conducted and that all
7 asbestos trust claims that can be made by the claimant or any person
8 on the claimant's behalf have been filed;

9 (2) Provide all parties with all trust claim materials pertaining
10 to every asbestos trust claim filed by or on behalf of the claimant,
11 including all trust claim materials filed by the claimant that relate to
12 conditions other than those that are the basis for the asbestos action
13 and all trust claim materials from all law firms connected to the
14 claimant with regard to exposure to asbestos, including anyone at a law
15 firm involved in the asbestos action, any referring law firm, and any
16 other firm that filed an asbestos trust claim on the claimant's behalf;

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

20 2. The sworn statement under subsection 1 of this section shall
21 include the name, address, and contact information for the asbestos
22 trust, the amount of compensation, if any, the claimant has received or
23 reasonably believes the claimant may receive from the trust including
24 a statement explaining any contingencies that may cause the amount
25 of compensation to change in the future, the date that the claimant
26 filed the asbestos trust claim, the disposition of the asbestos trust
27 claim, and an indication of whether there has been a request to defer,
28 delay, suspend, or toll any aspect of the trust claim process.

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

37 4. No initial trial date shall be set until at least forty-five days

38 after the requirements of this section are met.

39 5. A court may impose sanctions for failure by a claimant or
40 claimant's counsel to comply with this section, including dismissal of
41 the asbestos action with prejudice for willful failure to comply with the
42 requirements of sections 537.880 to 537.888.

43 6. The submission of the sworn statement under subsection 1 of
44 this section shall be in addition to any disclosure requirements
45 otherwise imposed by law, rules of civil procedure, court order or
46 ruling, applicable agreement or stipulation, local rule, or case
47 management order. Nothing in this section shall prevent a court of
48 competent jurisdiction from requiring any disclosures in addition to
49 the disclosures required under this section.

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

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

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

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

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

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

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

5 2. A defendant in an asbestos action may seek discovery against

6 an asbestos trust identified under sections 537.880 to 537.888. The
7 claimant shall not claim privilege or confidentiality to bar discovery.
8 The claimant shall provide consent or other expression of permission
9 that may be required by the asbestos trust to release information and
10 materials sought by the defendant.

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

18 4. The parties in the asbestos action may introduce at trial any
19 trust claim materials or trust governance documents to prove, without
20 limitation, alternative causation for the exposed person's claimed
21 injury, death, or loss to person; to prove that the bankrupt entity is a
22 joint-tortfeasor, liable for the same injury or wrongful death for the
23 purposes of section 537.060; or to prove issues relevant to an
24 adjudication of the asbestos claim, unless the exclusion of the trust
25 claim material is otherwise required by the rules of evidence. All
26 settlement agreements with bankruptcy trusts shall reduce the claim
27 by the stipulated amount of the agreement or the amount of
28 consideration paid, whichever is greater, pursuant to section 537.060.

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

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

15 **the claimant and order any other relief that the court considers just**
16 **and proper.**

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

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