
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 238 Session of
2017

INTRODUCED BY KAMPF, PICKETT, IRVIN, TOPPER, JAMES, MILLARD,
KAUFFMAN, ORTITAY, RADER, EVERETT AND SCHEMEL,
JANUARY 31, 2017

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 31, 2017

AN ACT

1 Providing for transparency of claims made against asbestos-
2 related bankruptcy trusts, for compensation and allocation of
3 responsibility, for the preservation of resources and for the
4 imposition of liabilities.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Fairness in
9 Claims and Transparency (FaCT) Act.

10 Section 2. Purpose.

11 The purposes of this act are:

12 (1) To provide transparency of claims made against
13 bankruptcy trusts and in the tort system.

14 (2) To facilitate fair and appropriate compensation to
15 plaintiffs with a rational allocation of responsibility to
16 all persons, whether current defendants or not, consistent
17 with existing State law.

18 (3) To preserve the resources of defendants involved in

1 tort claims and bankruptcy trusts to help promote adequate
2 recoveries for deserving plaintiffs.

3 (4) To ensure that liabilities properly borne by
4 bankruptcy trusts are not imposed upon defendants in the tort
5 system.

6 Section 3. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Asbestos action." Any civil lawsuit in which the plaintiff
11 seeks damages for an asbestos-related injury.

12 "Asbestos trust." Any trust or claims facility created as a
13 result of bankruptcies or other settlements that are intended to
14 provide compensation to plaintiffs alleging asbestos-related
15 injuries, including trusts created under 11 U.S.C. § 524(g)
16 (relating to effect of discharge).

17 "Defendant." Any party to an asbestos action other than a
18 plaintiff or an asbestos trust.

19 "Plaintiff." Any of the following:

20 (1) An individual filing an asbestos action on the
21 individual's behalf.

22 (2) A person permitted by law to represent an individual
23 filing an asbestos action during the individual's lifetime or
24 as the legal representative of the estate of an individual
25 claiming injury from asbestos during the individual's
26 lifetime.

27 Section 4. Apportionment of responsibility.

28 (a) File.--Not later than 90 days prior to trial of an
29 asbestos action, or at another time as ordered by the court,
30 whichever is earlier, a plaintiff shall file with the court and

1 serve on all parties:

2 (1) a statement listing all claims the plaintiff has
3 filed or has a reasonable basis to file against any asbestos
4 trust; and

5 (2) a statement listing all payments or funds the
6 plaintiff has received or reasonably believes the plaintiff
7 may be entitled to receive from each asbestos trust.

8 (b) Statement.--The statement provided under subsection (a)
9 shall:

10 (1) be supported by a certification made subject to the
11 penalties of 18 Pa.C.S. § 4904 (relating to unsworn
12 falsification to authorities) from the plaintiff that the
13 plaintiff has conducted a reasonable investigation and has
14 disclosed all claims the plaintiff has filed or has a
15 reasonable basis to file against an asbestos trust;

16 (2) disclose when each claim was or will be submitted to
17 each asbestos trust and the status of each claim, including
18 whether there has been a response from the asbestos trust and
19 whether the plaintiff has requested deferral, delay or
20 tolling of any aspect of the asbestos trust claims process;
21 and

22 (3) disclose the amount of compensation, if any, the
23 plaintiff has received or reasonably believes the plaintiff
24 may receive from the asbestos trust along with a statement
25 explaining any contingencies that may cause the amount of
26 compensation to change in the future.

27 (c) Service.--

28 (1) When the plaintiff files and serves the statement
29 required under subsection (a), the plaintiff shall serve on
30 all parties to the asbestos action copies of the plaintiff's

1 submissions to and communications with each asbestos trust
2 identified, including copies of electronic data and e-mails,
3 proof-of-claim forms and all other materials or information
4 provided to the asbestos trust or received from the asbestos
5 trust in relation to a claim, including all of the following:

6 (i) Work histories, exposure allegations,
7 affidavits, depositions and trial testimony of the
8 plaintiff and others knowledgeable about the plaintiff's
9 exposure history.

10 (ii) All medical documentation relating to the
11 plaintiff's claim, including, but not limited to, x-rays,
12 test results, diagnostic reports, CT reports, cytology
13 reports, all other medical reports and pathology results.

14 (iii) The trust governance documents, including the
15 payment amounts specified in the documents.

16 (2) If a defendant seeks discovery from an asbestos
17 trust, the plaintiff shall provide consent, a signed
18 authorization and permission for the release of relevant
19 information and materials, if required by the asbestos trust.

20 (d) Duty.--The plaintiff shall have a continuing duty, until
21 final resolution of the action, to supplement the statement
22 provided under subsection (a) and the production of materials
23 under subsection (c)(1), as follows:

24 (1) If the plaintiff learns that the statement filed
25 under subsection (a) was incomplete or incorrect when filed
26 or, although complete and correct when filed, is no longer
27 complete and correct, the plaintiff shall file and serve a
28 supplemental statement on all parties to an asbestos action.
29 The supplemental statement must be filed and served within 30
30 days after the plaintiff discovers the necessity for

1 supplementation or within the time as ordered by the court.

2 (2) If the plaintiff files or provides a claim form or
3 other materials to an asbestos trust after the plaintiff's
4 initial service of materials under subsection (c)(1), the
5 plaintiff must serve copies of the additional materials on
6 all parties to the action. The supplemental materials must be
7 served within 30 days after the plaintiff provides the
8 materials to the asbestos trust.

9 (3) A plaintiff's asbestos action shall be stayed in its
10 entirety until the plaintiff certifies that all claims
11 identified in the statement provided under subsection (a), as
12 supplemented, have been filed. An asbestos action may not
13 begin trial until at least 30 days after a statement is
14 supplemented under paragraph (1) or mandatory disclosures are
15 supplemented under paragraph (2).

16 (e) Liability.--For purposes of apportioning liability, the
17 question of liability of any entity that established an asbestos
18 trust or an asbestos trust disclosed in the statement required
19 under subsection (a) shall be transmitted to the trier of fact
20 upon appropriate requests and proofs by any party, consistent
21 with 42 Pa.C.S. § 7102 (relating to comparative negligence).

22 Section 5. Applicability.

23 This act shall apply to asbestos actions arising on or after
24 the effective date of this section.

25 Section 6. Effective date.

26 This act shall take effect in 90 days.